

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
CASCADE ENERGY, LLC**

PREAMBLE

This Agreement is made and entered into on the date last signed by the Parties (“Effective Date”) between the City of Santa Clara, California, a chartered California municipal corporation (“City”) and Cascade Energy, LLC, an Oregon corporation (“Contractor”). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. City desires to secure the services (“Services”) more fully described in this Agreement, in Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain required Services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties agree that Contractor will perform the Services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the Parties hereto agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A.** Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by written amendment to this Agreement, the term of this Agreement shall begin on October 1, 2025 and terminate on September 30, 2028 (“Initial Term”).
- B.** After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to one (1) additional year through September 30, 2029 (“Option Periods”) in such increments as determined by City. The Option Periods shall be authorized through an Amendment to this Agreement executed by the Parties. The Initial Term and Option Periods shall collectively be referred to as “Term”.

3. SCOPE OF SERVICES AND PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

In addition to those warranties contained in Exhibit A, Contractor expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions applicable to this Agreement. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services or materials at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace Services or materials, City may make corrections or replace Services or materials and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

- A.** Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services, including its duties and obligations, expressed and implied, contained herein. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. City expressly relies upon Contractor’s representations regarding its skills and knowledge.
- B.** Contractor warrants that all employees and subcontractor, if any, shall have sufficient skill and experience to perform the Services assigned to them.

- C. Contractor shall comply with all applicable federal, state and local laws in the performance of the Services; including but not limited to those of the Occupational Safety and Health Administration (OSHA) and the California Department of Industrial Relations and State Division of Industrial Safety and the professional standard of care. Where any applicable laws or ordinances conflict with the City's requirements, the more stringent requirement(s) shall be followed. Contractor's failure to be thoroughly familiarized with the provisions of any applicable federal, state, and local regulations, ordinances and codes shall not relieve Contractor from compliance with the obligations and penalties resulting therefrom.
- D. Contractor represents and warrants to the City that it has, shall obtain, and shall keep in full force in effect during the Term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession and to perform Services.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all Services rendered and material provided by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is **Seven Hundred Fifty Thousand Dollars (\$750,000)**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services including any taxes. All Services performed or supplies, materials and equipment provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor. In such event, the Contractor shall have no further rights hereunder, except that Contractor shall be paid, in accordance with Exhibit B, for all Services adequately rendered prior to such termination.
- B. Termination for Default. For purposes of this Section 7.B., the word "Default" shall mean the failure of Contractor to perform any of Contractor's duties or obligations or the breach by Contractor of any of the terms and conditions set forth in this Agreement. In addition, Contractor shall be deemed to be in Default upon Contractor (i) applying for, consenting to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets; (ii) making a general assignment for the

benefit of creditors; (iii) being adjudged bankrupt; (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); or (v) suffering or permitting to continue unstayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Contractor's assets or of Contractor's interests hereunder. In the event of any Default by Contractor, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than thirty (30) days after the notice of termination, Contractor will deliver to City all physical or hard copies of City information or material that Contractor has in its possession.
- D. In the event of termination under sections 7.A. or 7.B., Contractor shall have no further rights hereunder

8. ASSIGNMENT AND SUBCONTRACTING

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

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

- A. "Confidential Information" means, with respect to a Party hereto, all information or material which either (1) is marked or identified as

“Confidential,” “Restricted,” or “Proprietary Information” or other similar marking or identification, or (2) the other Party knew, as recipient, or under the circumstances, should have known, was considered confidential or proprietary by the Disclosing Party (as defined below), except that this Agreement, Contractor pricing, and Contractor proposals incorporated into this Agreement shall not be deemed Confidential Information. Confidential Information shall consist of all information, whether in written, oral, electronic, or other form, furnished in connection with this Agreement by the Disclosing Party or its Representatives (“Representative” is defined as any elected and appointed officials, affiliate, director, officer, employee, agent, advisor or Contractor of a Party or any of its subsidiaries or affiliates) to the Receiving Party (as defined below) or to its Representatives, and specifically includes but is not limited to the City’s individually identifiable customer information, and the City’s customer usage data and financial data.

- B.** Contractor and the City shall each hold the other’s Confidential Information in confidence. Neither Party shall make the other’s Confidential Information available in any form to any third party or use the other’s Confidential Information for any purpose other than as specified in this Agreement. The Party providing Confidential Information (“Disclosing Party”) to the other Party (“Receiving Party”) shall remain the sole owner of such information. Except as provided elsewhere within this Agreement, nothing contained in this Agreement shall be construed as granting or conferring any right or license in any Confidential Information or in any patents, copyrights, software or other technology, either expressly or by implication to the Receiving Party, or to its Representatives or to others. The term Confidential Information shall not include any of the following: (1) information already in possession of, or already known to, the Receiving Party as of the Effective Date without an obligation of confidentiality; (2) information in the public domain at the time of the disclosure, or which, after such disclosure, enters into the public domain through no breach of this Agreement by the Receiving Party or its Representative(s); (3) information lawfully furnished or disclosed to the Receiving Party by a non-party to this Agreement without any obligation of confidentiality and through no breach of this Agreement by the Receiving Party or its Representative(s); (4) information independently developed by the Receiving Party without use of any Confidential Information of the Disclosing Party; (5) information authorized in writing by the Disclosing Party to be released from the confidentiality obligations herein; or (6) this Agreement and Contractor’s proposals.
- C.** By virtue of this Agreement, each Party hereto may disclose to the other Party information that is Confidential Information. This Agreement does not diminish, revoke or supersede any existing confidentiality, non-disclosure or similar agreement between the Parties that does not pertain to the subject matter of this Agreement. However, any Confidential Information,

whether or not previously disclosed, that pertains to the subject matter of this Agreement shall be governed by the terms of this Section 11 which shall supersede any such previous agreement with respect to such Confidential Information and any Confidential Information relating to the subject matter of this Agreement that was exchanged under such previous agreement shall be treated as though it was exchanged under this Agreement as of the date of such exchange.

