City of Palo Alto

City Council Staff Report

(ID # 10771)

Report Type: Consent Calendar   **Meeting Date: 12/2/2019**

Summary Title: Contract Amendment for Online Solar and EV Calculator Tools

Title: Approval and Authorization for the City Manager or Designee to Execute Contract Amendment Number 1 to Contract Number S17165514 With Clean Power Research, LLC, for the Provision of a Web-Based Solar Photovoltaic (PV) and Electric Vehicle (EV) Calculator for CPAU Customers Increasing the Term for Five Years and Increasing Compensation by $275,000, for a Total Not-to-Exceed Amount of $410,000

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that Council approve and authorize the City Manager, or designee, to execute the following Utilities Program Services contract amendment:

Amendment One to the Clean Power Research, LLC, Contract S17165514 (Attachment A) for provision of a web-based solar photovoltaic (PV) and electric vehicle (EV) calculator tool, extending the contract's existing three-year term for up to five additional years from an expiration date of December 31, 2019 to an expiration date of December 31, 2024 and to clarify language in the agreement, including that related to invoicing, and with an increase in the not-to-exceed amount of the contract by $275,000, from $135,000 over three years to $410,000 over eight years.

Executive Summary

Clean Power Research's WattPlan® Advisor solar and electric vehicle (EV) calculators are web-based tools that enable CPAU customers to run estimates of the economics of purchasing solar, solar+storage, and/or electric vehicles (EVs). The tools are user friendly and they incorporate accurate utility rates in the economic modeling. Clean Power Research is the only vendor that includes all three of these distributed energy resources (DERs) -- solar, battery storage, and EVs – in one calculator tool offering. The City has worked with Clean Power Research over the past three years to update and optimize these web-based tools as the City transitioned from its original Net Energy Metering (NEM 1) solar billing program to the Net Energy Metering Successor (NEM 2) program. Opportunities may exist to enhance the tools' capabilities further

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in the coming years, adding features such as a home electrification module or a Virtual Energy Assessment. More than 600 unique residential addresses ran estimates in 2018, and we expect this number to increase with the upcoming launch of the utility's new web portal, MyCPAU. The proposed contract amendment adds five additional years and $275,000 to the existing three-year, $135,000 contract so that CPAU customers can continue to benefit from these online resources that have been customized over the past three years.

Background

In October 2016, the City of Palo Alto issued RFP #165514, soliciting proposals for providing a web-based calculator for evaluating EV and PV systems. Three vendors responded, and Clean Power Research was selected to provide its WattPlan PV/EV Calculator tools. The original contract with Clean Power Research was entered on December 31, 2016 for a period of three years. The total compensation not-to-exceed amount for the Term of the Agreement was $135,000.

Discussion

In 2016, Palo Alto's PV Partners solar rebate funds were fully reserved, and the City was approaching the cap for its original Net Energy Metering (NEM 1) program, which compensates solar customers at retail rates for electricity that they export to the utility. Also at that time, the City was developing its Sustainability and Climate Action Plan (S/CAP), which Council adopted in November 2016 (Council Staff Report 7304). The S/CAP included a goal of reducing greenhouse gas (GHG) emissions to 80% below 1990 levels by 2030, and the largest source of emissions was shown to be road transport. In response to the City's environmental sustainability goals, staff determined that providing online tools that customers could use to evaluate the economics of purchasing rooftop solar and/or electric vehicles would be of value. The City issued an RFP and selected Clean Power Research as provider of these tools.

Offering online tools fit well with the City's transition in solar-related matters from its role as provider of incentives to that of a trusted advisor, providing useful resources and information. Because the PV/EV calculator tools are self-service, they require minimal staff time. Customer Service Representatives benefit from the tools because when customers have questions about solar and EV purchase decisions the Customer Service representatives can refer the customers to these easily accessible and self-intuitive tools. In addition, the tools help protect customers from unscrupulous vendors by providing reasonable estimates to compare with bids.

The solar and EV calculator tools are currently accessible via the solar and EV web pages, respectively. Funds from this amendment cover integrating the tools with our new web portal, MyCPAU, adding "Solar" and "EV" tabs to the portal dashboard. Integration with the portal would increase visibility of the tools and we would expect a substantial increase in the number of users.

EV Calculator: https://paloalto.wattplan.com/ev/

Solar Calculator: https://paloalto.wattplan.com/pv/

In 2018, 604 estimates were run from unique addresses -- 317 solar estimates and 287 EV estimates. The annual subscription fee for the solar and EV tools was $23,000 per year, and so the cost of serving 604 unique customers with the solar and EV tools was $38 per customer.

The switch to NEM 2 in 2018 increased interest in battery storage. Since under NEM 2 customers are compensated at a rate lower than retail rates for electricity they export to the utility, they can maximize the value of their solar-generated electricity if they use (or store) that electricity while they generate it, rather than exporting. Increased concerns about power outages have also driven interest in combining battery storage with rooftop solar. Including a battery storage module in the solar calculator tool makes the tool more useful for customers as they are able to evaluate the economics of adding battery storage to a rooftop solar system. Set-up of the battery storage module was accomplished in Q4 of 2018 using a portion ($5,000) of the original contract's Task 3 designated funds for Optional Enhancements.

Adding the battery storage module increases WattPlan's annual subscription fee to $33,000 per year. Data integration adds $5,000 per year, bringing the total to $38,000 per year, as shown in the Task 2, Subscription Fees row in Table 1 below for Years 4 through 8 of the contracts. If the number of unique users increases from 600 per year to 1,000 per year with integration into the new MyCPAU portal, the cost of the solar and EV calculator tools will remain at $38 per unique customer.

Additional funds of $15,000 per year are added to the Task 3, Optional Enhancements category of the contract for years 4 through 6, and $20,000 per year for years 7 and 8. Just as Task 3 funds made the addition of the battery storage module possible at the end of 2018, this category of funds may be needed for adding features or enhancements in coming years, such as a home electrification module, or a Virtual Energy Assessment module. These possibilities are intriguing, and they may, on a per customer basis, be a more economical way for the City to provide residential customers with home efficiency and electrification advising in the future. The decrease from $25,000 per year to $15,000 or $20,000 per year in the Task 3 category is based on the experience of adding features during Years 1 through 3 and is believed to be a closer estimate of funds that may be needed.

Even as solar incentives have wound down, customers are still drawn to the idea of generating their own clean energy. As they consider an investment in rooftop solar, customers often expand the solar decision to include home efficiency improvements and electrification of their homes and transportation. Investments in these energy projects move our City closer to achieving its sustainability goals, and so we want to support informed decision-making by our customers and remove barriers such as confusion about the economics of the decisions. Continuing to provide online tools that help our customers make energy-related investment decisions is an efficient way to support our City's sustainability goals while also helping us meet the important goal of customer satisfaction.

A new solicitation at this stage would be impractical and unavailing. Staff and the community are satisfied with the Clean Power Research services and the negotiated rates are fair for the level of services provided. The City has invested significant time and money into customized software enhancements and training for all Clean Power Research modules. If, instead of continuing to contract with Clean Power Research, the City were to go out to competitive solicitation for software that produces economic analyses of investments in distributed energy resources, the City would have to conduct an assessment, conduct the solicitation, prepare for data transfer and implement a transition plan to ensure there are no disruptions to services, where a need for new calculator tools is not currently indicated. For these reasons, conducting a solicitation would be impractical and would be disadvantageous for the City at this time, and Staff therefore requested and received an exemption from competitive solicitation, Ref. PAMC 2.30.360(b).

Resource Impact
The budget schedule in Table 1 below shows the funds in the original contract (columns marked by year as Y1 through Y3) as well as the proposed funds for an additional five years of contract term (columns marked Y4 through Y8).

Table 1. Budget Schedule.

