



# City of Palo Alto

## City Council Staff Report

(ID # 5802)

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**Report Type: Consent Calendar**

**Meeting Date: 6/15/2015**

**Summary Title: Utilities Department Energy Efficiency Evaluation Support Contracts**

**Title: Approve and Authorize the City Manager or Designee to Execute the Following Energy Efficiency Evaluation Support Contracts in a Combined Not to Exceed Amount of \$250,000 per Year for a Three-Year Term With an Option to Extend Either or Both Contracts for an Additional Two Years: (A) TRC Engineers, Inc. in an Amount Not to Exceed \$210,000 per Year; and (B) Energy & Resource Solutions, Inc. in an Amount Not to Exceed \$40,000 per Year**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends that Council approve and authorize the City Manager, or his designee, to execute the attached contracts in a total not-to-exceed amount of \$250,000 per year for the initial three-year term through June 30, 2018 with the option, at the City's sole discretion, to extend the contracts for an additional two years for up to a total term of five years:

- A. TRC Engineers, Inc. (TRC) Contract C16157872 in a not-to-exceed amount of \$210,000 per year for Evaluation, Measurement & Verification (EM&V) services related to the City of Palo Alto Utilities' (CPAU) energy efficiency (EE), demand response (DR), and emerging technologies pilot programs. The total not-to-exceed amount for this TRC Contract, if the term is extended for the maximum five years, is \$1,050,000; and
- B. Energy & Resource Solutions, Inc. (ERS) Contract C16157873 in a not-to-exceed amount of \$40,000 per year for technical advisory services related to energy efficiency programs. The total not-to-exceed amount for this ERS Contract, if the term is extended for the maximum five years, is \$200,000.

### **Executive Summary**

Since 2008, CPAU has contracted with consultants to provide independent evaluation, measurement and verification (EM&V) of energy and demand savings achieved through its EE and DR programs. As mandated by state law, annual EM&V results are included in CPAU's

regulatory submittals to the California Energy Commission (CEC). The current EM&V contract with Cadmus Group will expire as of August 31, 2015.

Also, since 2011, CPAU has contracted with ERS to provide technical advisory services, such as commercial energy audits and validation of energy savings calculations, on an as-needed basis. The current contract with ERS will expire as of June 30, 2015.

To ensure ongoing EM&V and adequate technical support of CPAU's EE and DR programs, in January 2015 staff issued a Request for Proposals (RFP) for EM&V services (Category 1) and Technical Advisory Services (Category 2). Staff received seven proposals in Category 1 and nine proposals in Category 2. After evaluating the proposals and conducting in-person interviews with the top three ranked responders in each category, staff recommends that the City enter into contract with TRC as the EM&V consultant and ERS as the Technical Advisory Services consultant with the term of each contract to extend through June 30, 2018, with the option, at the City's discretion, to extend either contract or both for an additional two years for up to a total of five years. The recommended contract with TRC has an annual not-to-exceed amount of \$210,000, and the recommended contract with ERS has an annual not-to-exceed amount of \$40,000.

### **Background**

State law (AB 2021; 2006) requires each publicly owned electric utility to submit on an annual basis the results of an independent evaluation that measures and verifies EE savings and reduction in energy demand achieved by its EE and DR programs. To meet this mandate, CPAU has contracted with consultants since 2008 to provide EM&V services. In addition to satisfying the regulatory requirement, CPAU's goals for EM&V are to provide:

- Useful recommendations and feedback to improve CPAU's EE programs;
- Assessment of EE program effectiveness;
- Assessment of the quality of the program data for impact evaluation purposes; and
- Increased level of confidence in program results.

In addition to EE programs, CPAU engages in pilot projects with energy savings and demand reduction potential. CPAU launched the Program for Emerging Technologies (PET) in 2012 in order to partner with individuals and companies seeking to test and evaluate innovative emerging technology's ease of deployment, cost effectiveness and user feedback. Pilot projects under PET are typically short-term projects (i.e. less than one year) and may or may not result in energy savings. Concurrently, CPAU is implementing an advanced meter pilot program for several hundred residential customers and will be evaluating this pilot program based on the change in the energy and water consumption of the participating pilot households, as well as customer satisfaction. Staff will seek EM&V support for these pilot projects on an as needed basis.

Besides EM&V services, CPAU has, in the past four years, retained a Technical Advisory Services consultant to assist with reviewing energy savings estimates from third-party contractors and

custom rebate applications, and to provide technical advice to staff related to EE technologies and efficiency standards. The Technical Advisory Service consultant supplements staff resources on an as needed basis and also provides valuable input when staff is evaluating new EE technologies for inclusion in the CPAU's EE program portfolio.

### **Discussion**

In January 2015, staff issued an RFP to solicit services under two work categories—Category 1 for EE EM&V services and Category 2 for Technical Advisory Services. The RFP included instructions requiring RFP responders to submit a separate proposal for each category. Staff received seven proposals for Category 1 work and nine proposals for Category 2 work.

Proposals received for the EM&V and Technical Advisory Services were evaluated based on multiple criteria:

1. Quality and completeness of proposal;
2. Quality, performance and effectiveness of the proposed solution, goods and/or services;
3. Proposer's experience delivering similar programs;
4. Cost to the City;
5. Proposer's financial stability;
6. Proposer's location;
7. Proposer's prior record of performance with City or others; and
8. Proposer's exceptions taken to the City's standard agreement for professional services.

Based on staff's evaluation of the submitted proposals, staff recommends contracting with TRC as the EM&V consultant, with a proposed annual not-to-exceed contract amount of \$210,000, of which \$140,000 is annually budgeted for the EM&V of CPAU's EE programs. The remaining annually budgeted amount is for evaluation of pilot projects/programs and an optional scope of technical advisory services. The proposed contract term with TRC is three years through June 30, 2018, with an option to extend for an additional two years, at the City's discretion.

Furthermore, staff recommends contracting with ERS as the Technical Advisory Services consultant, with a proposed annual not-to-exceed contract amount of \$40,000. The proposed contract term with ERS is three years through June 30, 2018, with an option to extend for an additional two years, at the City's discretion.

### **Resource Impact**

The funds to support these contracts are available within the Utilities Electric and Gas demand side management budgets, subject to the approval of the FY 2016 budget and subsequent year budgets.

### **Policy Implications**

The proposed contracts support the achievement of the Council-approved Ten-year Energy Efficiency Goals for 2014 through 2023 (Staff Report # 3358).

**Environmental Review**

The provision of these services does not meet the definition of a project pursuant to Section 21065 of the California Public Resources Code, thus no environmental review under the California Environmental Quality Act is required.

**Attachments:**

- Attachment A: TRC Engineering, Inc. - Contract C16157872(PDF)
- Attachment B: Energy & Resource Solution, INC. - Contract C16157873 (PDF)

**CITY OF PALO ALTO CONTRACT NO. C16157872  
AGREEMENT BETWEEN THE CITY OF PALO ALTO  
AND TRC ENGINEERS, INC.  
FOR PROFESSIONAL SERVICES**

**PREAMBLE**

This Professional Services Agreement No. C16157872 (“Agreement”) is entered into on the day of June, 2015 (“Effective Date”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation, with its primary business office located at 250 Hamilton Avenue, Palo Alto, CA 94301 (“CITY”), and TRC Engineers, Inc., a California corporation, with its primary business office located at 436 14<sup>th</sup> Street, Suite 1020, Oakland, CA 94612 (“CONSULTANT”). CONSULTANT and CITY are referred to in this Agreement individually as a “Party”, and (collectively as the “Parties or the “Parties to this Agreement”).

**RECITALS**

The following recitals are a substantive portion of this Agreement.

A. CITY intends to evaluate energy efficiency and demand response programs and emerging technologies pilot programs (“Project”) on an annual basis and desires to engage a consultant to provide independent evaluation, measurement, and verification services in connection with the Project (“Services”).

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and currently has, and will maintain, all required licenses and/or certifications to provide the Services during the Term of this Agreement.

C. CITY in reliance on CONSULTANT’s representations, CITY desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

**AGREEMENT**

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

**SECTION 2. TERM.** The term of this Agreement shall be for a term of thirty-six (36) months beginning July 1, 2015 through June 30, 2018, (the “Term”) unless terminated earlier by either Party pursuant to Section 19 of this Agreement. The Parties further agree that CITY, at its sole discretion, has the option to extend the provisions of this Agreement for up to an additional twenty-four (24) months beyond the original Term to allow CONSULTANT to continue to provide the Services as fully described in Exhibit “A”. The authority to exercise the option to extend this Agreement beyond the initial three year Term is hereby delegated to the City

Manager and shall be confirmed by written notice delivered to CONSULTANT by the City Manager at least 30 days prior to the end of the initial Term of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance of the Services shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Two Hundred and Ten Thousand Dollars (\$210,000) per year. No additional services are contemplated as part of this Agreement.

**SECTION 5. INVOICES.** In order to request payment for Services provided, or reimbursable expenses incurred, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including an identification of personnel who performed the Services, hours worked, and hourly rates), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the CITY’s Project Manager at the address specified in Section 13 below. CITY will generally process and pay invoices within thirty (30) days of receipt of such invoice(s).

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All of the Services shall be performed by CONSULTANT or under CONSULTANT’s direct supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that such personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain, during the term of this Agreement, all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all required permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the

Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the project. This obligation shall survive termination of the Agreement.

**SECTION 9. COST ESTIMATES.** (This section does not apply to this Agreement).

**SECTION 10. INDEPENDENT CONTRACTOR.** It is understood and agreed that in performing the Services under this Agreement, CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor, and not be an agent or employee of the CITY.