- D.** The Receiving Party will treat all Confidential Information of the Disclosing Party, no matter written, electronic, or oral, as confidential and proprietary, and the Receiving Party shall only use such information in furtherance of this Agreement. As such, the Receiving Party shall hold in confidence the Confidential Information of the Disclosing Party and ensure that such Confidential Information is not disclosed to any other person or entity, except as expressly permitted by this Agreement or as authorized in writing by the Disclosing Party. The Receiving Party shall not disclose Confidential Information of the Disclosing Party received under this Agreement to any person other than its Representatives who require knowledge of such Confidential Information in furtherance of this Agreement. The Receiving Party shall inform its Representatives of the confidential nature of the Confidential Information of the Disclosing Party and advise such Representatives of the limitations on the use and disclosure and prohibition on making copies or summaries of such Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives. Neither Party shall use the Confidential Information of the other Party for any commercial purpose.
- E.** If the Receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information of the Disclosing Party or is requested Confidential Information pursuant to the California Public Records Act or similar law, the Receiving Party will provide the Disclosing Party with written notice of such an occurrence (if so permitted) as soon as possible. Thereafter, at its sole costs and expense, the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the disclosing Party (i) waives compliance, (ii) fails to respond to the Receiving Party within five (5) business days, or (iii) after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose. So long as it is consistent with applicable law, the Receiving Party will not oppose action by, and the Receiving Party will cooperate with, the Disclosing Party, at the Disclosing Party's sole cost and expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If the Disclosing Party fails to

obtain such protective order or other remedy, or if the Disclosing Party waives compliance with the requirements of the preceding sentence, the Receiving Party will disclose only that Confidential Information that it is legally required to disclose, and will exercise commercially reasonable efforts, at Disclosing Party's expense, to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

- F.** In the event the Receiving Party discloses, disseminates or releases any Confidential Information, except as expressly permitted by this Agreement, such disclosure, dissemination or release will be deemed a material breach of this Agreement and the Disclosing Party may demand prompt return of all Confidential Information previously provided to the Receiving Party. As soon as the Receiving Party becomes aware that it has made an unauthorized disclosure of Confidential Information, the Receiving Party shall take any and all necessary actions to recover the improperly disclosed Confidential Information and immediately notify Disclosing Party regarding the nature of the unauthorized disclosure and the corrective measures being taken. Each Party agrees that any breach of their confidentiality obligations could cause irreparable harm to the other Party, the amount of which would be extremely difficult to estimate. Accordingly, it is understood and agreed that monetary damages would not be a sufficient remedy for any material breach of this Agreement and that specific performance and injunctive relief in addition to monetary damages shall be appropriate remedies for any breach or any threat of such breach. The provisions of this Paragraph are in addition to any other legal rights or remedies the Disclosing Party may have.
- G.** Within two (2) weeks of the termination of this Agreement, Contractor will return to the City or destroy, to the extent permitted by law, any and all Confidential Information, including all originals, copies, translations, transcriptions or any other form of material, without retaining any copy or duplicate thereof; provided that Contractor may retain Confidential Information contained on backup media created in the ordinary course of business provided further that there is no effort to access such Confidential Information and Contractor's confidential obligations with respect to such information shall continue so long as such information is retained. Contractor shall certify in writing the destruction of the Confidential Information. The City may perform an audit of Contractor's records to confirm the return or destruction of the Confidential Information. The City shall have this audit right for two (2) years after the termination of this Agreement.
- H.** Notwithstanding the termination of this Agreement, this Confidentiality Section shall survive the expiration or earlier termination of this Agreement.

12. OWNERSHIP OF MATERIAL

- A.** City shall furnish to Contractor such documents and materials as may be relevant and pertinent to the provision of Services hereunder as City may possess or acquire.
- B.** All documents and materials furnished by City to Contractor, pursuant to Section 12.A., shall remain the property of City and shall be returned to City upon termination of this Agreement, for any reason. All documents or material prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall be considered works made for hire and shall become the exclusive property of the City, and City shall have the sole right to use such documents and materials without restriction or limitation on their use in City's discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's sole cost and expense, provide such documents and material to City upon written request.
- C.** Documents and material prepared by Contractor, pursuant to this Agreement, are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from Contractor will be at City's sole risk and without liability to Contractor. Further, any and all liability arising out of changes made to Contractor's deliverables under this Agreement by City or persons other than Contractor, is waived against Contractor and City assumes full responsibility for such changes unless City has given Contractor prior notice and has received from Contractor written consent for such change.
- D.** Contractor will maintain all ownership right, title and interest to Contractor's proprietary programs, software, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark, and other intellectual property rights related thereto or any derivatives thereof, that are owned or developed by Contractor outside of this Agreement or prior to the effective date of this Agreement and embedded in the Services or work ("Contractor's Pre-Existing Materials"). Contractor grants City a perpetual, non-exclusive, non-transferable license to use and disclose the "Contractor's Pre-Existing Materials" or all uses reasonably contemplated in the Agreement in connection with the Services within the territory where the Services are delivered and for disclosure to the California Energy Commission (CEC) for governmental and regulatory purposes related thereto. The Parties acknowledge that Contractor's technical expertise includes multiple models, calculators, computer programs, techniques, methods and materials, trade secrets, and other manner of intellectual property that will be used to complete the work contemplated under this Agreement. The Parties agree that Contractor shall retain ownership of this intellectual property at all times, and that inclusion of said intellectual