Task	Description	Not to Exceed (NTE) Amount							
		Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8
1	WattPlan Software -- Set-up/Configuration	$16,000							
2	Subscription	$23,000	$23,000	$23,000	$38,000	$38,000	$38,000	$38,000	$38,000
3	Enhancements on an as-needed basis	$0	$25,000	$25,000	$15,000	$15,000	$15,000	$20,000	$20,000
Sub-total NTE -- Basic Services		$39,000	$48,000	$48,000	$53,000	$53,000	$53,000	$58,000	$58,000

Funding of $53,000 for Year 4 in the contract is available in the FY 2020 Public Benefits and LCFS budgets, which are listed in the Funding Source row of Table 2 below. Funding for future enhancements will be allocated based on the percentages listed in the "% of Total" rows of Table 2. Funding for contract years 5 through 8 is contingent upon appropriation and approval of funds for FY 2021-24.

Policy Implications

Provision of these online-accessible tools is consistent with the Utilities Strategic Plan, Priority 3, utilizing technology to enhance the customer experience and maximize operational efficiency. The tools are also consistent with the Sustainability Implementation Plan and the City's Sustainability and Climate Action Plan (S/CAP) as they help customers navigate the process of purchasing an electric vehicle, supporting the acceleration of EV penetration in Palo Alto.

Table 2: Funding sources and cost breakdown for PV/EV Calculator tool subscription fees.

	PV Calculator	EV Calculator	Battery Storage Module	Data Integration	Electrification Module (Enhancement)	Virtual Energy Audit (Enhancement)	Total $/year Without/With Enhancements
Annual Subscription	$13,000	$10,000	$10,000	$5,000	$10,000	$5,000	$38,000/ $53,000
% of Total, No Enhancements	35%	26%	26%	13%	--	--	
% of Total, with Enhancements	25%	19%	19%	9%	19%	9%	
Funding Source	Electric Public Benefits Renewables	Low Carbon Fuel Standard (LCFS)	Electric Public Benefits R&D	50:50 Electric Public Benefits Renewables and LCFS	Electric Public Benefits R&D	50:50 Electric Public Benefits and Gas DSM	

Stakeholder Engagement

Each year staff holds workshops for the community on the topic of solar in Palo Alto in conjunction with the City's participation in the Bay Area SunShares solar group-buy program. The PV/EV calculator tools are central to the presentation as they are a key offering for customers considering rooftop solar. Similarly, the link to the EV calculator tool is shared at City EV events. The PV and EV calculator tools are cross-compatible because customers considering solar are often considering purchasing an electric vehicle and vice versa, and so both are promoted at solar and EV events.

Environmental Review

Approval of the Contract Amendment recommended in this staff report 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 (CEQA) is required and the work performed by consultants and staff in connection with these online tools is categorically exempt from CEQA pursuant to section 15301 of Title 14 of the California Code of Regulations.

Attachments:
- Attachment A: Contract S17165514
- Attachment B: Amendment Number 1 to Contract S17165514

CITY OF PALO ALTO CONTRACT NO. S17165514
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
CLEAN POWER RESEARCH, LLC
FOR PROFESSIONAL SERVICES

This Agreement is entered into on this 31st day of December, 2016, ("Agreement") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and CLEAN POWER RESEARCH, LLC, a limited liability company, located at 1541 3rd Street, Napa, CA 94559 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A.   CITY intends to develop a web based solar photovoltaic (PV) and electric vehicle (EV) calculator for CPAU customers ("Project") and desires to engage a consultant to design and build the calculator in connection with the Project ("Services").

B.   CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C.   CITY in reliance on these representations 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:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described at 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 from the date of its full execution through December 31st, 2019 unless terminated earlier pursuant to Section 19 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 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" ("Basic Services"), and reimbursable expenses, shall not exceed One Hundred Thirty Five Thousand Dollars ($135,000.00). CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event Additional Services are authorized, the total compensation for Basic Services, Additional Services and reimbursable expenses shall not exceed One Hundred Thirty Five Thousand Dollars ($135,000.00). The applicable rates and schedule of payment are set out at Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement. 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.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit an invoice for 50% of setup and customization fees (Task I) upon both Parties' execution of this Agreement. CONSULTANT shall submit an invoice for remaining 50% of setup (Task I) and 100% of annual subscription fee (Task II) upon the completion of setup, subject to not to exceed limits included elsewhere in this Agreement. For Task III, CONSULTANT shall submit monthly reports to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C-1"). If applicable, the reports 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 and reports to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the 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 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 is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of CITY's stated construction budget, CONSULTANT shall make recommendations to CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

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 an agent or employee of 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 nor the performance of any of CONSULTANT's obligations hereunder 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 not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

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 designee.

SECTION 13. PROJECT MANAGEMENT.   CONSULTANT   will   assign   Jennifer Goughas 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 director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director 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

personnel who 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 Project or a threat to the safety of persons or property.

CITY's project manager is Bruce Lesch, Manager, Utility Program Services, or his designee, , 250 Hamilton Avenue, Palo Alto, CA 94303. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. CONSULTANT shall retain exclusive ownership of any intellectual property in existence before the execution of this Agreement ("Background Intellectual Property") and shall retain exclusive title and ownership to any intellectual property generated during the Term, ("Foreground Intellectual Property") that it developed, authored, or conceived in the performance of this Agreement, with the exception of data, reports and outputs specific to CITY's licensed usage of the service described in this Agreement. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee with the exception of non-confidential user-specific data, reports and outputs required to troubleshoot, "debug" and maintain the service during the period of performance. 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 attorneys 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 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 hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher 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 Chief Procurement Officer 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 deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, including reports and outputs specific to CITY's licensed usage of the service which were not already delivered to or accessed by CITY, and whether or not completed, which were prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, 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 CONSULTANT's 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 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 CITY's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of 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:

    (a) 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 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.

    (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with 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 Division's office.

    (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to 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. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE. CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay

such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 25. NON-APPROPRIATION

25.1. 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 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

26.1 **This Project is not subject to prevailing wages.** CONSULTANT is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction project of more than $25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, 'improvement') project of more than $15,000.

SECTION 27. MISCELLANEOUS PROVISIONS.

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

27.2. 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.

27.3. 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.

27.4. 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.

27.5. 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.

27.6. 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.

27.7. All 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.

27.8 In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT's proposal, the exhibits shall control.

27.9 If, pursuant to this contract with CONSULTANT, 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 the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

27.10 All unchecked boxes do not apply to this agreement.

27.11 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.

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

CONTRACT No. S17165514 SIGNATURE PAGE

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

CITY OF PALO ALTO

DocuSigned by:

John Montenero

2584ACDBD2DA4B01
Purchasing Manager

APPROVED AS TO FORM:

DocuSigned by:

Amy Bartell

D0B48E347E9342B...
City Attorney or designee

CLEAN POWER RESEARCH, LLC

Officer 1

By: DocuSigned by:

Jeffrey S. Ressler

EA0E599AFE504B7...

Name: Jeffrey S. Ressler

Title: President, Software Services

Officer 2

By: DocuSigned by:

Carlos Brito

2D751AD7F0714EA...

Name: Carlos Brito

Title: VP of Engineering

Attachments:

EXHIBIT "A":   SCOPE OF SERVICES
EXHIBIT "B":   SCHEDULE OF PERFORMANCE
EXHIBIT "C":   COMPENSATION
EXHIBIT "C-1":   SCHEDULE OF RATES
EXHIBIT "D":   INSURANCE REQUIREMENTS
EXHIBIT "E":   INFORMATION PRIVACY POLICY
EXHIBIT "F":   SOFTWARE AS A SERVICE SECURITY AND PRIVACY TERMS AND
                  CONDITIONS

EXHIBIT "A"
SCOPE OF SERVICES

TASK I: WattPlan Software – Set-up/Configuration

1.1. **WattPlan Set-Up:** CONTRACTOR shall setup two separate WattPlan URLs, one for the PV calculator and one for the EV calculator. The EV calculator includes an option for the customer to add PV to their EV assessment. CITY will develop related website content on their website which will then link to each of these URLs.

1.2. **Standard Configuration Description:** WattPlan guides users through the analysis one step at a time, highlighting the most important information needed to make a decision.

