

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ENERGY & RESOURCE SOLUTIONS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, a chartered California municipal corporation (hereinafter "City") and Energy & Resource Solutions, Inc., A Massachusetts Corporation (hereinafter "Contractor"). 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 the services more fully described in this Agreement, at 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 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 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

Exhibit C – Insurance Requirements

Exhibit D - Notice of Exercise of Option to Extend Agreement Form

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 a written amendment to this Agreement, the term of this Agreement shall begin on December 1, 2020 and expire on June 30, 2022.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms through June 30, 2027 ("Option Periods"). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form

3. SCOPE OF SERVICES & 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

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 upon which this Agreement is based. 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.

5. QUALIFICATIONS OF CONTRACTOR- STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the 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.

6. 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 in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement during the Initial Term is One Million Six Hundred Ninety-One Thousand Seven Hundred Dollars (\$1,691,700), 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. All work performed or materials 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.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, 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 ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

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

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.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship 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.

13. 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 four (4) 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 bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the 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.

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, or in any way connected with 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. 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 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 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
svpcontracts@santaclaraca.gov, jcoleman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Energy & Resource Solutions, Inc.
Attention: Gary Epstein
120 Water Street, Suite 350
North Andover, MA 01845
(978) 521-2550
gepstein@ers-inc.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 to this Agreement.

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: _____

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"

ENERGY & RESOURCE SOLUTIONS, INC.

A Massachusetts Corporation

Dated: 9/22/2020
By (Signature): [Signature]
Name: Gary Epstein
Title: President
Principal Place of Business Address: 120 Water Street, Suite 350
North Andover, MA 01845
Email Address: gepstein@ers-inc.com
Telephone: (978) 521-2250
Fax: _____

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

1. GENERAL

- 1.1.** Contractor shall provide business energy efficiency program management services.
 - 1.1.1.** Contractor shall manage the business energy efficiency and electrification programs provided by SVP.
 - 1.1.2.** Contractor shall provide commercial and industrial energy audit and rebate management services.
- 1.2.** Contractor shall be responsible for developing methods to enhance the effectiveness of the City's existing energy efficiency programs, as well as implementing new programs to achieve cost savings.
- 1.3. City Resources**
 - 1.3.1.** City will provide four (4) cubicles for on-site Contractor staff. The City will provide one computer with access to the utility billing system and the SVP network in order to access customer energy consumption.
 - 1.3.2.** The City shall also provide access to a copy machine/scanner. All other supplies are provided by the contractor.

2. PROGRAM ADMINISTRATION

- 2.1.** Contractor shall provide program administration services, including but not limited to:
 - 2.1.1.** Administering SVP's standard and custom rebate programs;
 - 2.1.2.** Implementing energy efficiency programs;
 - 2.1.3.** Tracking and reporting on program performance;
 - 2.1.4.** Processing customer applications;
 - 2.1.5.** Providing data management services;
 - 2.1.6.** Managing and maintaining SVP's Monitoring and Verification (M&V) Tool Library. SVP is responsible for the cost of calibration of equipment.
 - 2.1.7.** Participating in the evaluation of bids including, but not limited to, bids for energy efficiency projects to help customers select a product that meets the City's requirements for rebate eligibility; and
 - 2.1.8.** Providing monthly reports.

3. FIELD SERVICES

- 3.1. Contractor shall perform field services, including but not limited to:**
 - 3.1.1. Conducting on-site standard energy audits (energy surveys);**
 - 3.1.1.1. Standard audits shall consist of an inventory of the energy-consuming equipment in the facility (including but not limited to lighting, HVAC, motors, variable frequency drives (VFDs), food service equipment, etc.), and providing recommendations for energy efficiency retrofits.**
 - 3.1.2. Conducting pre- and post-inspections;**
 - 3.1.3. Conducting energy usage and savings analyses;**
 - 3.1.4. Providing financial analysis including payback period, return on investment (ROI), etc.;**
 - 3.1.5. Preparing customer energy audit reports;**
 - 3.1.6. Providing design assistance services; and**
 - 3.1.7. Conducting customer outreach.**

4. CUSTOMER SERVICE

- 4.1. Contractor shall provide customer service, to include but not be limited to:**
 - 4.1.1. Assisting customers with identifying and implementing energy efficiency measures, and understanding program offerings;**
 - 4.1.2. Proactively develop relationships with customers that result in increased customer satisfaction and program participation;**
 - 4.1.3. Providing program support and technical assistance to help ensure that customers successfully take advantage of SVP energy efficiency rebates;**
 - 4.1.4. Serving as the basic point of communication with the commercial customers for all business energy efficiency and electrification programs;**
 - 4.1.5. Responding to customer inquiries regarding the audit / rebate program, and handling and responding to field vendor inquiries;**
 - 4.1.6. Providing program education to business customers and vendors;**
 - 4.1.7. Addressing questions and/or queries regarding website, surveys, rebates, etc.;**
 - 4.1.8. Evaluating claims on energy savings by customers or vendors;**
 - 4.1.9. Validating M&V data for custom and third-party rebates; and**

- 4.1.10.** Issuing customer satisfaction surveys after each rebate project, and forwarding all survey responses to SVP's program manager upon receipt.