property within the work in no way acts as an assignment, conveyance, or other transfer of ownership or control of said intellectual property to City, customers, or any other person, organization, or entity. All licensing in connection with Contractor's proprietary Software as a Service product, Gazebo, will be handled consistent with the user licensing agreement. In the event of a conflict between the user licensing agreement and this Agreement, the terms and provisions of this Agreement shall control.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

- A.** City, through its authorized employees, representatives or agents shall have the right during the Term and for four (4) years from the date of final payment for Services or goods provided under this Agreement ("Audit Period"), to audit the books and records of Contractor for the purpose of verifying any and all Contractor invoices and charges.
- B.** Contractor shall keep records and invoices in connection with the Services for the length of the Audit Period. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City.
- C.** Contractor shall use recognized accounting methods in preparing reports and invoices submitted to the City in connection with the Services. City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm who shall have the right to audit Contractor's accounting procedures and internal controls of Contractor's financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. If Contractor fails to provide supporting documentation satisfactory to City for costs charged, then Contractor agrees to reimburse City for those costs. Any such audit(s) shall be undertaken by City or its representative(s) at reasonable times and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).
- D.** Contractor will be notified in writing of any exception taken as a result of an audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within thirty (30) days from presentation of City's findings to Contractor. If Contractor fails to make such payment, Contractor agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date Contractor reimburses City for any exception(s). If an audit inspection or examination in accordance with this Section discloses overcharges (of any nature) by Contractor to City in excess of one percent (1%) of the value of that portion of the Agreement

that was audited, the actual cost of City's audit shall be reimbursed to City by Contractor.

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. The total aggregate liability of Contractor to City, for all claims (direct and third-party), damages, losses, expenses, costs, and liabilities of any kind arising out of this Agreement shall be limited to One Million Dollars (\$1,000,000). Notwithstanding the foregoing, this limitation of liability shall not apply to employee claims, personal injury to a third party, damage to property of a third party, or data breaches. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the Term, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

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

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Cascade Energy, LLC
Attention: Siva Sethuraman
630 SW 5th Ave., Suite 501
Portland, OR 97204
and by e-mail at siva.sethuraman@cascadeenergy.com

And to: Cascade Energy Legal Department
by email at legal@cascadeenergy.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the

regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

CASCADE ENERGY, LLC
An Oregon corporation

Dated: Sep. 3, 2025
By (Signature): [Signature]
Name: Sam Skidmore
Title: Director, Programs West
Principal Place of 630 SW Fifth Avenue, Ste 501
Business Address: Portland, OR 97204
Email Address: sam.skidmore@cascadeenergy.com
Telephone: 425-654-0367

EXHIBIT A
SCOPE OF SERVICES

SECTION 1. GENERAL

- 1.1 Contractor shall provide all necessary supervision, labor, and services, plus all tools, equipment, materials, and supplies required to implement a new demand-side management (DSM) program called Efficiency and Electrification Solutions for Industrials (EESI) to Silicon Valley Power (SVP) customers with annual energy usage greater than 1 million kWh ("Services").
- 1.2 Contractor will primarily perform Services in City of Santa Clara limits.
- 1.3 Goals of EESI Program
 - 1.3.1 Claim cost-effective energy savings from low- and no-cost behavioral, retro-commissioning, and operational (BRO) measures, capital upgrades, and electrification projects.
 - 1.3.2 Create a robust pipeline of near- and long-term energy savings from improved engagement with and increased DSM program participation by its industrial customers.
 - 1.3.3 Increase customer satisfaction by providing energy efficiency services aligned with large industrial customer needs and decarbonization goals.
 - 1.3.4 Support California's energy and greenhouse gas reduction priorities.
- 1.4 Definitions
 - 1.4.1 Action Item: a no-/low-cost BRO measure that when implemented will reduce energy use.
 - 1.4.2 BRO: behavioral, retro-commissioning, and operational.
 - 1.4.3 Facility: a building or collection of buildings grouped together for purposes of participating in EESI.
 - 1.4.4 Implementation Period: an approximately four-month period following the tune-up during which the Facility can implement all BRO projects identified and documented during the tune-up to receive the maximum incentive.
 - 1.4.5 Performance Period: an approximately six-month period following the implementation period during which Contractor collects data to measure energy savings and monitors energy use to ensure energy savings persist.
 - 1.4.6 Projects in Motion: projects identified or initiated prior to Facility's EESI program enrollment that cannot be claimed through EESI.