**SECTION 11. ASSIGNMENT.** The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement, or the performance of any of CONSULTANT's obligations under this Agreement, without the prior written consent of the City Manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the City Manager will be void.

**SECTION 12. SUBCONTRACTING.**

Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are as set forth in Exhibit "C-1", attached and incorporated into to this Agreement.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the Project Manager.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Jennifer Barnes as the Principal Investigator to have supervisory responsibility for the performance, progress, and execution of the Services and Marian Goebes as Project Manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the consultant's Principle Investigator, Project Manager, project coordinator, or any other key personnel for any reason, the appointment of a substitute Principle Investigator and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove any personnel which CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely provide the Services, completion of the Project or a threat to the safety of persons or property.

The CITY's Project Manager is Christine Tam or her designee, Utilities Department, Marketing

Services Division, 250 Hamilton Ave, Palo Alto, CA 94303. The Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate Project Manager from time to time and will inform CONSULTANT of any such change.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work products, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of CONSULTANT's work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such materials available to any individual or organization which is not a Party to this Agreement without the prior written approval of the City Manager or his/her designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** The waiver by either Party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.



**SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, all of the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required under this Agreement shall be provided through insurance carriers with AM Best's Key Rating Guide ratings of A-VII or higher and which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

**SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall immediately deliver to the City Manager any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its subcontractors, if any, or given to CONSULTANT or its subcontractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of the Services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

**SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
   City of Palo Alto  
   Post Office Box 10250  
   Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Director  
   at the address of CONSULTANT recited above

**SECTION 21. CONFLICT OF INTEREST.**

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of Services under this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant”

as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required, and agrees to file, the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

**SECTION 22. NONDISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at the CITY's Purchasing Department and are hereby incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste, and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

23.1 All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.

23.2 Goods purchased by Consultant on behalf of the CITY shall be purchased in accordance with the CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.

23.3 Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the CITY, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. NON-APPROPRIATION**

24.1. This Agreement is subject to the fiscal provisions of the Charter of the CITY of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

**SECTION 25. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

25.1. In its performance of Services under this Agreement, CONSULTANT and its representatives may acquire and otherwise gain access to Confidential Information, as defined in Exhibit “E”, which is exempt from public disclosure under the California Public Records Act, Cal. Gov. Code section 6250 *et seq.*

CONSULTANT agrees to protect such Confidential Information from disclosure to any third parties, in accordance with the terms and conditions set forth in Exhibit “E” attached to this Agreement.

**SECTION 26. MISCELLANEOUS PROVISIONS.**

26.1. This Agreement will be governed by the laws of the State of California.

26.2. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

26.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

26.4. This document represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the Parties to this Agreement.

26.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the Parties.

26.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

26.7. All of the provisions of this Agreement, including but not limited to, the Preamble and Recitals set forth above, are fully incorporated into this Agreement and are binding on the Parties to this Agreement. Also, each of the exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

26.8 If, pursuant to this Agreement, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (“Personal Information”), CONSULTANT shall maintain reasonable and appropriate security

procedures to protect that Personal Information, and shall inform CITY immediately upon learning that there has been a breach in such security procedures or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without CITY’s express written consent.

26.9 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

26.10 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement

IN WITNESS WHEREOF, the Parties to this Agreement have, by their duly authorized representatives, executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

**TRC ENGINEERS, INC.**

DocuSigned by:  
By: Catherine A. Chappell

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Name: Catherine A. Chappell

Title: Vice President, Consulting Services

Attachments, each of which is incorporated into this Agreement by this reference:

- EXHIBIT “A”: SCOPE OF SERVICES
- EXHIBIT “B”: SCHEDULE OF PERFORMANCE
- EXHIBIT “C”: COMPENSATION
- EXHIBIT “C-1”: HOURLY RATE SCHEDULE
- EXHIBIT “D”: INSURANCE REQUIREMENTS
- EXHIBIT “E”: CONFIDENTIALITY AGREEMENT
- EXHIBIT “F” IDENTITY INFORMATION PROTECTION

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

During each fiscal year of the term of this Agreement, CONSULTANT will provide an annual independent evaluation, measurement and verification (EM&V) services for the City of Palo Alto Utilities (“CITY” or “CPAU”). All of the work described in this Exhibit A shall be considered to be the Services to be provided by CONSULTANT under this Agreement and shall include all of the following:

- Impact and process evaluation of select CITY customer’s energy efficiency (EE) and demand response (DR) programs; and
- Evaluation of CITY’s emerging technologies pilot programs or projects that deliver energy efficiency savings, on an as-needed basis. These pilots programs or projects shall include, but are not limited to, the projects under the Program for Emerging Technology, Customer Connect Advanced Meter Pilot Program, and the Viconics Building Management System Pilot Program.

The following paragraphs provide an outline of the EM&V tasks for the impact and process evaluations of the EE programs referred to above. For EM&V of pilot programs or projects, CONSULTANT will work with the CPAU staff to determine the work tasks and deliverables prior to initiating the evaluation activities when requested by the CITY.

#### **Task 1: Annual Planning Meeting**

At CITY’s earliest convenience following the Effective Date of this Agreement, CONSULTANT will schedule a project kick-off (planning) meeting. After the first year, subsequent planning meetings will be scheduled annually at the CPAU Project Manager’s direction.

The meetings will be held at CPAU offices in Palo Alto. Key CONSULTANT staff will attend the meetings in person; additional staff will join by teleconference, as needed.

CONSULTANT will develop a draft agenda and slide deck (Planning Meeting Materials) for each meeting and submit it to the CPAU Project Manager for review and comment prior to the meeting.

As part of each planning meeting, CONSULTANT and CPAU Project Manager (and other CPAU staff, as available) will conduct a prioritization exercise with the objective of allocating evaluation resources to areas to determine the EE program(s) where EM&V adds the most value while minimizing cost to CPAU.

CONSULTANT and CPAU staff will discuss high priority areas, as such areas are defined by the CITY which need attention, evaluation tasks which could be streamlined, and review of new programs and available data. CONSULTANT will include factors such as program savings claims, risk and uncertainties surrounding savings parameters, past evaluation issues, etc. in the prioritization exercise. In addition, CONSULTANT and CPAU will discuss and determine which EE programs be selected for process evaluation for potential improvement.

CONSULTANT will summarize the planning meeting discussions, agreements, and action items in a written memo (Planning Meeting Summary Memo) to be delivered to CITY. The memo will be delivered to the CPAU Project Manager within five days after each planning meeting for review, comment, and approval.

<b>Deliverables:</b>	<b>Due Dates:</b>
<i>1.1 Planning Meeting Materials (agenda and slide deck)</i> <i>1.2 Planning Meeting Summary Memo</i>	<i>1.1 Three days prior to each planning meeting (annually)</i> <i>1.2 Within five days after each planning meeting</i>

**Task 2: Design a Measurement and Evaluation Action Plan**

CONSULTANT will develop an action plan for completing the evaluations annually (M&V Action Plan). The M&V Action Plan will be informed by the planning meeting discussions and prioritization, and an initial review of program information.

For impact evaluation, the M&V Action Plan will include, but not limited to, the following subtasks:

- Program-specific evaluation objectives and key issues to be addressed;
- Impact evaluation methodology;
- Verification of measures implementation;
- Data source and data collection plan;
- Data analysis approach;
- Review of program documents and interviews;
- Billing analyses, engineering analysis and modeling;
- Risk assessment and management plan;
- Conduct customer surveys; and
- Work plan schedules.

For process evaluation, the M&V Action Plan will include, but not limited to, the following subtasks:

- Identify desired goals and objectives of process evaluation for selected EE program(s);
- Conduct interviews with CITY’s program staff to identify data resources and potential process improvements;
- Conduct customer surveys;
- Provide insights to EE program administrator; and
- Recommend possible EE program(s) process enhancements.

CONSULTANT will deliver the draft M&V Action Plan to the CPAU Program Manager for review and comment as set forth below. CONSULTANT will finalize the M&V Action Plan based on feedback from CPAU.

<b>Deliverables:</b>	<b>Due Dates:</b>
<i>2.1 Draft M&amp;V Action Plan</i>	<i>2.1 Within three weeks of the planning meeting (annually)</i>
<i>2.2 Final M&amp;V Action Plan</i>	<i>2.2 Within five business days of receipt of the final comments from CPAU</i>

### **Task 3: Implement the M&V Action Plan**

CONSULTANT will execute the M&V Action Plan developed in Task 2 and approved by the CPAU Project Manager.

CONSULTANT will prepare a written Sampling Memo describing the sampling plan for each evaluated program. CONSULTANT will design each program's sampling plan to meet the desired level of precision as set out in the M&V Action Plan developed in Task 2. CONSULTANT will deliver a draft Sampling Memo three weeks prior to the start of data collection activities. CONSULTANT will finalize the draft Sampling Memo by incorporating the CPAU Program Manager's comments.

CONSULTANT will review each measure's savings algorithm to verify the following:

1. Baseline efficiency levels are consistent with the prevailing building and appliance efficiency standards (Title 20 and Title 24) and/or industry standard practices;
2. Efficiency levels are consistent with program requirements;
3. Hours of use and run time values are consistent with ASHRAE or other established references;
4. Include appropriate adjustments for climate zone and interactivity; and
5. Standard engineering practices have been followed.
6. Industrial standard modeling software has been used with appropriate inputs and reasonable assumptions, if applicable.

