

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
CLEAResult CONSULTING, INC.**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between CLEAResult Consulting, Inc., a Texas corporation, with its principal place of business located at 4301 Westbank Drive, Building A, Suite 250, Austin, Texas 78746 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are

more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

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

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

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2019.

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If

any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

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

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. BUSINESS TAX LICENSE REQUIRED.

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

10. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

11. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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

14. 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.

15. INDEPENDENT CONTRACTOR.

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

16. NO PLEDGING OF CITY'S CREDIT.

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

17. CONFIDENTIALITY OF CITY'S MATERIAL.

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

18. CONFIDENTIALITY OF CONTRACTOR'S MATERIAL.

To the extent not covered under Section 17 above, all proprietary information and trade secrets of Contractor received by or for City shall be held confidential by City and shall not, without the prior written consent of Contractor, be used for any purposes other than the Services nor be disclosed to an entity not connected with the Services, except as required pursuant to applicable public records and meetings laws and under protective order as available. Nothing furnished to City which is otherwise known to City or becomes generally known to the related industry shall be deemed confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by Contractor as Confidential Information, City as soon practical but within three (3) days of receipt of the request, shall notify Contractor that such request has been made, by telephone call, letter sent via facsimile, electronic mail, and/or by US Mail to the address, facsimile number, and/or e-mail address listed at the end of the Agreement. Contractor shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by City. If Contractor takes no such action, after receiving the foregoing notice from City, City shall be permitted to comply with the Requestor's demand and is not required to defend against it.

19. 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.

20. OWNERSHIP OF MATERIAL.

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

damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

- B. Notwithstanding the foregoing, Contractor retains ownership of all pre-existing intellectual property and any generally applicable development, modification or improvement of such pre-existing intellectual property under this Agreement (collectively, "Contractor IP"). To the extent any deliverable incorporates Contractor IP, Contractor grants to City a nonexclusive, worldwide, royalty-free, irrevocable license (with rights to sublicense to others) in Contractor IP to translate, reproduce, distribute and prepare derivative works, to publicly perform, and to publicly display all deliverables and to authorize others to do so.

21. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

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

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

22. CORRECTION OF SERVICES.

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

23. FAIR EMPLOYMENT.

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

24. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

25. INSURANCE REQUIREMENTS.

During the term of this Agreement, 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 with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

26. AMENDMENTS.

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

27. INTEGRATED DOCUMENT.

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

28. 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.

29. 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.

30. NOTICES.

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

City of Santa Clara
Attention: Electric Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 244-2990

And to Contractor addressed as follows:
ClearResult Consulting, Inc.
Attn: Legal Department Address:
100 SW Main Street
Suite 1500
Portland, Oregon 97204

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

31. CAPTIONS.

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

32. LAW GOVERNING CONTRACT AND VENUE.

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

33. DISPUTE RESOLUTION.

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

- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

34. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall comply with the City's Ethical Standards, a copy of which is set forth in Exhibit D, attached hereto and incorporated into this Agreement.

35. AFFORDABLE CARE ACT OBLIGATIONS

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.

36. CONFLICT OF INTERESTS.

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

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

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

“CITY”

CLEARRESULT CONSULTING, INC.
a Texas corporation

Dated: _____

By: _____

Name: NICK BROD

Title: Vice President

Local Address: 180 Grand Ave, Suite 850

Oakland, CA 94612

Email Address: Nick.Brod@clearesult.com

Telephone: (650) 726-7832

“CONTRACTOR”

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
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EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "Comprehensive Commercial Energy Efficient HVAC Program Scope of Work" dated August 7, 2018, which is attached to this Exhibit A.

COMPREHENSIVE COMMERCIAL ENERGY EFFICIENT HVAC PROGRAM
SCOPE OF WORK
AUGUST 7, 2018

A. Program Overview. CLEAResult will deliver a HVAC tune-up and controls enhancement program (the Program) that will help the targeted Silicon Valley Power (SVP) customers reduce their energy use by up to 15%. The target market is described in Table 1 below and includes hard to reach customers that require a targeted solution due to their relatively small size and the typical “out-of-sight, out-of-mind” treatment of their HVAC systems. The Program includes a Retrocommissioning (RCx) Lite approach that fills an important market gap between a standard HVAC tune-up program and large commercial RCx programs. The Program anticipates delivering 233 HVAC unit tune-ups and 155 controls upgrades to reach the energy savings goals in Table 2 below.