- 1.4.7 Tune-up: an on-site retro-commissioning event during which Contractor and Facility staff identify (and for some BRO Action Items, implement) measures that reduce energy waste at the Facility.
- 1.5 Contractor will not be directly involved in the installation, modification, repair, or maintenance of a participant's equipment. These services will be provided by staff of the participating facility or outside vendors they hire, with guidance and recommendations offered by Contractor. Contractor may install and remove sub-metering equipment to conduct appropriate M&V activities

SECTION 2. SERVICES TO BE PERFORMED

2.1 Contractor Team:

- 2.1.1 Program Director: Executive Oversight
- 2.1.2 Program Lead, Technical Lead: Program Delivery and Oversight
- 2.1.3 Technical Leads: Program Delivery
- 2.1.4 Technician: Tune Up Support
- 2.1.5 Outreach Lead: Outreach and Recruitment Support
- 2.1.6 Marketing Lead: Marketing Support
- 2.1.7 Program Specialist: Operations Support

2.2 Contractor will collaborate with City to recruit eligible customers into the EESI program. Contractor will provide initial scoping-level reviews of each targeted customer site to screen for both low-cost and capital-intensive energy efficiency opportunities. For eligible customers with energy savings potential who choose to enroll in the program, Contractor will:

- 2.2.1 Facilitate a comprehensive system review at each participant site to identify and document energy-saving and electrification project opportunities.
- 2.2.2 Provide the participant with a prioritized action plan.
- 2.2.3 Follow up regularly with technical guidance to influence action item implementation.
- 2.2.4 Measure energy savings following an implementation period.
- 2.2.5 Calculate a participant incentive for verified savings.

2.3 Program Management and Administration

- 2.3.1 Program Coordination Meetings: Prior to launching EESI, Contractor will meet with City and required stakeholders to discuss and finalize EESI deliverables, due dates, technical review process, and scope. Contractor will schedule a meeting with City's Key Customer Representatives and technical engineering subcontractor to present EESI, confirm customer recruitment strategies and communication protocols, and answer any questions. Contractor will:
- 2.3.1.1 Schedule a meeting with City's Program Manager and other City stakeholders to ensure all parties fully understand the scope and schedule.
 - 2.3.1.2 Schedule a meeting with City's Key Customer Representatives and technical engineering subcontractor to present the new program and confirm customer recruitment approach.
 - 2.3.1.3 Take notes from meetings, including documentation of roles/responsibilities, detailed work plan and schedule, customer recruitment strategies, and Key Performance Indicators (KPIs).
- 2.3.2 Program Management: Contractor will provide the following program operations and management activities:
- 2.3.2.1 Operational Coordination: Contractor's Program Lead will conduct a regular call with City's Program Manager. During the calls, Contractor will provide an overall update on EESI status, qualitative insights on participating Facilities, and insight into any challenges and recommendations on how to address them.
 - 2.3.2.2 Program Operations Manual: Contractor will develop a manual defining EESI program operations, processes, requirements, and policies in alignment with any required City program start-up documentation requirements.
 - 2.3.2.3 Program Data/Documentation Management: Contractor will develop a program management and project tracking database to facilitate reporting on progress relative to KPIs and to address City and third-party evaluator information requests. Contractor will follow all City protocols for data transmission and documentation strategy and management. Contractor shall not retain aggregated, de-identified data as to City nor for any of City's utility customers participating in this program.

- 2.3.2.4 Program Templates: Contractor will develop templates for enrollment agreements, scoping reports, tune-up reports, and completion/Measurement and Verification (M&V) reports that meet City legal, technical, and branding requirements.
- 2.3.2.5 Program Progress Reporting: Contractor will provide a quarterly report to City's Program Manager that summarizes progress relative to KPIs along with projections of expected savings, incentive costs, and project closeout dates. Contractor will respond to ad-hoc reporting and data requests from City.
- 2.3.2.6 Incentive Tracking and Administration: Contractor will track Facility eligibility for rebates and performance incentives and coordinate with City on approval. Prior to initiation of any Services, Contractor shall obtain written confirmation from City regarding which building(s) constitute a Facility for purposes of compensation to Contractor and rebate eligibility for customers.
- 2.3.2.7 Program Invoicing: Contractor will track invoicing milestones and submit monthly invoices following City's invoice formatting and documentation requirements further outlined in Exhibit B.

2.4 Recruitment

2.4.1 Targeting and Outreach

- 2.4.1.1 Contractor will document eligibility criteria and ideal traits for EESI participation. At a high level, ideal prospects will be industrial facilities with annual energy usage of 1 million kWh or greater, have a majority of electric load associated with processing or manufacturing, and be motivated to save energy.
- 2.4.1.2 Contractor will develop marketing collateral and content for City's website describing EESI and its benefits to help promote program participation. Materials will comply with City's brand guidelines.
- 2.4.1.3 Contractor will coordinate with City's Key Customer Representatives and its technical engineering subcontractor to conduct personalized, targeted outreach to ideal prospects. City will help facilitate recruitment meetings between Contractor and interested prospects.

2.4.2 Scoping Assessments

- 2.4.2.1 Contractor will offer eligible, interested prospects a half-day, on-site energy scoping at no cost to the customer. During the scoping, a Contractor Technical Lead will assess the customer's facility and systems to determine: 1) an estimate of baseline energy use, 2) potential low-/no-cost behavioral, retro-commissioning, and operational (BRO) opportunities, 3) potential capital and electrification projects for future implementation, 4) an early estimate of savings potential, and 5) overall data acquisition requirements/capabilities.
- 2.4.2.2 Contractor will document and deliver a scoping report to City for technical review. Following City approval, Contractor will share the scoping report with the customer.
- 2.4.2.3 The energy scoping is a recruitment and screening tool which may not be needed for all prospects.