    1.2.1. The PV calculator will require the customer's address, whether they are a residential either their average monthly electric bill or their previous 12 months of electricity usage and finally a Review Terms screen. The EV calculator will require the customer to specify the make and model of the plug-in and conventional vehicles they want to compare, their address, their commute distance, an option to include PV in the assessment, either their average monthly electric bill or their previous 12 months of electricity usage and finally a Review Terms screen. CITY will have the option of configurable text and default values for these screens. Once the calculations are complete, the customer will see a series of sections which summarize key aspects of the assessment. The PV and EV calculators will have their own unique screens as are relevant for the specific technology being assessed. CITY will have the option to configure text, colors, and default values for these screens. Finally, the customer will have the option to fine tune their estimate by adjusting assumption values in the Customize Assumptions menu and WattPlan will re-calculate and refresh their results. CITY will have the option to configure text and default values for this menu.

    1.2.2. **CITY's Requested WattPlan Configuration:** The table below outlines the CITY's required features of the web-based PV and EV calculator and CONTRACTOR's proposed approach. In some cases, CONTRACTOR's approach is exactly as described in the RFP, in other cases the "CONTRACTOR Approach" column will outline any further definition of the approach and any options for alternative approaches.

        1.2.2.1. Hosted Solution: Hosted, managed and maintained by CONTRACTOR.

        1.2.2.2. Customer Types: Residential single-family home, and multi-family house accounts. Note that the EV calculator is residential focused and thus does not support commercial electric rates. A residential user can specify how much public (e.g., workplace) charging they expect to do.

        1.2.2.3. Utility Branding: Using CITY color scheme, fonts and logos; customers should feel like they are using the CITY website. The calculator will be available to utility customers with a link from CITY's website. WattPlan allows for customization of color scheme and logos, and the calculator may be linked to from any CITY webpage. While the content of all text will be made configurable (to the extent that page layout is not adversely affected), the text font itself will not be configurable as a standard option.

        1.2.2.4. User Defined Inputs: Ability for users to enter their monthly electric usage (or use CITY-defined default for customer type), and select the following options, as applicable: electric rates, average daily/monthly driving miles, EV charging hours, PV system size, orientation, tilt, PV and EV purchase options (loan, lease, Power Purchase Agreements, or cash), terms and costs. Regarding EV mileage, the user may input their daily miles and

easily view the equivalent annual miles or they can tell WattPlan where they typically commute to and let WattPlan calculate the commute distance for them.

1.2.2.5. Electric Consumption History and Load Profile: The calculator should be able to accept user-entered monthly energy usage history and the software should have the capability to use sample Palo Alto residential customer load profiles for the customized customer analysis. The calculator should be able to modify the default load shape for customers who already have any or all of the following equipment: solar PV, electric vehicle and/or an all-electric home. Users can perform a quick estimate by inputting their average monthly electric bill or their estimated 12 monthly electricity usage values. Users with 12 months of energy usage history can enter these monthly kWh usage values for each month of the year. Based on these user inputs, typical load profiles will be scaled to derive an hourly customer load profile. Optionally, CITY can provide CONTRACTOR with typical customer load data for a one-year period can be provided to CONTRACTOR (as a CSV or other standardized file format) in either 15 minute, 30 minute, or hourly resolutions, and CONTRACTOR will transform the data into an hourly 12x24 (an hourly load profile for each month representing an average day in each month) format for use in the analysis. Alternatively, CONTRACTOR maintains a database of typical residential customer load profiles for several climate zones and rate classes from which representative load profiles for CITY customers may be chosen.

1.2.2.6. Rate Structure: Use the relevant CITY electric rates for the financial analysis results created by the PV and EV calculator. Update the rates used in the PV and EV calculator when requested by CITY to provide the most accurate rate analysis possible. CITY rates are usually updated annually for a July 1st effective date. Analysis to include all relevant electric charges including tiered residential energy use, time-of-use energy charges, monthly peak demand charge, minimum bill charge, and utility users tax.

1.2.2.7. Financial Analysis: Calculator should be able to model PV-only, EV-only and combined PV and EV options. a. PV analysis: Show 20-year cost analysis including electric retail rate escalations, initial system cost, long-term savings, and simple payback time frame. Analysis should provide side-by-side, easy to understand financial and pictorial representation of the various ownership options. A community solar component may be added to the calculator options in the future, if requested by CITY. b. EV analysis: Provide comparison of annual costs and benefits of selecting an electric vehicle compared to a standard car based on user-selected vehicles, miles per day/month/year, and purchase type (lease, loan, cash) including operating and maintenance costs, and available tax incentives. Regarding EV mileage, the user may input their daily miles and easily view the equivalent annual miles or they can tell WattPlan where they typically commute to and let WattPlan calculate this for them.

1.2.2.8. Roof Top Analysis: WattPlan incorporates LIDAR data from a third-party provider, Sun Number.

1.2.2.9. Reporting: Provide consumer friendly web visualization tools showing personalized results of monthly energy use and energy costs with and without solar PV and/or EV. Reporting should be part of the tool and immediately available to customers for viewing, printing and saving the results from each scenario entered. Personalized results reported by WattPlan can be visualized instantly. The user can optionally download and/or print a summary of the results as a PDF. Note: the Save as PDF feature is not yet available for the EV calculator, though we expect it to be in the near future.

1.3. **TECHNICAL SUPPORT**

1.3.1. **Support Hours.** CITY will provide first-tier support to users. For second-tier support, CONTRACTOR shall provide email based support from 9:00 AM to 5:00 PM (PST) Monday through Friday, excluding national holidays ("CONTRACTOR Service Hours"). CONTRACTOR will provide second-tier support that includes direct communications with Customer but excludes any direct communication with end users. CONTRACTOR shall also provide ability to escalate email support incident to phone or interactive (phone with web-based screen sharing) as necessary. Customer may report an incident 24 hours/day, 7 days/week as described in Support Request.

1.3.2. **Outages.** CONTRACTOR will notify CITY about outages affecting the servers in a timely manner as described in Outage Notification. CONTRACTOR will contact CITY using the data in CONTRACTOR's contact database. CITY is responsible in keeping the contact information correct and up to date by communicating any changes to support@wattplan.com.

1.3.3. **Outage Notification.**

    1.3.3.1. **Planned Outages.** CONTRACTOR will communicate planned Service outages to CITY that are either a) inside Support Hours or b) outside Support Hours and expected to be more than 15 minutes. Depending on the breadth and impact of the outage, notification may be by email. Notification will be provided using the contact information, provided by CITY, in the CONTRACTOR's contact database.

    1.3.3.2. **Unplanned Outages.** An unplanned outage occurs when the Service becomes unavailable due to any issue not scheduled or planned. CONTRACTOR will communicate unplanned outages that are 15 minutes or longer as soon as practicable to the CITY contact by email with follow-up by phone if acknowledgement is not received by CONTRACTOR promptly through email.

1.3.4. **SUPPORT REQUEST.** All incidents shall be reported to support@wattplan.com and CONTRACTOR's designated or other knowledgeable staff member will respond by email to the CITY's incident as follows:

    1.3.4.1. **Urgent:** The Service is unavailable to all users for more than 1 hour and is not down as a result of a planned outage. For an Urgent Support Request, CONTRACTOR will use reasonable efforts to contact CITY during the CONTRACTOR Service Hours no later than 4 hours after receipt of an urgent incident report Resolution time will depend on the nature of the report, request, or inquiry.

    1.3.4.2. **Non-Urgent**: Abnormal or inconsistent system behavior or a system problem that does not prevent work on the system. For a Non-Urgent Support Request or a Business Inquiry, CONTRACTOR will use reasonable efforts to contact CITY during the CONTRACTOR Service Hours no later than 5 business days after receipt. Resolution time will depend on the nature of the report, request, or inquiry.

1.4. **SECURITY AND IT PROVISIONS.**

1.4.1. CONTRACTOR agrees to implement and maintain during the term of this Agreement, a Business Continuity Plan and Disaster Recovery Plan (the "Plans"), access to which each shall be provided to CITY for CITY's review. The Plans may be reviewed annually, or as required due to significant changes in risk or the business or regulatory environment. The Plans will also be updated to reflect lessons learned from real recovery events. CONTRACTOR agrees to maintain an effective business continuity, disaster recovery and crisis management response capability, consistent with the level of risk associated with the Service.

1.4.2. CITY may audit CONTRACTOR's records relating to the Services to ensure CONTRACTOR's compliance with the terms of this Agreement, provided that CITY has

      provided reasonable notice to CONTRACTOR and any such records of CONTRACTOR's will be treated by CITY as Confidential Information.