If required in the M&V Plan, CONSULTANT will develop interview and survey guides.. The guides will be delivered to the CPAU Project Manager at least three weeks prior to the scheduled start of the data collection activity. CONSULTANT will finalize each guide based on the CPAU Project Manager's feedback.

CONSULTANT will send notification letters (Advance Letters) to targeted participants prior to the start of each interview, survey, and site visit effort, as required in the M&V Action Plan. With the CPAU Project Manager's approval, CONSULTANT will send the Advance Letters on CPAU letterhead with prior approval by the CPAU. Draft Advance Letters will be delivered to the CPAU Project Manager for review and approval at least three weeks prior to the start of the data collection activity.

If computer-assisted interviews (CATI) are conducted, CONSULTANT will conduct survey pretests with five to ten respondents. Findings from each pretest, as well as recommendations for alternate question wording, will be delivered in a Pretest Memo for the CPAU Project Manager's review and approval.



As part of Task 3, CONSULTANT will:

- Summarize and verify the types of measures installed and savings contribution from each measure;
- Ensure complete and accurate data collection as defined in each program's sampling plan and will identify any errors, gaps and inconsistency in data;
- Verify and calculate energy savings, realization rates and net to gross ratio as indicated in the M&V Action Plan;
- Ensure appropriate standard industrial practice and modeling software are used in engineering review and calculations; and
- Provide results of M&V of EE programs and recommendations for program enhancements.

<b>Deliverables:</b>	<b>Due Dates:</b>
<i>3.1 Sampling memo(s)</i>	<i>3.1 September 11, 2015 (and annually)</i>
<i>3.2 Draft interview and/or survey guides, as applicable</i>	<i>3.2 Three weeks prior to the scheduled start of data collection</i>
<i>3.3 Draft advance letters, as applicable</i>	<i>3.3 Two weeks prior to the scheduled start of data collection</i>
<i>3.4 Survey pretest memo, as applicable</i>	<i>3.4 Within three days of survey pretests</i>

#### **Task 4: Prepare EM&V Report**

CONSULTANT will prepare a report of the evaluation findings (EM&V Report) summarizing the findings of the evaluation and recommendations to enhance EE programs' effectiveness and processes. Each annual EM&V Report will include the following sections:

- An executive summary will present an overview of the most relevant findings;
- A background and/or introduction that includes the evaluation objectives;
- A detailed methodology of the evaluation approaches used;
- Findings by program including:
  - A description of the program;
  - Gross and net evaluation results, as applicable;
  - An estimate of the lifecycle savings;
  - A table identifying evaluation results compared to program goals, budgets and expenditures;
  - A qualitative description of the program evaluation results, including achievements and challenges;
- Portfolio-level summary;
- Recommendations that are specific and actionable and tied directly to the evaluation findings; and
- Appendices that provide supporting details such as field data collection forms, survey and interview guides, and additional tables and graphics, if needed.

CONSULTANT will ensure that each EM&V Report meets the reporting requirements in the CEC's Framework of Evaluation Criteria. Each EM&V Report will include the CEC's Example

Checklist for POU EM&V Reports to fully demonstration that it meets the criteria.

CONSULTANT will deliver a draft EM&V Report to the CPAU Project Manager per the schedule established in each M&V Action Plan.

Shortly after CONSULTANT delivers each draft EM&V Report, CONSULTANT will present the evaluation findings CPAU and implementation contractor staff; the attendees and schedule will be determined by the CPAU Project Manager.

CONSULTANT will prepare a final EM&V Report by incorporating the comments received from the CPAU Project Manager.

<b>Deliverables:</b>	<b>Due Dates:</b>
<i>4.1 Draft EM&amp;V Report</i>	<i>4.1 February 29, 2016 (and annually)</i>
<i>4.2 Final EM&amp;V Report</i>	<i>4.2 March 18, 2016 (and annually)</i>

#### **OPTIONAL (Scope) Technical Advisory/Evaluation Services Contingency**

If requested by CPAU Project Manager, CONSULTANT will provide the following technical advisory services:

##### **Task 1: Energy Savings Calculation Review**

On an as requested basis by CPAU, CONSULTANT will review energy savings estimates submitted by program participants and 3<sup>rd</sup> party EE program vendors to make a determination as to whether the energy savings estimates are reasonable and credible. The review may cover one or more of the following supporting documentation: engineering calculations such as spreadsheet models and building energy simulation models, technical workpapers, past evaluation studies supporting the estimates, and project installation and verification reports.

Based on this review, CONSULTANT will submit a memo that provides CONSULTANT's assessment of the reasonableness of the calculation methodology and the uncertainties, if any, of the savings estimates. Where appropriate, CONSULTANT may provide recommendations for corrections and/or revised energy savings estimates.

<b>Deliverable</b>	<b>Due Date</b>
<i>Memo summarizing technical assessment and recommendations as determined in each Technical Services Work Scope</i>	<i>As agreed to in each Technical Services Work Scope</i>

##### **Task 2: Rebate Application Review**

On an as requested basis by CPAU, CONSULTANT will review custom rebate applications, including all supporting documentation, and will provide a memo to CPAU that details

CONSULTANT's findings and recommendations. CONSULTANT may recommend that additional supporting documentation or data be provided that substantiates the energy savings estimates, savings persistence, and/or equipment eligibility. Where a custom measure's estimated savings are dependent upon a few key operating parameters, CONSULTANT may recommend that the customer implement a measurement and verification (M&V) plan. Should a third-party M&V be warranted and/or required by CPAU, CONSULTANT may implement the M&V plan as an additionally assigned task.

CONSULTANT will submit a written memo documenting Consultant's assessment of the custom rebate application. The memo will also identify any potential technical or other project-related issues that should be addressed by the customer before the rebate is approved.

<b>Deliverable</b>	<b>Due Date</b>
<i>Memo summarizing the results of custom rebate application assessment and recommendations</i>	<i>As agreed to in each Technical Services work scope</i>

### **Task 3: Business Energy Audit**

On an as requested basis by CPAU, CONSULTANT shall conduct energy audits for business customers. The audits will be performed according to ASHRAE's definition of a level 1, 2, or 3 audit based on CPAU's specifications on the rigor of the audit. For facility's less than 50,000 square feet, CONSULTANT will provide an Energy Performance Report. Such report is equivalent to a hybrid ASHRAE level 1/level 2 audit and includes a benchmarking analysis that helps facility operators to better understand their operational performance and overall energy savings potential.

CONSULTANT will provide an energy audit report that includes annual energy and cost savings potential as well as other non-energy benefits for each recommended energy conservation measure.

<b>Deliverable</b>	<b>Due Date</b>
<i>An energy audit report as specified by the ASHRAE's audit level</i>	<i>As agreed to in each Technical Services Work Scope</i>

### **Task 4: Technical Advice to CPAU Staff**

On an as requested basis by CPAU, CONSULTANT will provide Technical Advisory Services as directed by the CPAU Project Manager or designee.

When technical services are requested by CPAU staff, before commencement of work, CONSULTANT will confirm the scope of the request in an email (Technical Services Work Scope) by providing:

- A description of the services to be provided

- A description of the deliverable(s)
- The budget for the work
- A deliverable due date
- The team members who will work on the project

<b>Deliverable</b>	<b>Due Date</b>
<i>Memo summarizing technical assessment and recommendations as determined in each Technical Services Work Scope</i>	<i>As agreed to in each Technical Services Work Scope</i>

**EXHIBIT “B”  
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the month specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the Term of this Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Below is our estimated schedule of performance:

<b>Task</b>	<b>Activity/Deliverable</b>	<b>Date</b>
	<i>Work commences</i>	<i>July 1, 2015</i>
<i>Task 1: Annual Planning Meeting</i>	<i>Conduct planning meeting</i>	<i>July 10, 2015</i>
<i>Task 2: M&amp;V Action Plan</i>	<i>Deliver M&amp;V Action Plan</i>	<i>Draft: July 22, 2015 Final: August 14, 2015</i>
<i>Task 3: Implement M&amp;V Action Plan</i>	<i>Deliver sampling memo</i>	<i>August 28, 2015</i>
	<i>Conduct data collection</i>	<i>September 4, 2015 to January 29, 2016</i>
	<i>Data analysis</i>	<i>February 1, 2016 to February 19, 2016</i>
<i>Task 4: Prepare EM&amp;V Report</i>	<i>Report development</i>	<i>February 15, 2016 to February 26, 2016</i>
	<i>Deliver EM&amp;V Report</i>	<i>Deliver draft report: February 29, 2016 CPAU comments back: March 11, 2016 Deliver final report: March 18, 2016</i>

## **EXHIBIT “C” COMPENSATION**

The CITY agrees to compensate the CONSULTANT for the Services performed in accordance with the terms and conditions of this Agreement, and as set forth in this Exhibit C.

Compensation shall be calculated based on the hourly rate schedule attached as Exhibit C-1 up to the not-to-exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all Services described in Exhibit “A” (“Scope of Services”) and reimbursable expenses shall not exceed \$210,000.00 per fiscal year (July 1 through June 30 the year after) over the 36-month contract period. CONSULTANT agrees to complete all Scope of Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. A detailed breakdown of CONSULTANT’s proposed budget, by Task, is provided below.