2.4.3 Enrollment

- 2.4.3.1 Committed prospects will enroll in EESI by signing an enrollment agreement. Contractor will develop the enrollment agreement and facilitate signatures.

2.5 Program Implementation

2.5.1 Kick-off Meetings

- 2.5.1.1 A Contractor Technical Lead will schedule and attend a kick-off meeting with each Facility to introduce the EESI program and plan for the tune-up, including gathering additional Facility data, communications with key contractors, and determining Facility staff participation and logistics. Contractor will invite the assigned City Key Customer Representative to optionally attend the kick-off meeting.

2.5.2 Tune-ups

- 2.5.2.1 A Contractor Technical Lead and/or Technician will conduct a one- to three-day on-site tune-up focused on identifying (and in some cases implementing) no-/low-cost BRO action items that reduce energy waste at the Facility. The Contractor team will also identify longer-term capital-intensive energy efficiency and electrification projects during the tune-up.
- 2.5.2.2 After the tune-up, Contractor's Technical Lead will write a tune-up report and provide it to City and the Facility. The tune-up report summarizes what was found and fixed during the tune-up and presents a high-level, prioritized overview of

remaining BRO action items along with longer-term capital and electrification project opportunities.

- 2.5.2.3 Contractor will also record all viable action items and capital and electrification projects in Gazebo®, Contractor's energy performance software platform.

2.5.3 Implementation support

- 2.5.3.1 Following the tune-up, the Facility has up to 120 days to implement all documented BRO action items to receive the maximum incentive. Contractor's Technical Lead will schedule regular (approximately monthly) check-in calls with each Facility during this implementation period focused on progress, challenges, plans, and continued prioritization of action items. Contractor's Technical Lead will use Gazebo during these calls to facilitate discussions with the Facility on action item progress. Coaching will include working with the Facility to document, review, and audit subsystem setpoints so that energy savings are sustained over time.

- 2.5.3.2 Larger capital and electrification projects take much longer to complete than BRO action items. Contractor's implementation support for projects beyond BRO action items will be agreed to in advance with the Facility and City. For approved capital and electrification projects, Contractor's Technical Lead will provide ongoing technical and project management support. Support will be scaled to the expected level of energy savings and may include:

- 2.5.3.2.1 Conducting project studies and energy analysis.
- 2.5.3.2.2 Identifying vendors and securing, reviewing, and comparing bids.
- 2.5.3.2.3 Calculating cost-effectiveness metrics such as return on investment.
- 2.5.3.2.4 Helping present the project to Facility management for approval.
- 2.5.3.2.5 Providing project implementation guidance.
- 2.5.3.2.6 Energy commissioning of installed projects.

- 2.5.3.3 Contractor's Technical Lead will work with the Facility to complete the paperwork and secure the documentation needed to submit capital and electrification projects to City's

existing commercial rebate programs for approval and incentive. Contractor will act as the Facility's representative during City's engineering review. Customer incentives are projected in Table A1.

Table A1 – Customer Incentive Projection

Customer Segment	Measure	kWh	Therms	Incentive rate (\$/kWh or \$/th)	Total Incentive Budget
Medium and Large Industrial	HVAC	325,000	NA	Aligned with and paid for out of existing rebate programs ²	\$48,750
	Industrial – Process	325,000	NA		\$48,750
	Commercial Water Heating (Electrification)	NA	7,500		\$60,000
	Commercial HVAC (Electrification)	NA	7,500		\$60,000
	Retro-commissioning	1,473,333	NA	\$0.05	\$73,667
	Behavioral/Education ¹	43,333	NA	\$0.00	\$0
	Total	2,166,667	15,000	NA	\$291,167

¹EESI will document energy savings from behavioral/education measures but customers will not be eligible for monetary incentives for those energy savings. Free technical assistance is considered the “incentive” for this measure category. For this measure, Contractor will only be eligible for compensation for energy savings that directly result from Contractor's influence on customers.

²Energy savings and Total Incentive Budget figures for these measures (HVAC, Industrial – Process, Commercial Water Heating, Commercial HVAC) are estimates; customers are still eligible for incentives for energy savings in excess of the figures in Table A1.

2.6 Measurement and Verification (M&V)

2.6.1 M&V Planning

2.6.1.1 Prior to the tune-up, Contractor's Technical Lead will coordinate with City's technical engineering contractor to confirm whether the Facility is suitable for energy modeling.

2.6.1.1.1 If yes, Contractor will gather the energy and Facility data needed to create baseline energy models and establish a plan for measuring energy savings. Contractor will develop each energy model in accordance with International Performance Measurement and Verification Protocol (IPMVP) and American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) recommendations on

determining model fitness. An internal Contractor technical reviewer will review the energy model to ensure quality.

- 2.6.1.1.2 If not, Contractor will develop a custom data collection and M&V plan for each major subsystem that is expected to be affected by the tune-up.

