

**PROGRAM for EMERGING TECHNOLOGIES (PET)
PROJECT AGREEMENT BETWEEN THE CITY OF PALO ALTO AND _____**

This Program for Emerging Technologies Project Agreement (the “Agreement”), dated as of, _____, 2014 (the “Effective Date”) is made by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the “CITY”), and _____, a [please fill corporate status] (“PARTICIPANT”; the CITY and the PARTICIPANT are, individually, a “Party” and, collectively, the “Parties”).

RECITALS

A. The CITY has launched the Program for Emerging Technologies to provide a ‘test bed platform’ for individuals and companies who want to evaluate, test and implement innovative emerging technologies, with the goal of finding and nurturing creative concepts to help customers manage their usage of electricity , gas, water and/or fiber optics services.

B. The PARTICIPANT has submitted a proposal to the Program for Emerging Technologies in which PARTICIPANT will _____ in order to evaluate the merits of such systems to provide electrical energy and associated benefits on a wider scale in the CITY.

C. The proposal has been selected by the CITY for implementation.

D. The Scope of Services (the “Services”) and equipment to be provided (“Equipment”) are described in Exhibit “A”.

AGREEMENT

In consideration of the above Recitals and the following, covenants, terms, and conditions, the Parties agree:

SECTION 1. TERM; TERMINATION. The term of this Agreement shall begin on the Effective Date and shall end at the conclusion of the Pilot Term defined in Exhibit A attached hereto (“Term”), unless and until terminated by a Party upon 14 days’ prior written notice.

SECTION 2. SCOPE OF SERVICES. The PARTICIPANT shall perform the Services and provide the Equipment in accordance with the terms and conditions of this Agreement and its exhibits, including Exhibit “A”.

SECTION 3. COMPLIANCE WITH LAWS. The PARTICIPANT shall keep informed of and in compliance with all applicable federal, state and local laws, ordinances, rules, regulations, and orders (“Laws”) that may apply to the performance of the Services or those engaged by the PARTICIPANT to perform Services under this Agreement. The PARTICIPANT shall procure all

applicable permits and licenses, pay all applicable charges and fees, and give all notices as may be required by Law in the performance of the Services.

SECTION 4. INDEPENDENT CONTRACTOR. In the performance of the Services, the PARTICIPANT and any individual or entity employed or under contract to the PARTICIPANT to furnish labor/materials under the terms and conditions of this Agreement shall all be deemed independent contractors and not employees or agents of the CITY.

SECTION 5. ASSIGNMENT.

5.1. The Parties agree that the expertise and experience of the PARTICIPANT are material considerations for this Agreement. The PARTICIPANT shall not assign or transfer any interest in this Agreement nor the performance of any of the PARTICIPANT'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.

5.2 The CITY shall not assign this Agreement or any interest in this Agreement, and shall not lease, assign, loan, or sell any of the Equipment or any interest in any of the Equipment, without PARTICIPANT'S prior written consent.

SECTION 6. PROJECT MANAGEMENT. The PARTICIPANT will assign _____ as the project director to have supervisory responsibility for the performance, progress, and execution of during the day-to-day work contemplated by the Services. The City's project manager is _____, Utilities Department ("CPAU"), 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: 650-_____, Email: _____@cityofpaloalto.org.

SECTION 7. OWNERSHIP AND USE OF EQUIPMENT.

7.1 Ownership. PARTICIPANT has agreed to loan the CITY the Equipment described on Exhibit A for the purpose of facilitating the CITY'S examination of the Equipment's performance pursuant to the Agreement. PARTICIPANT shall retain full title to and ownership of the Equipment. CITY agrees to execute appropriate Uniform Commercial Code forms and such other documents as may be required during the Term of this Agreement to reflect PARTICIPANT's ownership of the Equipment.

7.2 Inspection. PARTICIPANT shall have the right (but not the obligation) to inspect the Equipment and observe its use. PARTICIPANT shall make reasonable efforts to coordinate such inspection at times mutually convenient for both Parties. PARTICIPANT assumes no responsibility and waives no rights as a result of any such inspection or observation.

7.3 Delivery, Possession and Control. PARTICIPANT shall make delivery and CITY shall accept possession of the Equipment at a mutually agreeable time and manner. Once PARTICIPANT has completed its installation of the Equipment to CITY's satisfaction, CITY shall

have exclusive possession of and control over the Equipment. PARTICIPANT agrees to replace any Equipment that becomes damaged during the term of this Agreement at its sole expense. CITY agrees not to remove or allow the removal of the Equipment from its premises once PARTICIPANT has installed it, unless such removal is reasonably necessary in CITY's sole discretion. CITY will maintain the Equipment in good order and condition, save normal wear and tear, at its expense. CITY shall not alter the Equipment and shall not affix or connect any accessory equipment or device to the Equipment if such alteration or addition would impair or reduce the value of such Equipment or would impair the safe use or operation thereof.

7.4 Warranty. All equipment and labor shall be covered under a full warranty for the Term of this Agreement.

7.5 Disposal. Upon Termination of this Agreement, PARTICIPANT shall remove all Equipment at its sole expense.

SECTION 8. INDEMNITY.

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

8.2 Notwithstanding the above, nothing in this Section 8 shall be construed to require PARTICIPANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

8.3 The acceptance of PARTICIPANT's services and duties by the CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 8 shall survive the expiration or early termination of this Agreement.

SECTION 9. INSURANCE. During the Term, the PARTICIPANT and its contractors and consultants shall obtain and maintain during the Term the insurance coverage as set forth in Exhibit "B".