### **ANNUAL CONSULTANT COMPENSATION BY TASK**

#### **EM&V Task Cost (Not-To-Exceed) for energy efficiency (EE) and demand response (DR) Programs**

- Task 1 – Project Kick-off or Annual Planning Meeting \$8,604.00
- Task 2 – M&V Action Plan for EE and DR Programs \$12,978.00
- Task 3 – Implement M&V Action Plan for EE and DR Programs \$92,978.00
- Task 4 – Final EM&V Report for all programs and projects \$25,440.00

**Labor Hours**

		Task 1	Task 2	Task 3	Task 4		
Labor Category	Billing Rate	Annual Planning Meeting	M&V Action Plan	Implement M&V Action Plan	Final EM&V Report	Total Hours	Assigned Evaluation Staff
Associate Vice President	\$215	8	16	60	24	108	Barnes
Engineering Director	\$200	6	12	35		53	Snaith
Program/Engineering Manager	\$175			38		38	Roberts
Associate Technical Director	\$164	24	32	110	40	206	Staller, Goebes
Engineer IV	\$150					0	
Engineer III	\$130			80		80	Green
Project Manager III	\$143			40	20	60	Berkland
Engineer II	\$120			80		80	McCabe, Rosado
Project Manager I/Engineer I	\$121	8		70	60	138	Dawe
Technical Analyst/Level II Technician	\$90				12	12	
Assistant/Level 1 Technician	\$75					0	
Klos Energy	\$105	6	18	125	24	173	Klos
<b>Total Hours/Task</b>		<b>52</b>	<b>78</b>	<b>638</b>	<b>180</b>	<b>948</b>	

**Labor Costs (Dollars)**

	Task 1	Task 2	Task 3	Task 4	Total
	\$8,454	\$12,978	\$91,905	\$25,440	\$138,777

**Other Direct Costs (Dollars)**

	Task 1	Task 2	Task 3	Task 4	Total
Travel	\$150		\$873		\$1,023
Equipment Lease Fee			\$200		\$200
Other Direct Costs					\$0
	\$150	\$0	\$1,073	\$0	\$1,223

**Total Costs (Dollars)**

	Task 1	Task 2	Task 3	Task 4	Total
	\$8,604.00	\$12,978.00	\$92,978.00	\$25,440.00	\$140,000.00

**Sub-Total Annual Budget for EE and DR Evaluation \$140,000**

CONSULTANT built the proposed budget, shown above, using the all-inclusive hourly rates provided above. The table provides subtotal cost by task as well as the total cost. The costs in this table represent at not-to-exceed amounts, and CONSULTANT shall receive written approval in advance from the CITY’s Project Manager prior to moving funds between any of these tasks.

**EM&V Annual (Not-To-Exceed) Budget for Emerging Technologies Pilot Projects = \$45,000.**

**Optional (Scope): Technical Advisory/Evaluation Contingency Annual (Not-To-Exceed) Budget = \$25,000.**

**Annual combined (Not-To-Exceed) compensation for EE Evaluation, Technical Advisory Services and Emerging Technologies Pilot Project Evaluation = \$210,000.**

**Total Compensation NOT-TO-EXCEED AMOUNT for the initial three year Term of the Agreement = \$630,000.**

**If the CITY elects, at its sole discretion, to extend the Term of the Agreement for two additional years beyond the initial Term, the Total Compensation NOT-TO-EXCEED AMOUNT for the five year Term of the Agreement = \$1,050,000.**

## REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included as a part of the compensation and the scope of payment for Services provided under this Agreement and are not to be included in reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

- A. Travel-related expenses, including transportation and meals, will be reimbursed at actual cost and shall be subject to, and limited by, the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.
- B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.
- C. Equipment leasing costs are as specified in the table below.

### Equipment Leasing

Equipment Type	Monthly Cost
HOBO U12-12 Data Logger Temp RH Light Ext.	\$8
HOBO UA-002-64	\$4
HOBO U23 Pro v2 Ext. Logger + Solar Radiation Shield	\$15
HOBO Energy Logger H22-001	\$18
HOBO Contact Closure Smart Sensor S-UCD-M006	\$4
HOBO Pendant Temp/Light Logger	\$3
HOBO Current Sensor CTV-A	\$6
ELITEpro SP Power Logger	\$64
ELITEpro CT Clamp 50A CTSCS0050U	\$4
SMARTlogger TOU	\$5
CR1000 Data Logger	\$73

All requests for payment of expenses shall be accompanied by appropriate backup information and shall be consistent with the provisions of Section 5 INVOICES of this Agreement.

Any expense anticipated to be more than \$200 shall be approved in advance and in writing by the CITY's Project Manager.



**EXHIBIT “C-1”  
HOURLY RATE SCHEDULE**

CONSULTANT’s hourly compensation rates are based on staff title, roles and responsibilities rounded to the nearest whole dollar amount.

<b>Staff Title</b>	<b>Roles/Responsibilities</b>	<b>Hourly Rates</b>
<i>Associate Vice President: Jennifer Barnes, Paul David, Catherine Chappell</i>	<i>Project Director</i>	<i>\$215</i>
<i>Engineering Director: Colman Snaith,</i>	<i>Engineering Director</i>	<i>\$200</i>
<i>Program/Engineering Managers: Theobald, Luedtke, Roberts, Mangalekar</i>	<i>Project Manager, Process Evaluation, Interviews, and Surveys</i>	<i>\$175</i>
<i>Associate Technical Director: Staller, Goebes</i>	<i>Process Evaluation, Interviews, Surveys, Building Simulation Modeling</i>	<i>\$164</i>
<i>Project Manager III: Berkland</i>	<i>Interviews, Surveys, Data Synthesis and Analysis</i>	<i>\$143</i>
<i>Engineer III: Green, Schuyler, Ma</i>	<i>Engineering Analysis and Field Data Collection</i>	<i>\$130</i>
<i>Engineer II: McCabe, Rosado, Jadhav, Maghdouri</i>	<i>Engineering Analysis and Field Data Collection</i>	<i>\$120</i>
<i>Project Manager I/Engineer I: Dawe</i>	<i>Process Evaluation, Field Data Collection</i>	<i>\$121</i>
<i>Technical Analyst/Level II Technician: Whitford, Flores</i>	<i>Technical Support</i>	<i>\$90</i>
<i>Klos Energy Principal: Mary Klos (TRC Subcontractor)</i>	<i>Demand Response Lead, Statistics, Sampling, and Net-to-Gross</i>	<i>\$105</i>

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THIS AGREEMENT, OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY INSURANCE COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUI RED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURREN CE	AGGREGAT E
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	

YES	<p><b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b></p>
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I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
  
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**

## CERTIFICATE OF LIABILITY INSURANCE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/06/2015

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Greyling Insurance Brokerage  450 Northridge Parkway Suite 102 Atlanta, GA 30350 Matias Ormazabal	<b>CONTACT NAME:</b> Jerry Noyola <b>PHONE (A/C, No, Ext):</b> 770-552-4225 <b>FAX (A/C, No):</b> 866-550-4082 <b>E-MAIL ADDRESS:</b> jerry.noyola@greyling.com														
<b>INSURED</b> TRC Engineers, Inc. TRC Environmental Corp. TRC Companies, Inc. 123 Technology Drive Irvine, CA 92618	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Zurich American Insurance Company</td> <td></td> </tr> <tr> <td>INSURER B: American Guarantee &amp; Liability Insurance</td> <td></td> </tr> <tr> <td>INSURER C: American Zurich Insurance Company</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Zurich American Insurance Company		INSURER B: American Guarantee & Liability Insurance		INSURER C: American Zurich Insurance Company		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Zurich American Insurance Company															
INSURER B: American Guarantee & Liability Insurance															
INSURER C: American Zurich Insurance Company															
INSURER D:															
INSURER E:															
INSURER F:															

**COVERAGES**      **CERTIFICATE NUMBER:** 43804319      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	<b>GENERAL LIABILITY</b>			GLO5472507-02	07/01/14	07/01/15	EACH OCCURRENCE	\$ 2,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000	
	<input checked="" type="checkbox"/> Contractual Liability						PERSONAL & ADV INJURY	\$ 2,000,000	
							GENERAL AGGREGATE	\$ 4,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/POP AGG	\$ 4,000,000	
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC							\$	
A	<b>AUTOMOBILE LIABILITY</b>			EAP 5472506-02	07/01/14	07/01/15	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS		<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$	
	<input type="checkbox"/> HIRED AUTOS		<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB			AUC-6547767-05	07/01/14	07/01/15	EACH OCCURRENCE	\$ 9,000,000	
	<input type="checkbox"/> EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				AGGREGATE	\$ 9,000,000	
	<input type="checkbox"/> DED	<input checked="" type="checkbox"/>	<input type="checkbox"/> RETENTION \$ 0					\$	
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			WC5472508-02	07/01/14	07/01/15	<input checked="" type="checkbox"/> WC STATUTORY LIMITS		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	<input checked="" type="checkbox"/> N				N/A	E.L. EACH ACCIDENT	\$ 1,000,000
	DESCRIPTION OF OPERATIONS below							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
A	<b>Professional Liability</b>			BOC 5472532-02	07/01/14	07/01/15	Per Claim	5,000,000	
	Including Pollution Liability						Aggregate	5,000,000	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 City of Palo Alto, its council members, officers, agents & employees are named as Additional Insureds on the above referenced liability policies with the exception of workers compensation & professional liability where required by written contract. The above referenced liability policies with the exception of professional liability are primary & non-contributory where required by written contract. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, we will endeavor to provide 30 days' written notice (except 10 days for nonpayment of premium) to the Certificate Holder named below.