2.6.2 M&V

2.6.2.1 For BRO action items:

- 2.6.2.1.1 Following the implementation period, Contractor will collect data and monitor Facility energy use for up to six months to ensure that energy savings persist ("Performance Period").
- 2.6.2.1.2 At the end of the performance period or upon completion of all identified action items by the Facility (whichever occurs first), Contractor will input daily production and weather data into the baseline energy model for an appropriate performance period length (typically six months). In some cases, Facilities may have their own metered data. Where daily energy data is not available from a Facility, a monthly model may be used if it meets statistical criteria.
- 2.6.2.1.3 Contractor will then compare the predicted baseline energy use to the actual measured energy use for the same time period and apply the percent reduction in energy use for this time period to the Facility's baseline annual energy use to calculate annual energy savings.
- 2.6.2.1.4 If the Facility is not using an energy model and instead has a custom M&V plan, Contractor will follow the M&V plan to calculate energy savings. The level of rigor for these calculations will follow guidelines established in the latest version of the California SEM M&V Guide.
- 2.6.2.1.5 After savings are calculated, Contractor will develop a completion report and provide it to City and the Facility. The completion report documents action items completed and energy savings eligible for incentives within the EESI

program boundary. Contractor will also document the energy-saving impact of any Projects in Motion in this step and subtract it from the total achieved savings for EESI.

- 2.6.2.1.6 The completion report will also include a checklist for energy standard operating conditions (ESOCS) that describes how optimized Facility subsystems should be operating. These ESOCS are left with the Facility for use in self-auditing to increase persistence of energy savings.

2.6.2.2 For Capital and Electrification Projects

- 2.6.2.2.1 For larger capital and electrification projects, Contractor will help the Facility comply with the requirements of the commercial rebate program under which the project is approved by SVP.
- 2.6.2.2.2 For each Facility, Contractor will develop one completion report per capital or electrification project identified and approved and will provide it to SVP. The completion report from Contractor will document energy efficiency projects completed and energy savings eligible for incentives within the EESI program boundary. Contractor will verify energy savings and project costs based on aggregate results of implemented action items for each customer.

2.7 Evaluation Support

- 2.7.1 Contractor will support City with requests related to third-party Evaluation, Measurement & Verification (EM&V). Contractor will:

- 2.7.1.1 Respond to City and evaluator data requests.
- 2.7.1.2 Support City with any required evaluation reporting.
- 2.7.1.3 At City's direction, prepare for and attend any meetings, site visits, or interviews related to evaluation support.
- 2.7.1.4 Add customer service support for Facilities impacted by the evaluation process.

2.7.2 Energy Performance Platform

2.7.2.1 Contractor will use Gazebo to track progress on all identified action items. At the first check-in call with the Facility, Contractor will train the Facility how to use Gazebo to maintain its project opportunity register and share energy project progress within its organization.

2.7.2.2 Deliverables include:

2.7.2.2.1 Accounts and access to Gazebo for each Facility and City's Program Manager for the contract term.

2.7.2.2.2 Maintenance of each Facility's project opportunity register in Gazebo.

2.7.2.2.3 Library of EESI resources and notes in Gazebo.

SECTION 3. CITY'S RESPONSIBILITIES

3.1 City will perform the following:

3.1.1 Check-in calls with Contractor's Program Lead on a monthly or as-needed basis.

3.1.2 Review and approval of or feedback on start-up and reporting deliverables within thirty (30) days of receipt.

3.1.3 Coordination with City's technical engineering subcontractor.

3.1.4 Monthly energy use and bill data (24 months) for all customers eligible for EESI participation at or prior to program launch.

3.1.5 Updated monthly energy use and bill data for enrolled Facilities prior to conducting M&V.

3.1.6 Promotion of EESI to eligible customers.

3.1.7 Coordination of recruitment meetings between Contractor and interested customers to discuss EESI and qualify them for participation.

3.1.8 Processing and payment of customer incentives.

3.1.9 For customers that City and/or its technical engineering subcontractor are already engaged with, a list of Projects in Motion.

SECTION 4. EESI PROJECT PARTICIPATION TIMELINE

4.1 Facilities will typically participate in EESI for approximately 12 months, as outlined in the following table. In some cases, Facilities may continue to participate for up

to three years if additional energy efficiency and/or electrification opportunities are available at their facilities. Contractor will support Facilities with large capital or electrification projects identified through EESI until the projects are completed, and the performance period has concluded.

Timing	Task Overview
Two months prior to enrollment	Contractor collaborates with City on customer targeting, outreach, and recruitment
One month prior to enrollment	Contractor conducts scoping assessment at targeted customer site
Start of participation	Customer signs enrollment agreement
Month 1 of participation	Contractor schedules a kick-off meeting, submits Measurement and Verification (M&V) Plan, and completes on-site tune-up at the Facility
Months 2 – 5 of participation (Implementation Period)	Facility implements projects identified at the tune-up and Contractor provides ongoing support
Months 6 – 11 of participation (Performance Period)	Contractor monitors energy savings
Month 12 of participation	Contractor calculates energy savings and customer incentive and issues a Completion Report

SECTION 5. KEY PERFORMANCE INDICATORS (KPIS)

5.1 City will use the following metrics to monitor and evaluate Contractor's performance.

Program Goals	Key Performance Indicators
Successful Recruitment	• Recruit 15 or more participants into the program • At least 12 participants complete the full program
Increase Customer Enthusiasm for Energy Efficiency	• 15 or more BRO action items identified at each tune-up • EESI post-participation surveys convey customer satisfaction