1. Target Market. The Program will target commercial customers with single zone packaged HVAC units for tune ups and control upgrades. This includes customers such as schools, retailers, offices, and light industrial buildings. It will also offer the RCx Lite approach for customers in the same segments that have multi-zone HVAC systems that require a more custom approach. Table 1 below summarizes the target market.

Table 1. Target Market

Target Segment	Eligible Sub Segments	Comments
Commercial	Schools	Customers in these sub-segments will be eligible, except for those sites identified by SVP as served by other programs.
	Retail	
	Light industrial	
	Office	
	Others	Customers in other sub-segments may be served if pre-approved in writing by SVP.

2. Energy Savings Goals

The program’s initial energy savings goal is shown in the table below.

Table 2. Year One Program Goal

Metric	Goal
Energy Savings	1,066,533 kWh

3. Measures. The energy savings goal will be achieved through delivery of the measures listed in Table 3 below.

Table 3. Program Measures

Measure Category	Measures
HVAC Tune-up Measures (deemed savings)	<ol style="list-style-type: none">1. Refrigerant Charge Adjustment2. Condenser and Evaporator Coil Cleaning3. Airflow Adjustment4. Economizer Repair, upon approval from SVP5. Schedule and Setpoint Programming, existing Title-24 compliant thermostat6. Schedule and Setpoint Programming, new Title-24 compliant thermostat
Control Enhancement Measures (deemed savings)	<ol style="list-style-type: none">1. Advanced Digital Economizer Control (ADEC)2. Demand Control Ventilation (DCV)3. Enhanced Ventilation
RCx Lite Measures (custom savings)	<p>For buildings with more complex multi-zone systems, RCx Lite will deliver custom measures that are determined by site conditions. The following is sampling and not an exhaustive list of RCx Lite measures:</p> <ol style="list-style-type: none">1. Economizer repair2. Schedule and setpoint programming3. Variable speed drive on HVAC fan4. Supply air temperature reset5. Static pressure reset

B. Tasks. CLEAResult will execute the following tasks.

1. Program Development. CLEAResult will develop the documentation and marketing materials necessary to launch and implement the Program on the timeline specified in Table 4 below. The activities included in this task are:
 - i. **Kick-off Meeting**: CLEAResult will organize a kick-off meeting with SVP to discuss logistics, marketing messaging, measure and energy savings specifications, data collection and reporting, and any other open questions.
 - ii. **Prepare Policies and Procedures Manual**: CLEAResult will document the Program policies and procedures, HVAC contractor eligibility, customer eligibility, incentive levels, eligibility criteria, application processing protocols, quality assurance procedures, data dictionary, and tracking and reporting procedures.

- iii. **Prepare Program HVAC Contractor and Customer Participation Agreement:** CLEAResult will prepare HVAC contractor terms and conditions and a system for submitting rebate applications.
- iv. **Marketing Materials:** CLEAResult will prepare marketing materials for direct delivery to customers, as well as for distribution by participating contractors and SVP staff. Such, marketing pieces may include a one-page flyer, direct mail and Program brochure. These materials will be co-branded with SVP, based on the latest brand guidelines supplied by SVP and will be approved by SVP.

Table 4 – Program Deliverables

Deliverable(s)	Due Date(s)
Program Kick-off Meeting	Within 2 weeks of the Effective Date
Program Policy and Procedures Manual	Within 1 month of kick-off meeting
HVAC Contractor Participation Agreement	Within 1 month of kick-off meeting
Customer Participation Agreement	Within 1 month of kick-off meeting
Marketing Materials	Within 2 months of kick-off meeting

- 2. **Enroll and Train Trade Allies.** CLEAResult will enroll contractors (each, a Trade Ally) and train their staff to participate in the Program on the timeline specified in Table 5 below. The number of Trade Allies will be managed to satisfy the Program volume. Silicon Valley Power will have final approval of all Trade Allies enrolled in the program.
 - i. **Enroll Trade Allies:** CLEAResult will collect a signed Contractor Participation Agreement from each Trade Ally, confirm licensing and insurance, and issue contractor tools and credentials.
 - ii. **Prepare and Deliver Trade Ally Training:** CLEAResult will prepare training that covers Program Policy and Procedures Manual and technical skills. Components of the training will include:
 - a. Policy and procedures training
 - A) Information, methods and techniques for educating, promoting and selling tune-up and control enhancement services to customers
 - B) Customer interaction standards
 - C) Information and education regarding safety practices and relevant codes and standards
 - D) Other rules and administrative processes