<b>CERTIFICATE HOLDER</b>  City of Palo Alto  P.O. Box 10250  Palo Alto, CA 94303  USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2010/05)  
 JNoyola  
 43804319

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**EXHIBIT “E”  
CONFIDENTIALITY AGREEMENT**

**1. PURPOSE**

- 1.1 In its performance of Services under this Agreement, CONSULTANT and its directors, officers, partners, managers, members, employees, advisors, agents, sub-contractors and other representatives of CONSULTANT and their subsidiaries and affiliates, including, without limitation, attorneys, accountants, consultants, and financial advisors (collectively, the “Representatives”) may acquire and otherwise gain access to Confidential Information, as defined in Section 2 of this Exhibit “J”, which is exempt from public disclosure under the California Public Records Act, Cal. Gov. Code section 6250 *et seq.*
- 1.2 In accordance with the terms and conditions of this Agreement, CONSULTANT agrees to take reasonable precautions to ensure that Confidential Information of CITY, as defined in this Exhibit, is safeguarded against disclosure to unauthorized employees or third parties.
- 1.3 CITY would not share or disclose any Confidential Information to CONSULTANT but for the legal protections against unauthorized disclosures intended to be afforded by California law and this Agreement, and is relying on this Agreement in disclosing such Confidential Information to CONSULTANT.

**2. CONFIDENTIAL INFORMATION, DEFINED**

- 2.1 “Confidential Information” means any and all information which is of a non-public, proprietary or confidential nature, in any form or medium, written or oral, (whether prepared by the CITY, its employees, or agents, and irrespective of the form or means of communication and whether it is labeled or otherwise identified as confidential) that is furnished to CONSULTANT by the CITY, including, without limitation, individually identifiable utilities customer information and utility infrastructure data.
- 2.2 Exceptions. “Confidential Information” shall exclude (and the CONSULTANT shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to CONSULTANT by CITY 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 CITY; or
  - (c) is known, or becomes known, to CONSULTANT from a source other than CITY or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement CITY; or

- (d) is independently developed by CONSULTANT without violating any of its obligations under this Agreement or any other agreement between the Parties; 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 first given to CITY, which shall be afforded the opportunity to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence; or
- (f) is permitted to be disclosed by a formal written agreement executed by and between the Parties.

Specific information shall not fall within the exceptions of Sections (a) through (f) above merely because it is embraced by more general information falling within such exceptions.

### **3. CALIFORNIA PUBLIC RECORDS ACT**

- 3.1 CONSULTANT acknowledges that CITY is a public agency subject to the requirements of the California Constitution, Article 1, Section 3 and California Public Records Act Cal. Gov. Code section 6250 *et seq.* CONSULTANT acknowledges that CITY may submit to or otherwise provide access to CONSULTANT Confidential Information that CITY or any utility customer of CITY considers to be protected from disclosure pursuant to exemptions granted by applicable California law.
- 3.2 Whether or not there is a request or demand of any third party not a Party to this Agreement (the “Requestor”) for the production, inspection and/or copying of information designated by CITY as Confidential Information, CONSULTANT shall be solely responsible for taking whatever legal steps CITY deems necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by CONSULTANT).
- 3.3 Under no circumstances will CONSULTANT be permitted to comply with the Requestor’s demand for disclosure of such Confidential Information that CITY deems confidential and not intended for disclosure to the general public, or otherwise publicly disclose the Confidential Information to any person not authorized by law to receive such information.

### **4. CONFIDENTIAL INFORMATION DESIGNATION**

- 4.1 As practicable, the Confidential Information shall be marked with the words “Confidential” or “Confidential Material” or with words of similar import. CITY shall instruct CONSULTANT that information of a financial, personal, or proprietary nature being conveyed orally and intended by CITY to be covered by

the terms of this Agreement, is deemed Confidential Information. To the extent possible, CITY shall endeavor to mark any electronic document intended to be covered by the terms of this Agreement with the words "Confidential" or similar words, or, if that is not possible or would be exceedingly difficult, CITY shall notify CONSULTANT (for example, by covering e-mail transmitting the electronic document) that the electronic document is Confidential Information.

- 4.2 CITY's failure, for whatever reason, to mark any material at the time it is produced to CONSULTANT, or to notify it that oral or electronic material is Confidential Information at the time it is provided, shall not take the material out of the coverage of this Agreement for all time, and CONSULTANT shall treat the material as Confidential Information once CITY has notified it that the material is to be covered by this Agreement.

## **5. DUTY TO KEEP CONFIDENTIAL**

- 5.1 CONSULTANT agrees to maintain as confidential, to the extent permitted or required by applicable law, all Confidential Information furnished or otherwise made available to the CONSULTANT, or its Representatives by CITY. CONSULTANT acknowledges that the Confidential Information is proprietary and a valuable asset of CITY and agrees that CONSULTANT shall take reasonable precautions to ensure that such Confidential Information is safeguarded against disclosure to unauthorized employees, Representatives or third parties.
- (a) CONSULTANT shall use the Confidential Information solely as permitted by this Agreement and shall not sell Confidential Information or otherwise disclose such Confidential Information under any circumstances and without the prior written consent of CITY. CONSULTANT shall not disclose the Confidential Information, or portions thereof, to any of its Representatives, except to those who need to know such information for the purpose of advising CITY and who agree to the terms of this Agreement.
- (b) CONSULTANT agrees that any of the Representatives to whom the Confidential Information is disclosed will be informed of the confidential or proprietary nature of such information and of CONSULTANT's obligations under this Agreement. CONSULTANT is responsible for any use of Confidential Information by any of its Representatives.
- (c) CONSULTANT shall ensure that:
- (i) any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT regard and treat such Confidential Information of CITY as strictly confidential and wholly owned by CITY, and



- (ii) CONSULTANT shall not (and CONSULTANT shall ensure that any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT do not) for any reason, in any fashion, either directly or indirectly, sell, lend, lease, distribute, license, give, transfer, assign, show, disclose, disseminate, or otherwise communicate any such Confidential Information to any third party, or misappropriate, reproduce, copy or use any such Confidential Information, in either case, for any purpose other than in accordance with this Agreement.
  
- (d) If CONSULTANT or any of its Representatives are requested or required to disclose any Confidential Information by law, regulation, the applicable rules of any national securities exchange or other market or reporting system, oral questions, interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand or any other similar process, CONSULTANT shall provide CITY with prompt written notice of any such request or requirement so that CITY has an opportunity to seek a protective order via writ of mandate or other appropriate remedy, or waive compliance with the provisions of this Agreement.
  
- (e) If CITY waives compliance with the provisions of this Agreement with respect to a specific request or requirement, CONSULTANT and its Representatives shall disclose only that portion of the Confidential Information that is expressly covered by such waiver and which is necessary to disclose in order to comply with such request or requirement. CONSULTANT and its Representatives shall cooperate in a reasonable manner with CITY in attempting to preserve the confidentiality of the Confidential Information.
  
- (f) If (in the absence of a waiver by CITY) CONSULTANT has not secured a protective order or other appropriate remedy despite attempting to do so, and CONSULTANT or one of its Representatives is nonetheless then legally compelled to disclose any Confidential Information, CONSULTANT or such Representative may, without liability hereunder, disclose only that portion of the Confidential Information that is necessary to be disclosed. In the event that disclosure is made in accordance with this subsection, CONSULTANT shall exercise, and cause its Representatives to exercise, reasonable efforts to preserve the confidentiality of the Confidential Information, including obtaining reliable assurance at the sole expense of CONSULTANT that confidential treatment shall be accorded any Confidential Information so furnished.

## **6. NO LIABILITY, RELEASE, OR OBLIGATION**

Except as set forth in any formal written agreement executed by and between the parties, neither CONSULTANT nor any of its Representatives shall be entitled to rely on any statement, promise, agreement or understanding, whether written or oral, or any custom, usage of trade, course of dealing or conduct. In addition, each Party understands and acknowledges that neither CITY nor any of its representatives, employees or agents makes any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information, and that neither CITY nor any of its representatives, employees or agents shall have any liability whatsoever to CONSULTANT or to any of its Representatives relating to or resulting from the Confidential Information or any errors therein or omissions therefrom.

## **7. REMEDIES**

In recognition that an irreparable injury may result to CITY, if any provision of this Exhibit J is violated, CONSULTANT agrees that upon any breach or threatened breach of any provision of this Exhibit J by CONSULTANT or any of its Representatives, that CITY shall be entitled to seek an injunction or specific performance prohibiting such conduct or any other relief as may be permitted by law.

## **8. RETURN OF CONFIDENTIAL INFORMATION**

8.1 CONSULTANT shall have access to the Confidential Information provided by CITY only during the term of this Agreement, and shall return all Confidential Information provided under this Agreement upon its termination, or at any time upon request of CITY, as described in Section 8.2 of this Exhibit J.

8.2 CITY may at any time request that CONSULTANT promptly return to CITY or destroy any or all documents or other materials containing Confidential Information of CITY, and CONSULTANT shall immediately comply with any such request. Notwithstanding the return or destruction of the Confidential Information as contemplated by this Section 8 of this Exhibit J, the CONSULTANT and its Representatives will continue to be bound by the terms of this Agreement with respect thereto, including all obligations of confidentiality.

## **9. SURVIVAL**

CONSULTANT's obligations of confidentiality and non-circumvention under this Exhibit J shall survive the termination of this Agreement.

## **10. OWNERSHIP RIGHTS NOT CREATED**

The transfer of Confidential Information hereunder shall not be construed as granting a license of any kind or any right of ownership in the Confidential Information to CONSULTANT.

## **11. NO OBLIGATION TO DISCLOSE**

Nothing in this Section shall obligate CITY to disclose specific Confidential Information to CONSULTANT. Such disclosures shall be at the CITY's sole discretion.