	No customer complaints to City key customer representatives and energy engineers
Deliver Cost-Effective Savings	- EESI savings meet or exceed 2.5 million kWh in first-year savings by the end of the three-year program - Program is delivered under not to exceed budget of \$750,000 (excluding incentives)
Implement Comprehensive Projects	At least four capital or electrification projects are identified and implemented through EESI

EXHIBIT B

SCHEDULE OF FEES AND PAYMENT PROVISIONS

SECTION 1. CATEGORIES OF COMPENSATION

1.1 The maximum compensation, which includes the delineated categories in Table B1 and all reimbursable expenses, payable to Contractor during the Term shall not exceed seven hundred and fifty thousand dollars (\$750,000). Contractor shall not incur or invoice amounts exceeding the Not-to-Exceed Budget for each category in Table B1 below:

1.2 Table B1

Budget Category	Budget Sub-Category	Not to Exceed Maximum Compensation	Compensation Methodology
Program Development	Program Startup (1)	\$10,000	Fixed Fee
	Customer Targeting & Outreach (2)	\$36,167	T&M
	Scoping Audits (3)	\$156,500	Fixed Fee
	Program Administration (4)	\$39,000	T&M
Program Implementation	Performance Compensation: (5)	\$508,333	Performance
Total		\$750,000	

- 1.2.1. **Program Startup:** activities required to launch the new EESI program, including a kick-off meeting with City, development of program tracking systems and reporting templates, a presentation to City's Key Customer Representatives and technical engineering subcontractor, and creation of a program operations manual and marketing content.
- 1.2.2. **Customer Targeting and Outreach:** research to identify ideal candidates for EESI and outreach to the targeted group of customers to recruit them for EESI participation.
- 1.2.3. **Scoping Audits:** on-site scoping visits to qualify potential participants for EESI and determine high-level energy savings opportunities.
- 1.2.4. **Program Administration:** operations (invoicing, reporting, meetings) and customer service.
- 1.2.5. **Performance Compensation:** The Performance Compensation covers the following Services: program delivery including Facility tune-ups, energy project identification, technical guidance, regular check-in calls, energy model development and maintenance, engineering calculations,

support for capital and electrification project implementation, M&V of energy savings, evaluation support, and Gazebo licenses and support for Facilities. Performance Compensation shall be paid in accordance with Section 4 of this Exhibit B.

1.2 Rates.

1.2.6. All rates are fully burdened and will remain fixed.

1.2.7. All rate changes must be approved by the City through an amendment to this Agreement. References to alternate rates in quotes or Proposals that have not been separately authorized pursuant to this section are not approved.

SECTION 2. FIXED FEE COMPENSATION

2.1 For Services authorized to be paid on a fixed price basis, Contractor shall provide an invoice (based on Table B2 or B3) to the City on a monthly basis for Services completed in the preceding month.

2.2 Invoices must include the following information:

2.2.1 Invoice Number and Invoice Period.

2.2.2 Detailed information on the Services performed on each deliverable or task completed on each project, as applicable.

2.2.3 Contractor shall invoice each milestone payment in full. Contractor shall not separate milestone payments into multiple invoices.

2.3 Fixed Fee Program Startup Compensation – The following are one-time payments for completion of each milestone for all applicable Facilities.

2.3.1 Table B2

Milestone	Fixed-Fee Payment
Program coordination meetings completed	\$2,500
City approves EESI program operations manual	\$2,500
City approves EESI templates for enrollment agreements and scoping reports	\$2,500
City approves EESI marketing collateral and EESI content for SVP's website	\$2,500
Total Not to Exceed	\$10,000

2.4 Fixed Fee Scoping Report Compensation

2.4.1 Table B3 - following are one-time payments for completion of each report per Facility.

Tier	Expected Count	Fixed-Fee Payment (each)
Tier 1: Customers with annual usage > 25 GWh	2	\$15,500
Tier 2: Customers with annual usage between 10 and 25 GWh	5	\$12,300
Tier 3: Customers with annual usage < 10 GWh	8	\$8,000
Total Not to Exceed	15	\$156,500

SECTION 3. TIME & MATERIALS (T&M) COMPENSATION

3.1 For Services authorized to be paid on a T&M basis, Contractor shall provide an invoice (based on Table B5) to the City on a monthly basis for Services completed in the preceding month. The invoice must include the following information:

3.1.1 Invoice Number and Invoice Period.

3.1.2 Current amount due with a time and materials breakdown: titles, hours, hourly rates, and any City approved reimbursable expenses itemized with supporting documentation.

3.1.3 Each invoice shall provide sufficient detail for City to verify that rates listed in Table B5 are charged.

3.2 Rates for Services.

3.2.1 Table B5

	2025	2026	2027	2028	2029
Role	Rate	Rate	Rate	Rate	Rate
Program Director	\$302	\$307	\$307	\$319	\$332
Program Lead, Technical Lead	\$258	\$262	\$262	\$272	\$283
Technical Lead	\$251	\$255	\$255	\$265	\$276
Outreach/Marketing Lead	\$202	\$205	\$205	\$213	\$222
Program Engineer	\$199	\$202	\$202	\$210	\$218
Technician	\$196	\$199	\$199	\$207	\$215
Program Specialist	\$185	\$188	\$188	\$196	\$203
Administrative Assistant	\$143	\$145	\$145	\$151	\$157

3.2.2 In cases where services are required but not listed above in Table B5, Contractor shall submit rates for approval by the City pursuant to Section 1.2.7 before performing the services.