- b. Technical training
 - A) Use of the customized software
 - B) Program measures and installation standards
 - C) Equipment calibration, diagnostic testing, data collection and reporting procedures

Table 5 – Trade Ally Deliverables

Deliverable(s)	Due Date(s)
Commence enrolling Trade Allies	Within 1 week of kick-off meeting
Deliver Trade Ally Training	Within 1 month of kick-off meeting

3. Marketing and Outreach. CLEAResult will conduct a market assessment to identify customers with a strong potential to achieve energy savings through the Program. Following the market assessment, CLEAResult and Trade Allies will reach out to customers through multiple channels on the timeline specified in Table 6 below.
 - i. **Market Assessment:** CLEAResult’s market intelligence team will use commercially available data as well as customer account data SVP can provide to identify and rank customers to create a target participant list. Sites identified by SVP as the target market for other programs will be excluded from targeting. However, if those customers elect not to participate in other programs after being approached, they may be eligible for this program upon approval by SVP and CLEAResult will then reach out to them.
 - ii. **Multi-Channel Outreach:** CLEAResult will engage target participants through direct mail and phone outreach. Field staff and contractors may also conduct in-person canvassing.

Table 6 – Marketing Deliverables

Deliverable(s)	Due Date(s)
Prioritized lead list	Within 2 months of the Effective Date
Customer applications	Ongoing

4. Implement Measures. CLEAResult will implement the following measures.
 - i. CLEAResult and Trade Allies will screen interested customers to ensure their eligibility and suitability for the programs. Screening will include confirming SVP customer status, alignment with target market, and equipment condition and suitability for program measures with one of the following outcomes:
 - a. Customers eligible for tune-ups or control upgrades will be provided an incentive offer that describes recommended measures, incentive amounts, and the required customer copay.
 - b. Customers eligible for RCx Lite will be provided a participation agreement that details the services that the program will provide in exchange for a customer commitment to implement measures identified with a simple payback less than or equal to one year.
 - c. Ineligible customers will be notified of the reason for ineligibility and referred to other energy efficiency programs, if appropriate.

- ii. Eligible customers, upon acceptance of the incentive offer, will be provided one or more of the following program services:
 - a. **Tune-up:** Trade Ally will perform the applicable tune-up measures in accordance with the Program Policy and Procedures Manual.
 - b. **Controls Upgrade:** A program-approved contractor will perform the controls upgrade in accordance with the Program Policy and Procedures Manual and submit incentive request.
 - c. **RCx Lite:** Field staff, under direction of CLEAResult's engineering team, will collect field data to determine baseline conditions. CLEAResult engineers will review the field data, determine applicable measures and calculate savings and incentives in accordance with the Program Policy and Procedures Manual. Customers will then be provided an incentive agreement that details required measures and other measures with applicable incentives. Following customer implementation by their preferred controls contractor, CLEAResult field staff will verify implementation and collect post installation data as needed to true up energy savings calculations.

Table 7 – Measure Implementation Deliverables

Deliverable(s)	Due Date(s)
Facilitate installation of approved Program energy savings measures	Ongoing

5. Quality Assurance. CLEAResult will perform the following quality assurance to confirm that projects have been in conformance with the Program Policy and Procedures Manual and address customer concerns as follows.
 - i. **Project Review:** CLEAResult will perform a desk review of project data for 100 percent of projects and will field inspect the first five projects performed by each Trade Ally and a 10 percent random sampling of all projects thereafter. CLEAResult will require the Trade Ally to correct any deficiencies per terms of the Contractor Participation Agreement. If there are any common deficiencies, CLEAResult will provide the Trade Ally with corrective training or terminate that Trade Ally from the Program as necessary.
 - ii. **Customer Satisfaction:** CLEAResult will measure customer satisfaction on an ongoing basis and address any issues within one business day. CLEAResult will periodically distribute a five-question, post-service customer survey about the customer's experience with the Program. The survey will focus on expectation-setting, level of service and follow-through. CLEAResult will address any issues identified through the survey results within one business day and analyze feedback quarterly to update trainings and adjust messaging. CLEAResult will report the customer survey results to SVP in a quarterly customer satisfaction memo.