**EXHIBIT “F”**  
**IDENTITY INFORMATION PROTECTION**

Identity Information Protection

1. During the term of this Agreement, the CONSULTANT shall not collect, process or store any Private Information (PI) and Personally Identifiable Information (PII), except the name and address of the customer.
2. During the term of this Agreement, the CONSULTANT shall comply with the CITY’s Information Privacy Policy and the CITY’s Software as a Service Security and Privacy Terms and Conditions.

Personal information (PI) is defined as an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number.
- (2) Driver's license number or California Identification Card number.
- (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account,

"Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Personally Identifiable Information (PII), as used in information security, is information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual.

**CITY OF PALO ALTO CONTRACT NO. C16157873  
AGREEMENT BETWEEN THE CITY OF PALO ALTO  
AND ENERGY & RESOURCE SOLUTIONS, INC.  
FOR PROFESSIONAL SERVICES**

**PREAMBLE**

This Professional Services Agreement No. C16157873 (“Agreement”) is entered into on the day of June, 2015 (“Effective Date”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation, with its primary business office located at 250 Hamilton Avenue, Palo Alto, CA 94301 (“CITY”), and ENERGY & RESOURCE SOLUTIONS, INC. a Massachusetts S corporation, with its primary business office located at 120 Water Street, Suite 350, North Andover, MA 01845 (“CONSULTANT”). CONSULTANT and CITY are referred to in this Agreement individually as a “Party”, and collectively as the “Parties” or the “Parties to this Agreement”.

**RECITALS**

The following recitals are a substantive portion of this Agreement.

A. This Agreement will become effective on July 1, 2015 between the Parties. The provisions of this Agreement provide that CONSULTANT shall provide technical advisory and evaluation services, as fully described in Exhibit “A”, (the “Services”) in engineering review, technology assessment, energy modeling for buildings, calculation and analysis of third party energy consultants’ energy savings estimates and customer rebate applications submitted under the Commercial Advantage and Business New Construction Programs for commercial and industrial facilities within the CITY, for a term of thirty-six (36) months beginning July 1, 2015 through June 30, 2018. The Parties further agree that, at CITY’s sole discretion, CITY has the option to extend the terms of this Agreement for CONSULTANT to provide such Services for up to an additional twenty-four (24) months beyond the initial term of July 1, 2015 through June 30, 2018, to allow for Consultant to provide additional technical advisory and evaluation services in engineering review, calculations, engineering support and technical advisory services to assess the validity of energy savings estimates submitted by custom and third party energy consultants as such Services are more fully described in Exhibit “A”.

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and currently has, and will maintain, all required licenses and/or certifications to provide the Services during the Term of this Agreement.

C. In reliance on CONSULTANT’S representations, CITY desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the Parties agree as follows:

## **AGREEMENT**

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

**SECTION 2. TERM.** The term of this Agreement shall be for thirty-six (36) months beginning July 1, 2015 through June 30, 2018, (the “Term”) unless terminated earlier by either Party pursuant to Section 19 of this Agreement. The Parties further agree that CITY, at its sole discretion, has the option to extend the provisions of this Agreement for up to an additional twenty-four (24) months beyond the original Term to allow CONSULTANT to continue to provide the Services as fully described in Exhibit “A”. The authority to exercise the option to extend this Agreement beyond the initial three year Term is hereby delegated to the City Manager and shall be confirmed by written notice delivered to CONSULTANT by the City Manager at least 30 days prior to the end of the initial Term of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the Term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the Term or the schedule for performance of the Services shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION** The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed Forty Thousand Dollars (\$40,000) per year. No additional services are contemplated as part of this Agreement.

**SECTION 5. INVOICES.** In order to request payment for Services provided, or reimbursable expenses incurred, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including an identification of personnel who performed the Services, hours worked, and hourly rates), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the CITY’s Project Manager at the address specified in Section 13 below. CITY will generally process and pay invoices within thirty (30) days of receipt of such invoice(s).

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All of the Services shall be performed by CONSULTANT, or under CONSULTANT’s direct supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that such personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and

subconsultants, if permitted, have and shall maintain, during the term of this Agreement, all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all required permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

**SECTION 9. COST ESTIMATES.** (This section does not apply to this Agreement).

**SECTION 10. INDEPENDENT CONTRACTOR** It is understood and agreed that in performing the Services under this Agreement, CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor, and not be an agent or employee of the CITY.

**SECTION 11. ASSIGNMENT.** The Parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement, or the performance of any of CONSULTANT's obligations under this Agreement, without the prior written consent of the City Manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the City Manager will be void.

**SECTION 12. SUBCONTRACTING.**

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the City Manager or his/her designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign David Reynolds

as the Project Supervisor to have supervisory responsibility for the performance, progress, and execution of the Services to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the Project Supervisor, , or any other key personnel for any reason, the appointment of a substitute Project Supervisor and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove any personnel which CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

The CITY's Project Manager is Christine Tam or her designee, Utilities Department, Marketing Services Division, 250 Hamilton Ave, Palo Alto, CA 94303. The Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate Project Manager from time to time and will inform CONSULTANT of any such change.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work products, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of CONSULTANT's work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such materials available to any individual or organization which is not a Party to this Agreement without the prior written approval of the City Manager or his/her designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** The waiver by either Party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

**SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain, and maintain in full force and effect during the term of this Agreement, the all of the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required under this Agreement shall be provided through insurance carriers with AM Best's Key Rating Guide ratings of A-VII or higher and which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated and responsible for the full and total amount of any damage,



injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

**SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall immediately deliver to the City Manager any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its subcontractors, if any, or given to CONSULTANT or its subcontractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of the Services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

**SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
   City of Palo Alto  
   Post Office Box 10250  
   Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Director  
at the address of CONSULTANT recited above

**SECTION 21. CONFLICT OF INTEREST.**

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of Services under this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required, and agrees to file, the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

**SECTION 22. NONDISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies, which are available at the CITY’s Purchasing Department and are hereby incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the CITY’s Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste, and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

23.1. All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.

23.2. Goods purchased by Consultant on behalf of the CITY shall be purchased in accordance with the CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.

23.3. Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the CITY, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

#### **SECTION 24. NON-APPROPRIATION**

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

#### **SECTION 25. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

25.1. In its performance of Services under this Agreement, CONSULTANT and its representatives may acquire and otherwise gain access to Confidential Information, as defined in Exhibit "E", which is exempt from public disclosure under the California Public Records Act, Cal. Gov. Code section 6250 *et seq.*

CONSULTANT agrees to protect such Confidential Information from disclosure to any third parties, in accordance with the terms and conditions set forth in Exhibit "E" attached to this Agreement.

#### **SECTION 26. MISCELLANEOUS PROVISIONS.**

26.1. This Agreement will be governed by the laws of the State of California.

26.2. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

26.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

26.4. This document represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and contracts, either written or oral.

This document may be amended only by a written instrument, which is signed by the Parties to this Agreement.

26.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the Parties.

26.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

26.7. All of the provisions of this Agreement, including but not limited to, the Preamble and Recitals set forth above, are fully incorporated into this Agreement and are binding on the Parties to this Agreement. Also, each of the exhibits referred to in this Agreement, and any addenda, appendices, attachments, and schedules to this Agreement are now, and which, from time to time may be referred to in any duly executed amendment hereto, are by such reference incorporated in this Agreement and will be, deemed to be a part of this Agreement.

26.8. If, pursuant to this Agreement, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (“Personal Information”), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform CITY immediately upon learning that there has been a breach in such security procedures or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without CITY’s express written consent.

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26.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

26.10 This Agreement may be signed in multiple counterparts, which shall, when executed by all the Parties, constitute a single binding agreement

IN WITNESS WHEREOF, the Parties to this Agreement have, by their duly authorized representatives, executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

**ENERGY & RESOURCE SOLUTIONS  
INC.**

By:  \_\_\_\_\_  
0A2FB63A6165462...

Name: Gary Epstein \_\_\_\_\_

Title: President \_\_\_\_\_

Attachments, each of which is incorporated into this Agreement by this reference:

- EXHIBIT "A": SCOPE OF SERVICES
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": HOURLY RATE SCHEDULE
- EXHIBIT "D": INSURANCE REQUIREMENTS
- EXHIBIT "E": CONFIDENTIALITY AGREEMENT
- EXHIBIT "F" IDENTITY INFORMATION PROTECTION

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

CONSULTANT will provide technical advisory services on an as needed basis, as requested by City of Palo Alto Utilities (“CITY“ or “CPAU”) to perform engineering review, evaluation, analysis, and validation of the energy savings estimates submitted by 3<sup>rd</sup> party contractors and/or customers in their energy efficiency (EE) rebate applications (the “Services”).

These Services include, but are not limited to, the following:

Task 1: Energy Savings Calculation Review

Task 2: Rebate Application Review

Task 3: Business Energy Audits

Task 4: Technical Advice to CPAU staff

The following paragraphs describe the Technical Advisory Services tasks which set forth the Services to be provided under this Agreement. CONSULTANT will work with CPAU to determine the work tasks and deliverables prior to initiating the review and evaluation activities.

#### **Task 1 – Energy Savings Calculation Review**

CONSULTANT will review energy savings estimates submitted by program participants and 3<sup>rd</sup> party EE program vendors to make a determination as to whether the energy savings estimates are reasonable and credible. The review may cover one or more of the following supporting documentation: engineering calculations such as spreadsheet models and building energy simulation models, technical workpapers, past evaluation studies supporting the estimates, and project installation and verification reports.