3.3 Reimbursable Expenses. Expenses shall be reimbursable only to the extent that (1) Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required Services, (2) Contractor demonstrates that such expenses aren't included in the hourly rate where applicable, (3) such expenses were approved in advance, (4) Contractor submits receipts, invoices, or other supporting documentation demonstrating that such reimbursable costs were incurred, and (5) any Mark Up conforms with the Reimbursable Expense Schedule below.

3.3.1 Table B4

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Charges for outside parts, materials, equipment, and services (including equipment, rental equipment, materials, and facilities not furnished directly by Contractor).	No Markup
4.	Contractor may charge allowable mileage at the prevailing IRS rate per mile. Mileage is not applicable to rental cars. Rental cars are reimbursed at actual fuel cost only.	No Markup
5.	Unless approved in writing (e-mail acceptable) in advance, reimbursement to Contractor for meals, lodging, and related per diem will not exceed the rates outlined by United States General Services Administration (GSA). https://www.gsa.gov/travel-resources . Airfare or rental car, where applicable shall be at economy rates.	No Markup
6.	Other reimbursable expenses with prior written approval from the City.	No Markup

SECTION 4. PERFORMANCE COMPENSATION

4.1 Under this Agreement, Contractor is eligible for compensation for Program Implementation based on performance in achieving electrical energy saving through Capital and Electrification Projects and/or BRO Measures. Delivered energy savings upon which performance payments are made include:

4.1.1 Measured and reported BRO savings from completion reports.

- 4.1.2 Measured and reported capital project savings from M&V Reports.
- 4.1.3 Measured and reported capital project savings claimed using SVP methodologies for existing commercial rebate programs.
- 4.1.4 Equivalent kWh from electrification project claims made via any of the above. Equivalent kWh savings from an electrification project are calculated as:
 - 4.1.4.1 $\text{Therms saved} \times 29.3 - \text{net increase in kWh} = \text{net equivalent kWh savings}$

4.2 Capital and Electrification Projects.

- 4.2.1 Payment shall be divided into two portions. Total compensation for electrical energy savings achieved through Capital and Electrification Projects shall be paid at the rate of \$0.20/kwh ("Projects Performance Compensation") for verified electrical energy savings.
- 4.2.2 The first payment ("Expected Savings Payment") shall be invoiced and subsequently paid upon City approval of a rebate agreement. Expected Savings Payment shall be at a rate of \$0.10/kWh based on expected electrical energy savings based on the rebate application.
- 4.2.3 The second payment ("True-Up Payment") shall be invoiced and paid upon verification of final energy savings. The True-Up Payment shall be the difference between the Projects Performance Compensation and the Expected Savings Payment.
- 4.2.4 In the event the Projects Performance Compensation is less than the Expected Savings Payment, resulting in a negative True-Up Payment, the difference shall be credited to future invoices. If no future invoices are anticipated, the difference shall be paid to the City.

4.3 BRO Measures.

- 4.3.1 Payment shall be divided into two portions. Total compensation for electrical energy savings achieved through BRO measures shall be paid at the rate of \$0.20/kwh ("BRO Performance Compensation") for verified electrical energy savings.
- 4.3.2 The first payment ("BRO Estimated Savings Payment") shall be invoiced and subsequently paid upon Contractor's submission of the tune-up report to the City. The BRO Estimated Savings Payment shall compensate Contractor at a rate of \$0.10/kWh based on the estimated savings documented in the tune-up report.
- 4.3.3 The second payment ("BRO True-Up Payment") shall be invoiced and paid upon verification of final energy savings.
- 4.3.4 In the event the BRO Performance Compensation is less than the BRO Estimated Savings Payment, resulting in a negative BRO True-Up Payment, the difference shall be credited to future invoices. If no future invoices are anticipated, Contractor shall pay the difference to the City.

4.3.5 Verification. All energy savings claims made by Contractor and Facilities are subject to verification by the City and the City's technical engineering consultant. Any Pay-for-Performance (aka Project Implementation) compensation are conditioned upon the City's independent verification of claimed energy savings.

4.3.6 The City will notify Contractor in the event that it is not able to verify energy savings claimed by the Contractor and the potential impact on Pay-for-Performance. Contractor shall have the opportunity, within 30 days of notification of the discrepancy, to provide updates, clarifications, and/or corrections regarding the energy savings and Pay-for-Performance compensation. After 30 days have passed the City will determine, in its sole discretion, the amount of energy savings that is eligible for Pay-for-Performance compensation.

SECTION 5. GENERAL PAYMENT PROVISIONS

- 5.1 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments until the City concludes that the Services and/or any furnished deliverables have been satisfactorily performed. City will reach its conclusion that the work is satisfactory within a reasonable period of time.
- 5.2 Accurate Invoice. If the invoice submitted by Contractor is not accurate, the invoice will be returned to Contractor to correct and resubmit before payment can be processed.
- 5.3 Payment. If there are no discrepancies or deficiencies in the submitted invoice, City shall process the invoice for payment within 30 days.
- 5.4 Confidential. Invoices are not confidential even if marked as confidential when submitted.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.