1.4.3.   Data transmissions of CITY Information via the Internet between the CITY and Services must be at least SSL 128 bit encrypted.

1.4.4.   CONTRACTOR warrants that it shall (i) use reasonable physical and systems security measures to prevent unauthorized access to or tampering with the Service, its site, including to protect the confidentiality and integrity of any CITY Information, which means all data provided by users via the CITY's implementation of the Service, including without limitation Personally Identifiable Information, and to prevent viruses and similar destructive code from being placed on the Service, on its site, or in its programming; and (ii) use reasonable physical security and precautionary measures to prevent unauthorized access or damage to a facility under its control or that of its subcontractors, including to protect the confidentiality and integrity of any CITY Information. CONTRACTOR shall, at a minimum, protect CITY Information and provide the same measures it uses to protect its own confidential information. Services shall be hosted in a facility that has been audited to SSAE16 SOC2 standards or those that are equal to or better standards.

1.4.5.   Any breach of the obligations contained in this document shall be reported to CITY within 24 hours of discovery. CONTRACTOR shall make its employees, agents, and subcontractors available to facilitate investigations related to any such breach. CONTRACTOR will present its remediation plan to CITY for approval (which approval shall not be unreasonably withheld). CONTRACTOR shall promptly remediate the effects of any such breach, at its sole expense.

1.4.6.   CONTRACTOR shall, and it shall cause its employees and subcontractors to, comply, at CONTRACTOR's sole cost and expense, with all laws, rules, regulations, reasonable practices and standards applicable to the obligations assumed by CONTRACTOR under this Agreement including those related to data privacy, data protection, international communications and the transmission of technical or personal data.

1.4.7.   CONTRACTOR shall not use any Customer Confidential Information (including Personally Identifiable Information), for application testing purposes for any reason or in any manner whatsoever, without the prior written consent of CITY. A sample of anonymized and transformed Customer data may be used upon occasion for internal testing to ensure continued quality of operation of the Services for CITY's use of the Services only.

1.4.8.   CITY may scan CONTRACTOR's application infrastructure, with CONTRACTOR's express prior written consent, whenever CITY scans its own site for security confirmation and testing.

1.4.9.   CONTRACTOR shall provide CITY, with a copy of its third party audited SSAE16 SOC2 report (or its equivalent or better), as permitted, immediately upon release, at no cost to CITY as such report is released from CONTRACTOR and/or its subcontractor. Otherwise, CITY may access subcontractor's same or similar report as it is made publicly available upon notice from CONTRACTOR.

Task II: Subscription

Clean Power Research ("CONTRACTOR") shall provide the City of Palo Alto ("CITY") with the WattPlan software service. WattPlan is a web-based application that enables users to quickly and remotely estimate their home or business potential for rooftop solar and understand its financial impacts through a simple step-by-step user interface. In addition, WattPlan provides a personalized estimate of the benefits of driving electric vehicle compared to a standard vehicle, including energy impact, economics and environmental savings.

TASK III: Enhancements on an as-needed basis

In the future, CITY may desire customized enhancements to the calculator evaluating some of the following technologies and program options: energy efficiency, battery storage, demand control devices, community solar, heat pump water heaters, and other technologies and behavior modeling. These features may incur additional one-time and/or on-going license fees outside of what is described in this proposal.

EXHIBIT "B"
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks 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 the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Milestones	Completion No. of Weeks From NTP
1. **Task I**: WattPlan Software – Set-up/Configuration	18 weeks
2. **Task II**: Subscription	Annual
3. **Task III** : Enhancements on an as-needed basis	TBD

EXHIBIT "C"
COMPENSATION

The 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 the budget schedule below. 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.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, and the total compensation for Additional Services do not exceed the amounts set forth in Section 4 of this Agreement.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1 (One-time set-up and customization)	$16,000.00
Task 2 (Annual Subscription - $23,000/year x 3 years)	$69,000.00
Task 3 (Optional Enhancements on an as-needed basis)	$50,000.00
Sub-total Basic Services	**$135,000.00**
Total Basic Services and Reimbursable expenses	$135,000.00
Additional Services (Not to Exceed)	$0
Maximum Total Compensation	**$135,000.00**

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:

.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than $250 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

EXHIBIT "C-1"
SCHEDULE OF RATES

<u>Software Engineer</u>
- Senior: $200
- Junior: $150

<u>Program/Project Management</u>
- Senior: $160
- Junior: $135

EXHIBIT "D"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY 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:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
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
	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	$1,000,000	
YES	**THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED**: CONTRACTOR, 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, **NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.**			

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 AT THE FOLLOWING URL: https://www.planetbids.com/portal/portal.cfm?CompanyID=25569.

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

     A.   <u>PRIMARY COVERAGE</u>

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.   <u>CROSS LIABILITY</u>

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.   <u>NOTICE OF CANCELLATION</u>

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

VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP

Information Privacy Policy

Release and Version:	1st Release, Version 2.2
Release Date:	31 January, 2013
Document Classification:	Need to Know

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DOCUMENT CONTROLS

Document Title	Information Privacy Policy
Location	City of Palo Alto Website and SharePoint
Document Author	Raj Patel
Document Manager	Raj Patel
Contributors	Jonathan Reichental, Shiva Swaminathan, Tom Auzenne, Joe Blackwell, Grant Kolling

CHANGE RECORD

Date	Author	Version	Change Reference
12-Jul-12	Raj Patel	0.01	First draft developed
26-Sep-12	Raj Patel	1.0	First draft released for review
09-Nov-12	Raj Patel	1.5	Updated first draft for review
19-Nov-12	Raj Patel	1.6	Additional updates as identified
22-Nov-12	Raj Patel	1.7	Revised table of content
26-Nov-12	Raj Patel	1.8	Revised followed by review from Jonathan Reichental and Tom Auzenne
6-Dec-12	Raj Patel	1.92	Revised according to comments from Jonathan Reichental
14-Jan-13	Raj Patel	2.0	Revised according to comments from Grant Kolling
31-Jan-13	Raj Patel	2.2	Revised according to recommendations from Information Security Steering Committee

APPROVAL

Date	Name	Role	Comments
06-Dec-12	Raj Patel	Information Security Manager; Information Technology Department	Approved
06-Dec-12	Jonathan Reichental	CIO; Information Technology Department	Approved
06-Dec-12	Tom Auzenne	Assistant Director, Utilities Department	Approved
14-Jan-13	Grant Kolling	Senior Assistant City Attorney; City Attorney's Office	Approved
14-Jan-13	Information Security Steering Committee	Sponsor	Approved

DISTRIBUTION

Name	Location
City of Palo Alto Employees, Service Providers, Residents and Businesses	City of Palo Alto Website and SharePoint

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1. Objective

The City of Palo Alto (the "City") strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 – 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons, collected in the ordinary course and scope of conducting the City's business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City's rules and regulations, and industry best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City's data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Informationand Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms "Personal Information," "Protected Critical Infrastructure Information", "Personally Identifiable Information" and "Personally Identifying Information" (collectively, the "Information") are defined in the California Civil Code sections, referred to above, and are incorporated in this Policy by reference.

A) INTENT

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City's website, and persons who access other information portals maintained by the City's staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City's applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City's staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

B) SCOPE

The Policy will guide the City's staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

C) CONSEQUENCES

The City's employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in

employment and/or legal consequences.

D) EXCEPTIONS

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request.The exception request will be reviewed and administered by the City's Information Security Manager (the "ISM"). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City's Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy's guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the Information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

E) MUNICIPAL ORDINANCE

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

2. RESPONSIBILITIES OF CITY STAFF

A) RESPONSIBILITY OF CIO AND ISM

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City's government.

The City's employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall by guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy, (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City's IT environments; (d) assisting the City's staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non-Disclosure Agreements (NDAs) signed by third party contractors, which will provide services, including, without limitation, local or 'cloud-based' software services to the City.

B) RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE

The Information Security Steering Committee (the "ISSC"), which is comprised of the City's employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

C) RESPONSIBILITY OF USERS

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

D) RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS

The City's IT Managers, who are responsible for internal, external, direct and indirect connections to the City's networks, will be responsible for configuring, maintaining and securing the City's IT networks in compliance with the City's information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.

E) RESPONSIBILITY OF AUTHORIZATION COORDINATION

The ISM will ensure that the City's employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City's approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

3. PRIVACY POLICY

A) OVERVIEW

The Policy applies to activities that involve the use of the City's information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City's employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City's intranet or other networks, systems, or devices.

The term "information assets" also includes the personal information of the City's employees and any other related organizations while those assets are under the City's control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City's staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City's employees and authorized third parties.

B) PERSONAL INFORMATION AND CHOICE

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented to the City's sharing of such information during the conduct of the City's business as a local government agency with third parties under contract to the City to provide services.

C) METHODS OF COLLECTION OF PERSONAL INFORMATION

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

D) UTILITIES SERVICE

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.

Businesses and residents with such non-standard or experimental metering will have their Information covered by the same privacy protections and personal information exchange rules applicable to Information under applicable federal and California laws.

E) PUBLIC DISCLOSURE

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by California law.

F) ACCESS TO PERSONAL INFORMATION

The City will take reasonable steps to verify a person's identity before the City will grant anyone online access to that person's Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

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G) SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City's employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City's employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

H) DATA RETENTION / INFORMATION RETENTION

The City will store and secure all Information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

I) SOFTWARE AS A SERVICE (SAAS) OVERSIGHT

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

J) FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a "covered financial institution or creditor" which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers' Information.

CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

4. CONTACTS

Information Security Manager: Patel, Raj <Raj.Patel@CityofPaloAlto.org>

Chief Information Officer: Reichental, Jonathan <Jonathan.Reichental@CityofPaloAlto.org>

Utilities Department: Auzenne, Tom <Tom.Auzenne@CityofPaloAlto.org

City Attorney's Office: Kolling, Grant <Grant.Kolling@CityofPaloAlto.org>

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EXHIBIT "F"

> ## SOFTWARE AS A SERVICE SECURITY AND PRIVACY
>
> ## TERMS AND CONDITIONS
>
> *This Exhibit shall be made a part of the City of Palo Alto's Professional Services Agreement or any other contract entered into by and between the City of Palo Alto (the "City") and ___CLEAN POWER RESEARCH, LLC___ (the "Consultant") for the provision of Software as a Service to the City (the "Agreement").*

In order to assure the privacy and security of the personal information of the City's customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons and other individuals and businesses, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the "Consultant") and its subcontractors, if any, including, without limitation, any Information Technology ("IT") infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit B, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City's customers. The Consultant shall fulfill the data and information security requirements (the "Requirements") set forth in Part A below.

A "secure IT environment" includes: (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City's IT systems; (b) the Consultant's operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

Part A.   Requirements:

The Consultant shall at all times during the term of any contract between the City and the Consultant:

(a) Appoint or designate an employee, preferably an executive officer, as the security liaison to

the City with respect to the Services to be performed under this Agreement.

(b) Provide a full and complete response to the City's Supplier Security and Privacy Assessment Questionnaire (the "Questionnaire") to the ISM, and also report any major non-conformance to the Requirements, as and when requested. The response shall include a detailed implementation plan of required countermeasures, which the City requires the Consultant to adopt as countermeasures in the performance of the Services. In addition, as of the annual anniversary date of this Agreement the Consultant shall report to the City, in writing, any major changes to the IT infrastructure.

(c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards. See the following:
http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=42103
http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=50297

(d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.

(e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.

(f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no longer would require access to that information or who are terminated.

(g) Provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.

(h) Implement access accountability (identification and authentication) architecture and support role-base access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems and software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.

(i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.

(j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity and availability of the City's information.

(k) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels by not later than one (1) week after its date of release. Emergency security patches must be installed within 24 hours after its date of release.

(l) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.

(m) Notify the City within one (1) hour of detecting a security incident that results in the unauthorized access to or the misuse of the City's confidential data and information.

(n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.

(o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis, and provide the required summary reports of those self-audits to the ISM on the annual anniversary date or any other date agreed to by the Parties.

(p) Accommodate, as practicable, and upon reasonable prior notice by the City, the City's performance of random site security audits at the Consultant's site(s), including the site(s) of a third party service provider(s), as applicable. The scope of these audits will extend to the Consultant's and its third party service provider(s)' awareness of security policies and practices, systems configurations, access authentication and authorization, and incident detection and response.

(q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, the Confidential Information will be accessible only by the Consultant and any authorized third party service provider's personnel.

(r) Perform regular, reliable secured backups of all data needed to maximize availability of the Services.

(s) Maintain records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.

(t) Maintain the Confidential Information in accordance with applicable federal, state and local data and information privacy laws, rules and regulations.

(u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.

(v) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.

Part B. **Alternate Requirements:**

**AMENDMENT NO. 1 TO CONTRACT NO.
S17165514 BETWEEN THE CITY OF PALO ALTO
AND
CLEAN POWER RESEARCH**

This Amendment No. 1 (this "Amendment") to Contract No. S17165514 (the "Contract" as defined below) is entered into as of December 2, 2019, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and CLEAN POWER RESEARCH, a limited liability company, located at 1541 3rd Street, Napa CA 94559 ("CONSULTANT"). CITY and CONSULTANT are referred to collectively as the "Parties" in this Amendment.

R E C I T A L S

A.   The Contract (as defined below) was entered into by and between the Parties hereto for the provision of web-based solar photovoltaic (PV) and electric vehicle (EV) calculator for CPAU customers, as detailed therein.

B.   The Parties now wish to amend the Contract in order to extend the term, increase compensation by $275,000 from $135,000 to $410,000 and to revise invoicing terms.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. **Definitions**. The following definitions shall apply to this Amendment:

      a.   **Contract**. The term "Contract" shall mean Contract No. S17165514 between CONSULTANT and CITY, dated December 31, 2016.

      b.   **Other Terms**. Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 2. TERM of the Contract is hereby amended to read as follows:

      "**SECTION 2. TERM**. The term of this Agreement shall be from the date December 31, 2019 through December 31, 2024 unless terminated earlier pursuant to Section 19 of this Agreement."

SECTION 3. Section 4. NOT TO EXCEED COMPENSATION of the Contract is hereby amended to read as follows:

      "**SECTION 4. NOT TO EXCEED COMPENSATION**. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A" ("Basic Services") shall not exceed Four Hundred and Ten Thousand Dollars ($410,000.00). CONSULTANT agrees to complete all Basic Services within this amount. In the event Additional Services are authorized, the total compensation for Basic Services and Additional Services shall not exceed Four Hundred and Ten Thousand Dollars ($410,000.00). The applicable rates and schedule of payment are set out at Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this

Agreement. 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."

SECTION 4. Section 5. INVOICES of the Contract is hereby amended to read as follows:

"**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit an invoice for 50% of setup and customization fees (Task I) upon both Parties' execution of this Agreement. CONSULTANT shall submit an invoice for remaining 50% of setup (Task I) and 50% of annual subscription fees (Task II) on a bi-annual basis, subject to not to exceed limits included elsewhere in this Agreement. For Task III, CONSULTANT shall submit an invoice for 100% of setup and customization fees once Optional Enhancement features are operational. CONSULTANT shall submit an invoice for 50% of annual subscription fees for Optional Enhancement features on a bi-annual basis. If hourly services are performed, CONSULTANT will submit monthly reports to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C- 1"). If applicable, the reports 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 and reports to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt."

SECTION 5. Section 6. QUALIFICATIONS/STANDARD OF CARE is hereby amended to read as follows:

"**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the 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 6A. WARRANTIES
6A.1. **Warranty of Performance**. CONSULTANT hereby warrants that when fully implemented, the Services to be configured and provided under this Agreement shall perform materially in accordance with the specifications applicable thereto. With respect to all Services to be performed by CONSULTANT under this Agreement, including the Services outlined in Exhibit A, and any Additional Services, CONSULTANT warrants that it will use reasonable care and skill. All Services shall be performed in a professional, competent and timely manner by CONSULTANT personnel appropriately qualified and trained to perform such Services.

6A.2. **Compliance with Description of Services.** CONSULTANT represents and warrants that the software and Services specified in this Agreement, and all updates and improvements to the software and Services, will comply in all material respects with the specifications and

representations specified in the scope of work (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

6.A.3. **Title**. CONSULTANT represents and warrants to CITY that, to its knowledge, it is the lawful owner or license holder of all software, materials, and property identified by CONSULTANT as CONSULTANT-owned, and used by it in the performance of the Services contemplated hereunder, and that, to its knowledge, it has the right to permit CITY access to or use of the software and Services and each component thereof.

6.A.4. **Warranty of Suitability for Intended Purpose**. CONSULTANT warrants that the software and Services will be suitable for the intended purpose of providing the Services described in Exhibit A, and any Additional Services described in the applicable statement of work.

6.A.5. CONSULTANT shall, as its sole obligation and CITY's sole and exclusive remedy for any breach of the warranties set forth in Section 6 or this Section 6A, re- perform the Services or repair the software which gave rise to the breach or, at CONSULTANT's option, refund the fees paid by CITY for the Services or software which gave rise to the breach; provided that CITY notifies CONSULTANT in writing of the breach within 12 months following performance of the defective Services, specifying the breach in reasonable detail.

6.A.6 EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, THE SERVICES AND SOFTWARE ARE PROVIDED WITHOUT ANY OTHER WARRANTIES OF ANY KIND, CONSULTANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING."

SECTION 7 COMPLIANCE WITH LAWS; CONFIDENTIAL REQUIREMENTS of the Contract is hereby amended to read as follows:

"**SECTION 7. COMPLIANCE WITH LAWS; CONFIDENTIAL REQUIREMENTS.**

7.1. CONSULTANT shall keep itself informed of and in compliance with all applicable 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 permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

7.2. Definition. "Confidential Information" means all information disclosed by one party ("Discloser") to the other party ("Recipient") relating to or disclosed in the course of the performance of this Agreement. Confidential Information includes information that is marked or identified as confidential and, if not marked or identified as confidential, information that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself.

7.3 Protection. Recipient will not use any Confidential Information of the Discloser for any purpose not expressly permitted by this Agreement, and will disclose Confidential Information

only to the employees or, subject to any license restrictions, individual independent contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

7.4   Exceptions. Recipient's obligations under Section 7.3 with respect to any Confidential Information of Discloser will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by

Discloser, (b) is disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions, (c) is, or through no fault of Recipient has become, generally available to the public, or (d) is independently developed by Recipient without access to or use of the Confidential Information. In addition, Recipient may disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure in writing prior to making such disclosure and cooperates with Discloser, at Discloser's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

7.5   CONSULTANT understands and agrees that the performance of the Services under this Agreement may involve access to CITY data which is Confidential Information. CONSULTANT and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use, and disclosure of confidential information and only as necessary in the performance of this Agreement or as otherwise permitted in this Agreement. CONSULTANT shall not use Confidential Information for direct marketing purposes without CITY's express written consent or as otherwise authorized in this Agreement. CONSULTANT's failure to comply with any such requirements shall be deemed a material breach for which CITY may terminate the Agreement, in addition to any other remedies it may have at law and equity. CONSULTANT agrees to include substantially similar terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement. CONSULTANT shall comply with CITY's "SOFTWARE as a SERVICE TERMS AND CONDITIONS", as set forth in Exhibit "E", attached to and made a part of this Agreement, and, to the extent applicable, with CITY's "Information Privacy Policy," as set forth in Exhibit "G", attached to and made a part of this Agreement. Notwithstanding anything to the contrary in this Agreement, CITY acknowledges that CONSULTANT may collect, compile, synthesize, and modify certain non-personally identifiable data and content made available to it in the course of CITY's and its users' access to and use of the software and Services."

SECTION 7. The following exhibit(s) to the Contract is/are hereby amended or added, as indicated below, to read as set forth in the attachment(s) to this Amendment, which is/are hereby incorporated in full into this Amendment and into the Contract by this reference:

a.   Exhibit "A" entitled "SCOPE OF SERVICES", AMENDED, REPLACES PREVIOUS.

b.   Exhibit "C" entitled "COMPENSATION", AMENDED, REPLACES PREVIOUS.

      c.   Exhibit "E" entitled "SAAS, SECURITY AND PRIVACY TERMS AND CONDITIONS", REPLACES PREVIOUS.

      d.   Exhibit "F" entitled "INFORMATION PRIVACY POLICY", REPLACES PREVIOUS.

SECTION 8. **Legal Effect.** Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 9. **Incorporation of Recitals**. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(*SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.*)

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO   **CLEAN POWER RESEARCH, LLC**

                                                         DocuSigned by:

                                            Officer 1 *Jeffrey S. Ressler*
                                                         916EF66D77D44C7...

Ed Shikada

City Manager APPROVED   By:
                                            Name: Jeffrey S. Ressler
                                            Title: Chief Executive Officer

                                                         DocuSigned by:

AS TO FORM: *Alan Saunders*

                                            Officer 2 E1693F782230430...

Amy Bartell

City Attorney or designee   By:
                                            Name: Alan Saunders
                                            Title: Vice President, Sales and Business Dev

Attachments:
EXHIBIT "A": SCOPE OF SERVICES, REPLACES PREVIOUS.
EXHIBIT "C": COMPENSATION, REPLACES PREVIOUS.
EXHIBIT "E": SAAS, SECURITY AND PRIVACY TERMS AND CONDITIONS, REPLACES PREVIOUS.
EXHIBIT "F": INFORMATION PRIVACY POLICY, REPLACES PREVIOUS.

EXHIBIT "A" SCOPE
OF SERVICES

TASK I: WattPlan Software – Set-up/Configuration

1.1.   **WattPlan Set-Up:** CONTRACTOR shall setup two separate WattPlan URLs, one for the PV calculator and one for the EV calculator. The EV calculator includes an option for the customer to add PV to their EV assessment. CITY will develop related website content on their website which will then link to each of these URLs.

1.2.   **Standard Configuration Description:** WattPlan guides users through the analysis one step at a time, highlighting the most important information needed to make a decision.

1.2.1.   The PV calculator will require the customer's address, whether they have gas or electric heat, their average monthly electric bill or their previous 12 months of electricity usage and finally a Review Terms screen. The EV calculator will require the customer to specify the make and model of the plug-in and conventional vehicles they want to compare, their address, their commute distance, an option to include PV in the assessment, either their average monthly electric bill or their previous 12 months of electricity usage and finally a Review Terms screen. CITY will have the option of configurable text and default values for these screens. Once the calculations are complete, the customer will see a series of sections which summarize key aspects of the assessment. The PV and EV calculators will have their own unique screens as are relevant for the specific technology being assessed. CITY will have the option to configure text, colors, and default values for these screens. Finally, the customer will have the option to fine tune their estimate by adjusting assumption values in the Customize Assumptions menu and WattPlan will re-calculate and refresh their results. CITY will have the option to configure text and default values for this menu.

1.2.2.   **CITY's Requested WattPlan Configuration:** The table below outlines the CITY's required features of the web-based PV and EV calculator and CONTRACTOR's proposed approach. In some cases, CONTRACTOR's approach is exactly as described in the RFP, in other cases the "CONTRACTOR Approach" column will outline any further definition of the approach and any options for alternative approaches.

1.2.2.1. Hosted Solution: Hosted, managed and maintained by CONTRACTOR.

1.2.2.2. Customer Types: Residential single-family home, and multi- family house accounts. Note that the EV calculator is residential focused and thus does not support commercial electric rates. A residential user can specify how much public (e.g., workplace) charging they expect to do.

1.2.2.3. Utility Branding: Using CITY color scheme, fonts and logos; customers should feel like they are using the CITY website. The calculator will be available to utility customers with a link from CITY's website. WattPlan allows for customization of color scheme and logos, and the calculator may be linked to from any CITY webpage. While the content of all text will be made configurable (to the extent that page layout is not adversely affected), the text font itself will not be configurable as a standard option.