9.1. The PARTICIPANT, 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 "B". The PARTICIPANT and its subcontractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

9.2. 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 subcontractors of the PARTICIPANT retained to perform the 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.

9.3. 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 the 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 PARTICIPANT, PARTICIPANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the PARTICIPANT's receipt of such notice. PARTICIPANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

SECTION 10. PUBLICITY AND DISCLOSURE.

10.1 PARTICIPANT shall not use the name, trade name, trademarks, service marks of, or owned by, CITY in any publicity releases, news releases, annual reports, product packaging, signage, stationery, print literature, advertising, websites or other media without securing the prior written approval of CITY.

10.2 PARTICIPANT shall not, represent, directly or indirectly, that any product or service has been approved or endorsed by without prior written consent of CITY, PARTICIPANT acknowledges that CITY may make oral and written reports, and other communications regarding this Agreement to the Palo Alto City Manager, City Council and other public officials, which reports and communications will be public reports and communications.

SECTION 11. CONFIDENTIAL INFORMATION.

11.1 The term "Confidential Information" includes all information, documents, and materials owned by CITY or PARTICIPANT, including technical, financial, or business information which is not available to the general public, as well as all information derived from such information, which is furnished or made available to PARTICIPANT, and is clearly labeled, marked or otherwise identified as "confidential" or "proprietary information."

11.2 Confidential Information which is disclosed to PARTICIPANT shall be held by the PARTICIPANT in confidence, and shall not be:

- (i) used by PARTICIPANT for its advantage in any way; and/or
- (ii) made available for third parties to use.

11.3 PARTICIPANT will direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all the terms of this Section 11.

11.4 Information received by PARTICIPANT shall not be Confidential Information if:

- (i) it is or becomes available to the public through no wrongful act of PARTICIPANT;
- (ii) it is already in the possession of PARTICIPANT and not subject to any confidentially agreement between the Parties;
- (iii) it is received from a third party without restriction for the benefit of CITY and without breach of this Agreement;
- (iv) it is independently developed by PARTICIPANT; or
- (v) it is disclosed pursuant to a requirement of law or a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to CITY, unless such notice is prohibited.

11.5 Upon termination or expiration of this Agreement, PARTICIPANT shall, at CITY'S direction, either return or destroy all of such Confidential Information and shall so certify in writing provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for PARTICIPANT or its representatives, or (ii) found in electronic format as part of PARTICIPANT'S off-site or on-site data storage/archival process system, will be held by PARTICIPANT and kept subject to the terms of this provision or destroyed at PARTICIPANT'S option. The obligations of this provision will survive termination or expiration of this Agreement.

SECTION 12. NOTICES. All notices provided under this Agreement will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of City Clerk
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

Copy to: Director of Utilities
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

To PARTICIPANT: _____

SECTION 13. MISCELLANEOUS PROVISIONS.

13.1 This Agreement will be governed by the laws of the State of California, excluding its conflicts of laws.

13.2 If any dispute arises between the parties in connection with this Agreement and it cannot be resolved by mutual agreement after meetings between the parties, it will be finally settled under the JAMS Comprehensive Arbitration Rules and Procedures, by one or more arbitrators appointed in accordance with the Rules. Arbitration will be held in Palo Alto, California, or at some other mutually agreeable location.

13.3 This document represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and contracts, written or oral. This document may be amended only by a written instrument, signed by the Parties.

13.4 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.

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

13.6 All exhibits, addenda, appendices, attachments, and schedules to this Agreement are by such reference deemed incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

<COMPANY NAME>

CITY OF PALO ALTO

Name:
Title

City Manager

APPROVED AS TO FORM:

Senior Deputy City Attorney

APPROVED:

Director of Utilities

EXHIBIT "A": SCOPE OF SERVICES
EXHIBIT "B": INSURANCE REQUIREMENTS

EXHIBIT "A"
SCOPE OF SERVICES

As part of the City's Program for Emerging Technologies, _____ (PARTICIPANT) will install _____ for an evaluation period of _____ with the following specifications and features at the location outlined below:

1. Test Site Location: _____
2. Equipment to be installed:
<enter description>
3. PARTICIPANT shall work with all necessary CITY staff, boards and commissions to get approval for the test project, including Utilities, Planning, Transportation, Development Center and possibly the Architectural Review Board.
4. PARTICIPANT will provide the following equipment and/or services at no cost to the CITY:
 - a. Equipment as described in Attachment B
 - b. Equipment installation
 - c. Data monitoring
 - d. Any necessary maintenance
 - e. Equipment removal
 - f. Etc.
5. The CITY will provide the following services and information:
 - a. Provide a summary report on findings
 - b. Etc.
6. Expected Performance Results
 - a. <enter description>
7. End of Project Term
 - a. At the end of the test period, the PARTICIPANT shall remove the equipment at no cost to the CITY

EXHIBIT "B" 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 AN BESTS KEY RATING OF A-AH, OR HIGHER LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

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

REQUI RED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	\$1,000,000 \$1,000,000	
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
	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			

1. INSURANCE COVERAGE MUST INCLUDE
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF COVERAGE CANCELLATION, AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY
2. CONTACTOR MUST SUBMIT CERTIFICATES OF INSURANCE EVIDENCING REQUIRED COVERAGE.
3. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

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

B. CROSS LIABILITY

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

C. NOTICE OF CANCELLATION

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

NOTICES SHALL BE MAILED TO:

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