Table 8 – Quality Assurance Deliverables

Deliverable(s)	Due Date(s)
Project review as provided above	Ongoing
Customer satisfaction reports	Quarterly

6. Monitoring and Reporting. CLEAResult will monitor the performance of the Program and make adjustments as needed to increase participation and deliver program goals. CLEAResult will report progress to SVP as part of the monthly program invoice.
- Monitor Performance:** CLEAResult will track the Program's project pipeline and provide feedback and direction to marketing, outreach and implementation activities.
 - Reporting:** CLEAResult will provide SVP with monthly reports on program expenditures; incentive payments; progress made towards achieving savings goals; activity highlights; a summary of any significant changes or anticipated changes in implementation strategies and services; a summary of customer problems and resolutions. As needed, CLEAResult will propose Program modifications for SVP approval

Table 9 – Monitoring and Reporting Deliverables

Deliverable(s)	Due Date(s)
Reports on program status	Monthly

- C. Fee Schedule. The program budget is divided into time and materials (T&M), pay-for-performance and incentive categories. The total budget is shown in Table 10 below by category.

Table 10. Program budget

Total	\$344,934
T&M (Tasks 1-3)	\$84,956
Pay-for-performance	\$259,978

- The pay-for-performance budget will be paid to CLEAResult for energy savings delivered through implementation of approved program measures at a rate of \$0.244/kWh. Tune up and control enhancement measures, which utilize deemed energy savings values that have been pre-approved by SVP, will be invoiced after installations are completed and verified by CLEAResult. RCx Lite measures, which utilized calculated energy savings values, will be invoiced after the installations are completed, verified by CLEAResult, and the final energy savings calculation has been approved by SVP. The estimated calculation review time for SVP is two weeks. All CLEAResult energy savings claims to SVP will be substantiated by monthly reports that identify the installation location, type and quantity of measures installed, and the energy savings.

2. The estimated customer incentives to be paid by SVP through its rebate program budget is \$224,000. While tracked by CLEAResult, this will be managed by SVP. CLEAResult will submit approved incentive amounts for Control Upgrades and RCx Lite projects with supporting documentation to SVP on a weekly basis. Incentive rates will be as follows:
 - i. Control Upgrades:
 - a. Advanced Digital Economizer Control, Install ADEC = \$20/ton
 - b. Demand Control Ventilation, Add CO₂ sensor and enable control = \$20/ton
 - c. Enhanced Ventilation, Install Variable Frequency Drive (VFD) with ADEC and DCV = \$160/ton
 - ii. RCx Lite = \$0.10/kWh energy savings, excluding measures with a simple payback <= 1 year
3. The rates in the table below apply to the T&M budget category.

Table 11. Labor rates

Role	Rate	Responsibilities
Program Manager	\$145	Manages overall delivery of program
Engineer	\$135	Develops measure specifications and savings calculations
Field Supervisor	\$130	Oversees quality of field work by trade allies
Marketing Specialist	\$125	Develops and delivers program marketing collateral

4. CLEAResult will invoice SVP for T&M and pay-for-performance amounts on a monthly basis and incentives check requests upon completion of a project. SVP will pay CLEAResult in accordance with the terms of the Agreement. Incentive amounts for approved incentive applications will be paid by SVP directly to the customer or the customer's designee within four weeks.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
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CLEARRESULT CONSULTING, INC.**

EXHIBIT B

FEE SCHEDULE

In no event shall the amount billed to City by Contractor for services under this Agreement exceed three hundred forty four thousand nine hundred thirty four dollars (\$344,934.00), subject to budget appropriations.

Labor rates

Role	Rate	Responsibilities
Program Manager	\$145	Manages overall delivery of program
Engineer	\$135	Develops measure specifications and savings calculations
Field Supervisor	\$130	Oversees quality of field work by trade allies
Marketing Specialist	\$125	Develops and delivers program marketing collateral

The pay-for-performance budget will be paid to CLEARresult for energy savings delivered through implementation of approved program measures at a rate of \$0.244/kWh.

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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. Contractor shall provide notice of any 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. Contractor shall provide notice of any cancellation or material 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 Electric Department

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.

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EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.