1.2.2.4. User Defined Inputs: Ability for users to enter their monthly electric usage (or use CITY-defined default for customer type), and select the following options, as applicable: electric rates, average daily/monthly driving miles, EV charging hours, PV system size, orientation, tilt, PV and EV purchase options (loan, lease, Power Purchase Agreements, or cash), terms and costs.

1.2.2.5. Regarding EV mileage, the user may input their daily miles and easily view the equivalent annual miles or they can tell WattPlan where they typically commute to and let WattPlan calculate the commute distance for them.

1.2.2.6. Electric Consumption History and Load Profile: The calculator should be able to accept user-entered monthly energy usage history and the software should have the capability to use sample Palo Alto residential customer load profiles for the customized customer analysis. The calculator should be able to modify the default load shape for customers who already have any or all of the following equipment: solar PV, electric vehicle and/or an all-electric home. Users can perform a quick estimate by inputting their average monthly electric bill or their estimated 12 monthly electricity usage values. Users with 12 months of energy usage history can enter these monthly kWh usage values for each month of the year. Based on these user inputs, typical load profiles will be scaled to derive an hourly customer load profile. Optionally, CITY can provide CONTRACTOR with typical customer load data for a one-year period (as a CSV or other standardized file format) in either 15 minute, 30 minute, or hourly resolutions, and CONTRACTOR will transform the data into an hourly 12x24 (an hourly load profile for each month representing an average day in each month) format for use in the analysis. Alternatively, CONTRACTOR maintains a database of typical residential customer load profiles for several climate zones and rate classes from which representative load profiles for CITY customers may be chosen.

1.2.2.7. Rate Structure: Use the relevant CITY electric rates for the financial analysis results created by the PV and EV calculator. Update the rates used in the PV and EV calculator when requested by CITY to provide the most accurate rate analysis possible. CITY rates are usually updated annually for a July 1st effective date. Analysis to include all relevant electric charges including tiered residential energy use, time-of-use energy charges, monthly peak demand charge, minimum bill charge, and utility users tax.

1.2.2.8. Financial Analysis: Calculator should be able to model PV- only, EV-only and combined PV and EV options. a. PV analysis: Show 20-year cost analysis including electric retail rate escalations, initial system cost, long-term savings, and simple payback time frame. Analysis should provide side-by-side, easy to understand financial and pictorial representation of the various ownership options. A community solar component may be added to the calculator options in the future, if requested by CITY. b. EV analysis: Provide comparison of annual costs and benefits of selecting an electric vehicle compared to a standard car based on user-selected vehicles, miles per day/month/year, and purchase type (lease, loan, cash) including operating and maintenance costs, and available tax incentives. Regarding EV mileage, the user may input their daily miles and easily view the equivalent annual miles or they can tell WattPlan where they typically commute to and let WattPlan calculate this for them.

1.2.2.9. Roof Top Analysis: WattPlan incorporates LIDAR data from a third-party provider, Sun Number.

1.2.2.10.　　Reporting: Provide consumer friendly web visualization tools showing personalized results of monthly energy use and energy costs with and without solar PV and/or EV. Reporting should be part of the tool and immediately available to customers for viewing, printing and saving the results from each scenario entered. Personalized results reported by WattPlan can be visualized instantly. The user can optionally download and/or print a summary of the results as a PDF. Note: the Save as PDF feature is not yet available for the EV calculator, though we expect it to be in the near future.

1.3.　TECHNICAL SUPPORT

1.3.1.　**Support Hours.** CITY will provide first-tier support to users. For second-tier support, CONTRACTOR shall provide email based support from 9:00 AM to 5:00 PM (PST) Monday through Friday, excluding national holidays ("CONTRACTOR Service Hours"). CONTRACTOR will provide second-tier support that includes direct communications with Customer but excludes any direct communication with end users. CONTRACTOR shall also provide ability to escalate email support incident to phone or interactive (phone with web-based screen sharing) as necessary. Customer may report an incident 24 hours/day, 7 days/week as described in Support Request.

1.3.2.　**Outages.** CONTRACTOR will notify CITY about outages affecting the servers in a timely manner as described in Outage Notification. CONTRACTOR will contact CITY using the data in CONTRACTOR's contact database. CITY is responsible in keeping the contact information correct and up to date by communicating any changes to support@wattplan.com.

1.3.3.　**Outage Notification.**

1.3.3.1. **Planned Outages.** CONTRACTOR will communicate planned Service outages to CITY that are either a) inside Support Hours or b) outside Support Hours and expected to be more than 15 minutes. Depending on the breadth and impact of the outage, notification may be by email. Notification will be provided using the contact information, provided by CITY, in the CONTRACTOR's contact database.

1.3.3.2. **Unplanned Outages.** An unplanned outage occurs when the Service becomes unavailable due to any issue not scheduled or planned. CONTRACTOR will communicate unplanned outages that are 15 minutes or longer as soon as practicable to the CITY contact by email with follow-up by phone if acknowledgement is not received by CONTRACTOR promptly through email.

1.3.4.　**SUPPORT REQUEST.** All incidents shall be reported to support@wattplan.com and CONTRACTOR's designated or other knowledgeable staff member will respond by email to the CITY's incident as follows:

1.3.4.1. **Urgent:** The Service is unavailable to all users for more than 1 hour and is not down as a result of a planned outage. For an Urgent Support Request, CONTRACTOR will use reasonable efforts to contact CITY during the CONTRACTOR Service Hours no later than 4 hours after receipt of an urgent incident report Resolution time will depend on the nature of the report, request, or inquiry.

1.3.4.2. **Non-Urgent**: Abnormal or inconsistent system behavior or a system problem that does not prevent work on the system. For a Non-Urgent Support Request or a Business Inquiry, CONTRACTOR will use reasonable efforts to contact CITY during the CONTRACTOR Service Hours no later than 5 business days after receipt. Resolution time will depend on the nature of the report, request, or inquiry.

1.4. SECURITY AND IT PROVISIONS.

1.4.1. CONTRACTOR agrees to implement and maintain during the term of this Agreement, a Business Continuity Plan and Disaster Recovery Plan (the "Plans"), access to which each shall be provided to CITY for CITY's review. The Plans may be reviewed annually, or as required due to significant changes in risk or the business or regulatory environment. The Plans will also be updated to reflect lessons learned from real recovery events. CONTRACTOR agrees to maintain an effective business continuity, disaster recovery and crisis management response capability, consistent with the level of risk associated with the Service.

1.4.2. CITY may audit CONTRACTOR's records relating to the Services to ensure CONTRACTOR's compliance with the terms of this Agreement, provided that CITY has provided reasonable notice to CONTRACTOR and any such records of CONTRACTOR's will be treated by CITY as Confidential Information.

1.4.3. Data transmissions of CITY Information via the Internet between the CITY and Services must be at least SSL 128 bit encrypted.

1.4.4. CONTRACTOR warrants that it shall (i) use reasonable physical and systems security measures to prevent unauthorized access to or tampering with the Service, its site, including to protect the confidentiality and integrity of any CITY Information, which means all data provided by users via the CITY's implementation of the Service, including without limitation Personally Identifiable Information, and to prevent viruses and similar destructive code from being placed on the Service, on its site, or in its programming; and (ii) use reasonable physical security and precautionary measures to prevent unauthorized access or damage to a facility under its control or that of its subcontractors, including to protect the confidentiality and integrity of any CITY Information. CONTRACTOR shall, at a minimum, protect CITY Information and provide the same measures it uses to protect its own confidential information. Services shall be hosted in a facility that has been audited to SSAE16 SOC2 standards or those that are equal to or better standards.

1.4.5. Any breach of the obligations contained in this document shall be reported to CITY within 24 hours of discovery. CONTRACTOR shall make its employees, agents, and subcontractors available to facilitate investigations related to any such breach. CONTRACTOR will present its remediation plan to CITY for approval (which approval shall not be unreasonably withheld). CONTRACTOR shall promptly remediate the effects of any such breach, at its sole expense.

1.4.6. CONTRACTOR shall, and it shall cause its employees and subcontractors to, comply, at CONTRACTOR's sole cost and expense, with all laws, rules, regulations, reasonable practices and standards applicable to the obligations assumed by CONTRACTOR under this Agreement including those related to data privacy, data protection, international communications and the transmission

of technical or personal data.