5. AD HOC SERVICES

- 5.1.** Contractor shall perform ad hoc services as needed.
- 5.2.** Ad hoc services shall include, but not be limited to, custom audits for SVP's large customers.

5.2.1. Custom Audits

- 5.2.1.1.** Contractor shall perform custom energy audits, as needed, for SVP's largest customers. The audits shall be comprehensive energy studies that are tailored to meet the specific customer's informational and strategic energy planning requirements.
- 5.2.1.2.** Custom audits typically consist of a comprehensive site survey, in-depth energy analysis (costs, savings, ROI, etc.), spot metering, system-specific evaluation and preparation of a customized report.

6. WORK PLAN

- 6.1.** Prior to the start of each Agreement term, including option years, Contractor shall submit a proposed work plan to SVP for review and approval.
- 6.2.** The work plan shall include a description of the services to be provided by Contractor during the stated term (statement of work), proposed Contractor staffing, and pricing for the services included in the work plan.
- 6.3.** Contractor shall not perform any services until the work plan has been approved by SVP. SVP shall not unreasonably withhold approval.

7. STAFFING RESPONSIBILITIES

- 7.1.** The Contractor shall be solely responsible for selecting, hiring, employing, paying, supervising, training and discharging all personnel necessary for the management of the City's energy efficiency program.
- 7.2.** Contractor shall select and hire only persons who are well-qualified to perform the job duties for which they are being hired, who are neat, well-groomed, and courteous, and who can act in the utmost professional manner when interacting with customers and the general public.
- 7.3.** Contractor shall ensure the following employment standards for all employees (including subcontractors) are complied with and enforced throughout the term of this Agreement.
 - 7.3.1.** United States of America citizenship or verified legal alien status

- 7.3.2.** At least eighteen (18) years of age.
- 7.3.3.** Sufficiently fluent in English.
- 7.3.4.** No known criminal background or record of conviction for other than minor vehicle code/traffic violations.
- 7.3.5.** Possession of a current, valid U.S. driver's license permitting operation of a two-axle vehicle.

EXHIBIT B
SCHEDULE OF FEES

1. The maximum amount of compensation to be paid to Contractor during the Initial Term shall not exceed One Million Six Hundred Ninety-One Thousand Seven Hundred Dollars (\$1,691,700). The maximum compensation shall be paid at the rates listed in Table B1- Maximum Compensation below.

Table B1 – Maximum Compensation

Description	Cost
Fixed Costs	\$1,419,300
Performance incentive – energy savings	\$99,900
Performance incentive – key performance indicators	\$72,500
Ad Hoc Services	\$100,000
GRAND TOTAL	\$1,691,700

2. Compensation Structure

2.1. Fixed Costs

- 2.1.1. City shall pay Contractor monthly fixed costs in accordance with the at the rates listed in Table B2- Fixed Costs below.

Table B2 – Fixed Costs

Task	Description	Monthly Fee	Extended Cost (19 months)
1	Program Administration	\$7,470	\$141,930
2	Field Services	\$37,350	\$709,650
3	Customer Service	\$29,880	\$567,720
	GRAND TOTAL	\$74,700	\$1,419,300

2.2. Performance Incentives

2.2.1. Energy Savings

- 2.2.1.1. Contractor shall be paid performance incentives for energy savings achieved from completed projects.

2.2.1.2. The energy savings goals are gross savings before any net savings impacts are applied. Energy savings counted toward achieving goals include all business energy efficiency program projects completed during the performance period.

2.2.1.3. Contractor shall be paid energy savings performance incentives in accordance with Table B3 below. Total incentive payments shall be capped at \$99,900 for the Initial Term.

Table B3 – Performance Incentives: Energy Savings

Project Category	Gross Savings Goal (MWh)	Incentive Rate (\$/MWh)	Performance Incentive
Small business customers, less than 200 kW	1,500	\$3.70	\$5,550
Medium-sized business customers, equal to and greater than 200 kW, less than 1 MW	3,500	\$3.70	\$12,950
Large business customers, 1 MW and greater	22,000	\$3.70	\$81,400
Total	27,000		\$99,900

2.2.2. Key Performance Indicators

2.2.2.1. Performance incentives for achieving key performance indicators shall be paid to Contractor in accordance with Table B4 below.

2.2.2.2. Total payments for achieving key performance indicators shall be capped at \$72,500 for the Initial Term.

Table B4 – Performance Incentives: Key Performance Indicators

KPI	Goal	Notes	Incentive Rate	Maximum Incentive	Payment Schedule
Number of outreach contacts who become rebate participants	60	Number of customers targeted in outreach campaigns who become rebate program participants. Non-direct install customers who we have actively been working with or discussing projects within the last previous 12 months will not count towards the goal.	\$175 per participant	\$10,500	Monthly
Time outside of office conducting outreach from 12/1/20 through 6/30/21*	600	Percent of hours spent conducting customer acquisition activities. It includes the initial site visit, phone calls, and follow up until the customer expresses an interest in participating in the rebate program. It excludes time spent on energy audits, reviewing contractor bids or assisting with equipment selection.	\$360 per percent of goal hours completed	\$36,000	July 2021
Time outside of office conducting outreach from 7/1/21 through 6/30/22*	1,350	Percent of hours spent conducting customer acquisition activities. It includes the initial site visit, phone calls, and follow up until the customer expresses an interest in participating in the rebate program. It excludes time spent on energy audits, reviewing contractor bids or assisting with equipment selection.	\$210 per percent of goal hours completed	\$21,000	Monthly
SVP staff satisfaction survey	5	Survey of SVP staff (KCRs and SVP program manager), based on a rating of 1 to 5, with 5 being very	\$5,000 if rating exceeds 4	\$5,000	July 2022

		satisfied. The survey will measure ERS performance related to on-time deliverables, customer complaint resolution, and overall level of service provided by ERS.			
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*If a COVID-19 triggering event occurs, then the metric may be modified to count hours engaging customers via phone calls and virtual meetings. A triggering event is defined as a health order issued by either the State, County of Santa Clara, or the City of Santa Clara that shuts down construction activities, or a Silicon Valley Power management decision to no longer allow site visits due to COVID-19 health concerns.

2.3. Ad Hoc Services

- 2.3.1. The City may require Contractor to perform ad hoc services including, but not limited to, custom audits.
- 2.3.2. In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of service(s) requested and the time and cost required. Contractor shall not perform any additional services without receiving written approval from the City
- 2.3.3. Contractor shall be paid for completed ad hoc services in accordance with Table B5 below. The total amount paid for ad hoc services shall not exceed \$100,000 during the Initial Term.

Table B5 – Hourly Rates

Position	Hourly Rate
Administrative Support	\$80/hour
Administrative	\$95/hour
Energy Analyst/Coordinator	\$125/hour
Project Engineer I, Project Consultant I	\$150/hour
Project Engineer II, Project Consultant II	\$160/hour
Senior Engineer/Consultant	\$170/hour
Managing Engineer/Managing Consultant	\$200/hour
Associate Director	\$205/hour
Director	\$210/hour
Officer/Principal Consultant	\$230/hour

Senior Director	\$230/hour
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3. Invoicing

- 3.1.** Contractor shall submit to the City a monthly invoice by the fifteenth (15th) day of each month, in arrears, for payment for services performed the previous month, pursuant to this Agreement.
- 3.2.** Each invoice shall include the task costs for the previous month.
- 3.3.** If the City disputes an expense in an invoice, the City may deduct the disputed expense from the payment of that invoice, provided that the City submits to the Contractor a written explanation of why the expense is being disputed.

4. Payment to Contractor

- 4.1.** The City shall review the invoice submitted by Contractor and within ten (10) working days of receipt of the invoice, the City shall notify Contractor of any discrepancies or deficiencies in said invoice.
- 4.2.** If there are no discrepancies or deficiencies in the submitted invoice, City shall submit payment to Contractor within thirty (30) days of the date of the invoice.

5. Renewal Period Compensation

- 5.1.** Pursuant to Section 2.B of the Agreement, the City reserves the right to extend the term of this Agreement for five (5) additional one-year terms ("Option Periods") for ongoing business energy efficiency program management services.
- 5.2.** Contractor shall provide to the City a quote for the services to be performed during the option period. Contractor shall not perform any services until the City has provided written approval.

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. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. 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.

F. 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.

G. 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.

H. 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, Parks and Recreation 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

I. 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.

**EXHIBIT D
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section ___ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
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NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: _____

Approved as to Form: _____

BRIAN DOYLE
City Attorney

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