Deliverable(s):

Based on its review, CONSULTANT will submit a written memo to CITY that provides CONSULTANT’s assessment of the reasonableness of the calculation methodology and the uncertainties, if any, of the savings estimates. Where appropriate, CONSULTANT may provide recommendations for corrections and/or revised energy savings estimates.

#### **Task 2 – Rebate Application Review**

CONSULTANT will review custom rebate applications, including all supporting documentation, and will provide a written memo to CPAU that details CONSULTANT’s findings and recommendations. CONSULTANT may recommend that additional supporting documentation or data be provided that substantiates the energy savings estimates, savings persistence, and/or equipment eligibility. Where a custom measure’s estimated savings are dependent upon a few key operating parameters, CONSULTANT may recommend that the

customer implement a measurement and verification (M&V) plan. Should a third-party M&V be warranted and/or required by CPAU, CONSULTANT may implement the M&V plan as an additionally assigned task.

**Deliverable(s):**

CONSULTANT will submit a written memo documenting CONSULTANT's assessment of the custom rebate application. The memo will also identify any potential technical or other project-related issues that should be addressed by the customer before the rebate is approved.

**Task 3 – Business Energy Audit**

On an as requested basis by CPAU, CONSULTANT shall conduct energy audits for business customers. Such audits will be performed according to ASHRAE's definition of a level 1, 2, or 3 audit based on CPAU's specifications on the rigor of the audit. For facility's less than 50,000 square feet, CONSULTANT will provide an Energy Performance Report. The report is equivalent to a hybrid ASHRAE level 1/level 2 audit and includes a benchmarking analysis that helps facility operators to better understand their operational performance and overall energy savings potential.

**Deliverable(s):**

CONSULTANT will provide an energy audit report that includes annual energy and cost savings potential as well as other non-energy benefits for each recommended energy conservation measure.

**Task 4 – Technical Advice to CPAU Staff**

On an as-requested basis, CONSULTANT shall provide technical advice and recommendations to CPAU staff for all aspects of energy efficiency program implementation. This may include program cost-effectiveness, program eligibility rules, technology assessment, program net savings assessment, sampling and statistical analysis, and project/measure M&V assistance. CONSULTANT will also support CPAU with the assessment, development, and addition of new program measures. CONSULTANT will document new measures savings consistent with the methodologies prescribed in the California Municipal Utilities Association (CMUA)'s Technical Reference Manual (TRM).

**Deliverable(s):**

CONSULTANT will submit a written memo to CPAU summarizing the results of the technical assessment and recommendations.

**EXHIBIT “B”  
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each task with the number of days/weeks specified below. The time to complete each task may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and the City of Palo Alto Utilities (CPAU) so long as all work is completed within the term of the Agreement.

**Task 0 – Project Kick-Off Meeting**

Within 45 days of Effective Date of this Agreement, CONSULTANT will attend a kick-off meeting at CPAU’s offices to discuss process and procedures for delivering services. After the kick-off meeting, CONSULTANT will provide status reports on a monthly basis or as agreed to with CPAU.

The deliverable for the kick-off meeting is the establishment of procedures for CONSULTANT to provide technical evaluation and advisory services.

**Task 1 – Energy Savings Calculation Review**

CONSULTANT shall provide Task 1 services on an as-needed basis. Each task order assignment will be delivered per the procedures defined in the kick-off meeting and as specified in the task order.

The deliverable for this task is a written memo to CPAU providing an assessment of the reasonableness of the calculation methodology and estimated savings. The memo will be delivered within the timeline specified in the task order. In general, savings calculation reviews will take no longer than 1 week to complete, if no site visit is required. Expedited reviews can be accomplished within a single day; however pre-coordination and agreement to expedite between CONSULTANT and CPAU is required.

**Task 2 – Rebate Application Review**

CONSULTANT shall provide Task 2 services on an as-needed basis. Each task order assignment will be delivered per the procedures defined in the kick-off meeting and as specified in the task order.

The deliverable for this task is a memo providing an assessment of the rebate application package. The memo will be delivered within the timeline specified in the task order. In general, the application review will take no longer than 1 week to complete if no site inspection is required. Expedited reviews can be accomplished within a single day; however pre-coordination and agreement to expedite between CONSULTANT and CPAU is required.

**Task 3 – Business Energy Audit**



CONSULTANT shall provide business energy audits on an as-needed basis. Each task order assignment will be delivered per the procedures defined in the kick-off meeting and as specified in the task order.

The deliverable for this task is an energy audit report. The audit report will be delivered within the timeline specified in the task order. In general, an Energy Performance Report and ASHRAE level 1 report will be delivered within 2 weeks of the onsite survey. ASHRAE level 2 and level 3 reports will be delivered within 4-8 weeks of the onsite survey.

**Task 4 – Technical Advice to CPAU Staff**

CONSULTANT shall provide Task 4 services on an as-needed basis. Each task order assignment will be delivered per the procedures defined in the kick-off meeting and as specified in the task order.

The deliverable for this task is a memo that summarizes CONSULTANT's technical assessment and recommendations. The memo will be delivered within the timeline specified in the task order.

**EXHIBIT “C”  
COMPENSATION**

CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in this Exhibit C.

Compensation shall be calculated based on the hourly rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below. The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Scope of Services”) and reimbursable expenses shall not exceed \$40,000.00 per fiscal year (July 1 through June 30 the following year) over the 36-month Term of this Agreement. CONSULTANT agrees to complete all Scope of Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. A detailed breakdown of CONSULTANT’s proposed budget, by Task, is provided below.

**ANNUAL CONSULTANT COMPENSATION BY TASK**

**Task Cost (Not to Exceed)**

- Task 1 – Energy Savings Calculation Review \$12,000.00
- Task 2 – Rebate Application Review \$7,000.00
- Task 3 – Business Energy Audit \$10,000.00
- Task 4 – Technical Advice to CPAU Staff \$11,000.00

**Total Annual Budget (Not to Exceed) \$40,000.00**

CONSULTANT built the proposed budget, shown above, using the all-inclusive hourly rates provided below in Exhibit “C-1”, hourly rate schedules. The task costs above represent at not-to-exceed amounts, and CONSULTANT shall be approved in advance by the CITY’s Project Manager prior to moving funds between tasks.

**Total Compensation NOT TO EXCEED AMOUNT for the initial three year Term of the Agreement = \$120,000**

**If the CITY elects, at its sole discretion, to extend the Term of the Agreement for two additional years beyond the initial Term, the Total Compensation NOT TO EXCEED AMOUNT for the five year Term of the Agreement = \$200,000.**

**REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel-related expenses, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information and shall be consistent with the provisions of Section 5 INVOICES of this Agreement.

Any expense anticipated to be more than \$200.00 shall be approved in advance by the CITY's Project Manager.

**EXHIBIT “C-1”  
HOURLY RATE SCHEDULE**

CONSULTANT’S hourly compensation rates are based on staff title, roles and responsibilities. The hourly rate schedules also include annual escalation rates of all CONSULTANT’S staff and rounded to the nearest whole dollar amount.

ERS Hourly Rates

Staff Title	Roles	Hourly Rate Through 6/30/16	Hourly Rate Through 6/30/17	Hourly Rate Through 6/30/18
Officer/Principal Consultant	Corporate support and resources, planning	\$240	\$245	\$250
Director	Project management, quality assurance, technical review	\$205	\$210	\$215
Senior Engineer/Consultant	Engineering review	\$165	\$170	\$175
Project Engineer II, Project Consultant II	Technical review, analysis, and research	\$150	\$155	\$165
Project Engineer I, Project Consultant I	Technical review, analysis, and research	\$135	\$140	\$150
Energy Analyst	Technical review, analysis, and research	\$120	\$125	\$135
Administrative Staff	Editorial review, administrative support	\$90	\$95	\$100

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL, FOR THE TERM OF THIS AGREEMENT, OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY INSURANCE COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD OF THIS AGREEMENT IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUI RED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURREN CE	AGGREGAT E
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY  PROPERTY DAMAGE  BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000  \$1,000,000  \$1,000,000	\$1,000,000  \$1,000,000  \$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON - EACH OCCURRENCE  PROPERTY DAMAGE  BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES		
			\$1,000,000	

YES	<p><b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b></p>
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I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO, OR CONTRIBUTING WITH, ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
  
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION  
CITY OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**





<b>NOTEPAD:</b>	HOLDER CODE INSURED'S NAME	Energy & Resource Solutions	ENERG-1 OP ID: AB	PAGE 2 Date 10/21/2014
<p>The City of Palo Alto, its council members, officers, agents &amp; employees are additional insured for ongoing and completed operations with respect to general liability if required by written contract on a primary basis assuming the additional insured's coverage is excess; subject to policy terms and conditions. A 10 day notice of cancellation applies for nonpayment and with regard to workers compensation per Massachusetts law. 20 days all other per MA law.</p>				

**EXHIBIT “E”  
CONFIDENTIALITY AGREEMENT**

**1. PURPOSE**

- 1.1 In its performance of Services under this Agreement, CONSULTANT and its directors, officers, partners, managers, members, employees, advisors, agents, sub-contractors and other representatives of CONSULTANT and their subsidiaries and affiliates, including, without limitation, attorneys, accountants, consultants, and financial advisors (collectively, the “Representatives”) may acquire and otherwise gain access to Confidential Information, as defined in Section 2 of this Exhibit “J”, which is exempt from public disclosure under the California Public Records Act, Cal. Gov. Code section 6250 *et seq.*
- 1.2 In accordance with the terms and conditions of this Agreement, CONSULTANT agrees to take reasonable precautions to ensure that Confidential Information of CITY, as defined in this Exhibit, is safeguarded against disclosure to unauthorized employees or third parties.
- 1.3 CITY would not share or disclose any Confidential Information to CONSULTANT but for the legal protections against unauthorized disclosures intended to be afforded by California law and this Agreement, and is relying on this Agreement in disclosing such Confidential Information to CONSULTANT.