1.4.7. CONTRACTOR shall not use any Customer Confidential Information (including Personally Identifiable Information), for application testing purposes for any reason or in any manner whatsoever, without the prior written consent of CITY. A sample of anonymized and transformed Customer data may be used upon occasion for internal testing to ensure continued quality of operation of the Services for CITY's use of the Services only.

1.4.8. CITY may scan CONTRACTOR's application infrastructure, with CONTRACTOR's express prior written consent, whenever CITY scans its own site for security confirmation and testing.

1.4.9. CONTRACTOR shall provide CITY, with a copy of its third party audited SSAE16 SOC2 report (or its equivalent or better), as permitted, immediately upon release, at no cost to CITY as such report is released from CONTRACTOR and/or its subcontractor. Otherwise, CITY may access subcontractor's same or similar report as it is made publicly available upon notice from CONTRACTOR.

Task II: Subscription

Clean Power Research ("CONTRACTOR") shall provide the City of Palo Alto ("CITY") with the WattPlan software service. WattPlan is a web-based application that enables users to quickly and remotely estimate their home or business potential for rooftop solar and understand its financial impacts through a simple step-by-step user interface. In addition, WattPlan provides a personalized estimate of the benefits of driving electric vehicle compared to a standard vehicle, including energy impact, economics and environmental savings.

TASK III: Enhancements on an as-needed basis

In the future, CITY may desire customized enhancements to the calculator evaluating technologies and program options that may include but are not limited to the following: energy efficiency, battery storage, demand control devices, community solar, heat pump water heaters, and other technologies and behavior modeling. These features may incur additional one-time and/or on-going license fees outside of what is described in this proposal. In addition, license fee increases commensurate with new price scheduling may occur in Year 7 or 8.

EXHIBIT "C"
COMPENSATION

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

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services and the total compensation for Additional Services do not exceed the amounts set forth in Section 4 of this Agreement.

Table C-1 Budget Schedule

Task	Description	Not to Exceed (NTE) Amount							
		Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8
1	WattPlan Software -- Set-up/Configuration	$16,000							
2	Subscription	$23,000	$23,000	$23,000	$38,000	$38,000	$38,000	$38,000	$38,000
3	Enhancements on an as-needed basis	$0	$25,000	$25,000	$15,000	$15,000	$15,000	$20,000	$20,000
Sub-total NTE -- Basic Services		$39,000	$48,000	$48,000	$53,000	$53,000	$53,000	$58,000	$58,000

Sub-total NTE Basic Services Y1-Y3	$135,000
Sub-total NTE Basic Services Y4-Y8	$275,000
Total NTE Y1-Y8	$410,000

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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.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

EXHIBIT "E"

VENDOR CYBERSECURITY TERMS AND CONDITIONS

(AKA: SAAS SECURITY AND PRIVACY TERMS AND CONDITIONS)

This Exhibit shall be made a part of the City of Palo Alto's Professional Services Agreement or any other contract entered into by and between the City of Palo Alto (the "City") and _____ (the "Consultant") for the provision of Software as a Service services to the City (the "Agreement").

In order to assure the privacy and security of the personal information of the City's customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons and other individuals and businesses, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the "Consultant") and its subcontractors, if any, including, without limitation, any Information Technology ("IT") infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit B, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City's customers. The Consultant shall fulfill the data and information security requirements (the "Requirements") set forth in Part A below.

A "secure IT environment" includes: (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City's IT systems; (b) the Consultant's operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

Part A.   Requirements:

The Consultant shall at all times during the term of any contract between the City and the Consultant:

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(a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the City with respect to the Services to be performed under this Agreement.

(b) Comply with the City's Information Privacy Policy:

(c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards. See the following:
http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=42103
http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=50297

(d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.

(e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.

(f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no longer would require access to that information or who are terminated.

(g) Provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.

(h) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems, and software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.

(i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.

(j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City's information.

(k) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels by not later than one (1) week after its date of release. Emergency security patches must be installed within 24 hours after its date of release.

(l) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.

(m) Notify the City within one (1) hour of detecting a security incident that results in the unauthorized access to or the misuse of the City's confidential data and information.

(n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.

(o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis, and provide the required summary reports of those self-audits to the ISM on the annual anniversary date or any other date agreed to by the Parties.

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(p) Accommodate, as practicable, and upon reasonable prior notice by the City, the City's performance of random site security audits at the Consultant's site(s), including the site(s) of a third party service provider(s), as applicable. The scope of these audits will extend to the Consultant's and its third party service provider(s)' awareness of security policies and practices, systems configurations, access authentication and authorization, and incident detection and response.

(q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, the Confidential Information will be accessible only by the Consultant and any authorized third party service provider's personnel.

(r) Perform regular, reliable secured backups of all data needed to maximize availability of the Services.

(s) Maintain records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.

(t) Maintain the Confidential Information in accordance with applicable federal, state and local data and information privacy laws, rules, and regulations.

(u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.

(v) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.

Part B.   Alternate Requirements:

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INFORMATION PRIVACY POLICY

POLICY STATEMENT

The City of Palo Alto (the "City") strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 – 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons,   collected in the ordinary course and scope of conducting the City's business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City's rules and regulations, and industry   best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City's data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Information and Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms "Personal Information," "Protected Critical Infrastructure Information", "Personally Identifiable Information" and "Personally Identifying Information" (collectively, the "Information") are defined in the California Civil Code sections, reference.

referred to above, and are incorporated in this Policy by

PURPOSE

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City's website, and persons who access other information portals maintained by the City's staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City's applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City's staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

SCOPE

The Policy will guide the City's staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

CONSEQUENCES

The City's employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in employment and/or legal consequences.

EXCEPTIONS

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request. The exception request will be reviewed and administered by the City's Information Security Manager (the "ISM"). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City's Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy's guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the Information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

MUNICIPALORDINANCE

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

RESPONSIBILITIES OF CITY STAFF

A.   RESPONSIBILITY OF CIO AND ISM

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City's government.

The City's employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall by guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy, (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City's IT environments; (d) assisting the City's staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non- Disclosure Agreements (NDAs) signed by third party contractors, which will provide services,   including, without limitation, local or 'cloud-based' software services to the City.

B.   RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE

The Information Security Steering Committee (the "ISSC"), which is comprised of the City's employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

C.   RESPONSIBILITY OF USERS

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

D.   RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS

The City's IT Managers, who are responsible for internal, external, direct and indirect connections to the City's networks, will be responsible for configuring, maintaining and securing the City's IT networks in compliance with the City's information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.

E.   RESPONSIBILITY OF AUTHORIZATION COORDINATION

The ISM will ensure that the City's employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City's approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

GENERAL PROCEDURE FOR INFORMATION PRIVACY

A.   OVERVIEW

The Policy applies to activities that involve the use of the City's information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City's employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City's intranet or other networks, systems, or devices.

The term "information assets" also includes the personal information of the City's employees and any other related organizations while those assets are under the City's control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City's staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City's employees and authorized third parties.

B.   PERSONAL INFORMATION AND CHOICE

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented to the City's sharing of such information during the conduct of the City's business as a local government agency with third parties under contract to the City to provide services.

C. METHODS OF COLLECTION OF PERSONAL INFORMATION

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

D. UTILITIES SERVICE

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.

Businesses and residents with such non-standard or experimental metering will have their Information covered by the same privacy protections and personal information exchange rules applicable to Information under applicable federal and California laws.

E. PUBLIC DISCLOSURE

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by California law.

F. ACCESS TO PERSONAL INFORMATION

The City will take reasonable steps to verify a person's identity before the City will grant anyone online access to that person's Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

G. SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City's employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City's employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

H. DATA RETENTION / INFORMATION RETENTION

The City will store and secure all Information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

I. SOFTWARE AS A SERVICE (SAAS) OVERSIGHT

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

J. FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a "covered financial institution or creditor" which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers' Information.

CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

NOTE: Questions regarding this policy should be referred to the Information Technology Department, as appropriate.

Recommended: _____   12/5/2017

           Director Information Technology/CIO   Date

Approved: _____   12/13/2017

           City Manager   Date