**2. CONFIDENTIAL INFORMATION, DEFINED**

- 2.1 “Confidential Information” means any and all information which is of a non-public, proprietary or confidential nature, in any form or medium, written or oral, (whether prepared by the CITY, its employees, or agents, and irrespective of the form or means of communication and whether it is labeled or otherwise identified as confidential) that is furnished to CONSULTANT by the CITY, including, without limitation, individually identifiable utilities customer information and utility infrastructure data.
- 2.2 Exceptions. “Confidential Information” shall exclude (and the CONSULTANT shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to CONSULTANT by CITY 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 CITY; or
  - (c) is known, or becomes known, to CONSULTANT from a source other than

CITY or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement CITY; or

- (d) is independently developed by CONSULTANT without violating any of its obligations under this Agreement or any other agreement between the Parties; 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 first given to CITY, which shall be afforded the opportunity to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence; or
- (f) is permitted to be disclosed by a formal written agreement executed by and between the Parties.

Specific information shall not fall within the exceptions of Sections (a) through (f) above merely because it is embraced by more general information falling within such exceptions.

### **3. CALIFORNIA PUBLIC RECORDS ACT**

- 3.1 CONSULTANT acknowledges that CITY is a public agency subject to the requirements of the California Constitution, Article 1, Section 3 and California Public Records Act Cal. Gov. Code section 6250 *et seq.* CONSULTANT acknowledges that CITY may submit to or otherwise provide access to CONSULTANT Confidential Information that CITY or any utility customer of CITY considers to be protected from disclosure pursuant to exemptions granted by applicable California law.
- 3.2 Whether or not there is a request or demand of any third party not a Party to this Agreement (the "Requestor") for the production, inspection and/or copying of information designated by CITY as Confidential Information, CONSULTANT shall be solely responsible for taking whatever legal steps CITY deems necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by CONSULTANT).
- 3.3 Under no circumstances will CONSULTANT be permitted to comply with the Requestor's demand for disclosure of such Confidential Information that CITY deems confidential and not intended for disclosure to the general public, or otherwise publicly disclose the Confidential Information to any person not authorized by law to receive such information.

### **4. CONFIDENTIAL INFORMATION DESIGNATION**

- 4.1 As practicable, the Confidential Information shall be marked with the words “Confidential” or “Confidential Material” or with words of similar import. CITY shall instruct CONSULTANT that information of a financial, personal, or proprietary nature being conveyed orally and intended by CITY to be covered by the terms of this Agreement, is deemed Confidential Information. To the extent possible, CITY shall endeavor to mark any electronic document intended to be covered by the terms of this Agreement with the words “Confidential” or similar words, or, if that is not possible or would be exceedingly difficult, CITY shall notify CONSULTANT (for example, by covering e-mail transmitting the electronic document) that the electronic document is Confidential Information.
- 4.2 CITY’s failure, for whatever reason, to mark any material at the time it is produced to CONSULTANT, or to notify it that oral or electronic material is Confidential Information at the time it is provided, shall not take the material out of the coverage of this Agreement for all time, and CONSULTANT shall treat the material as Confidential Information once CITY has notified it that the material is to be covered by this Agreement.

## **5. DUTY TO KEEP CONFIDENTIAL**

- 5.1 CONSULTANT agrees to maintain as confidential, to the extent permitted or required by applicable law, all Confidential Information furnished or otherwise made available to the CONSULTANT, or its Representatives by CITY. CONSULTANT acknowledges that the Confidential Information is proprietary and a valuable asset of CITY and agrees that CONSULTANT shall take reasonable precautions to ensure that such Confidential Information is safeguarded against disclosure to unauthorized employees, Representatives or third parties.
- (a) CONSULTANT shall use the Confidential Information solely as permitted by this Agreement and shall not sell Confidential Information or otherwise disclose such Confidential Information under any circumstances and without the prior written consent of CITY. CONSULTANT shall not disclose the Confidential Information, or portions thereof, to any of its Representatives, except to those who need to know such information for the purpose of advising CITY and who agree to the terms of this Agreement.
- (b) CONSULTANT agrees that any of the Representatives to whom the Confidential Information is disclosed will be informed of the confidential or proprietary nature of such information and of CONSULTANT’s obligations under this Agreement. CONSULTANT is responsible for any use of Confidential Information by any of its Representatives.
- (c) CONSULTANT shall ensure that:

- (i) any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT regard and treat such Confidential Information of CITY as strictly confidential and wholly owned by CITY, and
  - (ii) CONSULTANT shall not (and CONSULTANT shall ensure that any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT do not) for any reason, in any fashion, either directly or indirectly, sell, lend, lease, distribute, license, give, transfer, assign, show, disclose, disseminate, or otherwise communicate any such Confidential Information to any third party, or misappropriate, reproduce, copy or use any such Confidential Information, in either case, for any purpose other than in accordance with this Agreement.
- (d) If CONSULTANT or any of its Representatives are requested or required to disclose any Confidential Information by law, regulation, the applicable rules of any national securities exchange or other market or reporting system, oral questions, interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand or any other similar process, CONSULTANT shall provide CITY with prompt written notice of any such request or requirement so that CITY has an opportunity to seek a protective order via writ of mandate or other appropriate remedy, or waive compliance with the provisions of this Agreement.
- (e) If CITY waives compliance with the provisions of this Agreement with respect to a specific request or requirement, CONSULTANT and its Representatives shall disclose only that portion of the Confidential Information that is expressly covered by such waiver and which is necessary to disclose in order to comply with such request or requirement. CONSULTANT and its Representatives shall cooperate in a reasonable manner with CITY in attempting to preserve the confidentiality of the Confidential Information.
- (f) If (in the absence of a waiver by CITY) CONSULTANT has not secured a protective order or other appropriate remedy despite attempting to do so, and CONSULTANT or one of its Representatives is nonetheless then legally compelled to disclose any Confidential Information, CONSULTANT or such Representative may, without liability hereunder, disclose only that portion of the Confidential Information that is necessary to be disclosed. In the event that disclosure is made in accordance with this subsection, CONSULTANT shall exercise, and cause its

Representatives to exercise, reasonable efforts to preserve the confidentiality of the Confidential Information, including obtaining reliable assurance at the sole expense of CONSULTANT that confidential treatment shall be accorded any Confidential Information so furnished.

## **6. NO LIABILITY, RELEASE, OR OBLIGATION**

Except as set forth in any formal written agreement executed by and between the Parties, neither CONSULTANT nor any of its Representatives shall be entitled to rely on any statement, promise, agreement or understanding, whether written or oral, or any custom, usage of trade, course of dealing or conduct. In addition, each Party understands and acknowledges that neither CITY nor any of its representatives, employees or agents makes any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information, and that neither CITY nor any of its representatives, employees or agents shall have any liability whatsoever to CONSULTANT or to any of its Representatives relating to or resulting from the Confidential Information or any errors therein or omissions therefrom.

## **7. REMEDIES**

In recognition that an irreparable injury may result to CITY, if any provision of this Exhibit J is violated, CONSULTANT agrees that upon any breach or threatened breach of any provision of this Exhibit J by CONSULTANT or any of its Representatives, that CITY shall be entitled to seek an injunction or specific performance prohibiting such conduct or any other relief as may be permitted by law.

## **8. RETURN OF CONFIDENTIAL INFORMATION**

8.1 CONSULTANT shall have access to the Confidential Information provided by CITY only during the term of this Agreement, and shall return all Confidential Information provided under this Agreement upon its termination, or at any time upon request of CITY, as described in Section 8.2 of this Exhibit J.

8.2 CITY may at any time request that CONSULTANT promptly return to CITY or destroy any or all documents or other materials containing Confidential Information of CITY, and CONSULTANT shall immediately comply with any such request. Notwithstanding the return or destruction of the Confidential Information as contemplated by this Section 8 of this Exhibit J, the CONSULTANT and its Representatives will continue to be bound by the terms of this Agreement with respect thereto, including all obligations of confidentiality.

## **9. SURVIVAL**

CONSULTANT's obligations of confidentiality and non-circumvention under this Exhibit J shall survive the termination of this Agreement.

## **10. OWNERSHIP RIGHTS NOT CREATED**

The transfer of Confidential Information hereunder shall not be construed as granting a license of any kind or any right of ownership in the Confidential Information to CONSULTANT.

**11. NO OBLIGATION TO DISCLOSE**

Nothing in this Section shall obligate CITY to disclose specific Confidential Information to CONSULTANT. Such disclosures shall be at the CITY's sole discretion.

**EXHIBIT “F”**  
**IDENTITY INFORMATION PROTECTION**

Identity Information Protection

1. During the term of the contract the CONSULTANT shall not collect, process or store any Private Information (PI) and Personally Identifiable Information (PII), except the name and address of the customer.
2. During the term of the contract the CONSULTANT shall comply with the CITY’s Information Privacy Policy and the CITY’s Software as a Service Security and Privacy Terms and Conditions.

Personal information (PI) is defined as an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number.
- (2) Driver's license number or California Identification Card number.
- (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account,

"Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Personally Identifiable Information (PII), as used in information security, is information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual.