

**CITY OF SANTA CLARA, CALIFORNIA  
CONFIDENTIALITY AGREEMENT**

**PREAMBLE**

This Confidentiality Agreement (“Agreement”) is by and between **\*insert name**, a **\*choose one: a** **\_\_\_\_\_** (enter State name) corporation/partnership/individual, with its principal place of business located at **\*insert primary business address** (“Counterparty”), 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 Counterparty may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. Counterparty and the City (the “Parties”) have agreed to enter into discussions concerning **\*\_\_\_\_\_** (“Transaction”);
- B. It is anticipated that all materials, documents and information (including meetings and discussions) concerning the Transaction may be exchanged and shared by the Parties and are confidential (“Confidential Information”); and,
- C. The Parties desire to have any such Confidential Information kept in the strictest confidence and maintain their respective rights without making the Confidential Information general public or common knowledge.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. DEFINITIONS.**

As used herein, the following terms have the following meanings.

- A. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, rates, certain sales market information, research, developmental, engineering, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- B. Disclosing Party is the Party to whom the Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth below in paragraphs 2E and 7.
- C. Receiving Party is the Party to this Agreement who receives information designated as Confidential Information by the Disclosing Party.

## **2. EXCEPTIONS.**

The Parties to this Agreement agree to maintain as confidential, to the extent permitted by law, all Confidential Information. Notwithstanding the foregoing and the provisions of paragraph 1, the term Confidential Information shall not include (and neither Party shall be under any obligation to maintain in confidence or not use) any information (or any portion thereof) disclosed to it by the other Party to the extent that such information:

- A. is in the public domain at the time of disclosure; or
- B. at the time of or following disclosure, becomes generally known or available through no act or omission on the part of the Receiving Party; or
- C. is known, or becomes known, to the Receiving Party from a source other than the Disclosing Party or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement with the Disclosing Party; or
- D. is independently developed by the Receiving Party without violating any of its obligations under this Agreement; or
- E. is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the Disclosing Party and that the Disclosing Party shall be afforded the opportunity (consistent with the legal obligations of the Receiving Party) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence, in accordance with paragraph 7 below.

Specific information shall not be within the exceptions of sub-part 2A to 2E above merely because it is embraced by more general information within such exceptions.

## **3. USE OF CONFIDENTIAL INFORMATION.**

The Confidential Information (i) may be used by the Receiving Party solely in connection with performing the tasks required under the Agreement and (ii) will be kept confidential and not disclosed by the Receiving Party to any other person, except that Confidential Information may be disclosed to any of the Receiving Party's affiliates, directors, officers, council members, employees, attorneys and agents (collectively, its "Representatives") who require access to such information in connection with performing the tasks under the Agreement between the Parties. Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Receiving Party's obligations under

this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives.

**4. RIGHTS TO CONFIDENTIAL INFORMATION.**

The parties agree that (i) all rights to Confidential Information disclosed pursuant to this Confidentiality Agreement are reserved to the Disclosing Party; (ii) nothing in this Confidentiality Agreement shall diminish or restrict in any way the rights that each Party has to market, lease, sell, or otherwise make available its own products and services to any other customer or third party; and (iii) no license or conveyance or any rights under any discoveries, inventions, or patents is granted or implied by either Party to the other.

**5. TERM.**

This Confidentiality Agreement shall commence as of the Effective Date of the Agreement and may be terminated by either Party on thirty (30) days prior written notice with respect to subsequent disclosures and, unless sooner terminated by the Parties, shall terminate two (2) years after the date on which the Agreement expires.

**6. NO OBLIGATION TO DISCLOSE.**

Nothing in this Agreement shall obligate either Party to disclose specific Confidential Information, which disclosure shall be at the Disclosing Party's sole discretion.

**7. PUBLIC RECORDS ACT.**

Counterparty acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that Counterparty may submit information to Santa Clara that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Counterparty acknowledges that Santa Clara may submit to Counterparty information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). 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 a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party 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 the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

**8. LIABILITY.**

The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and Santa Clara hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

**9. COOPERATION.**

The Receiving Party may, at its sole expense, institute or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Disclosing Party to provide a complete indemnity.

**10. RETURN OF CONFIDENTIAL INFORMATION.**

While this Agreement remains in effect, and for a period of ninety (90) days after termination, upon a Disclosing Party's request, the Receiving Party agrees to return to the Disclosing Party, or to provide an officer's certificate certifying that all Confidential Information has been destroyed, as promptly as practicable, but in all cases within thirty (30) days, all Confidential Information provided to the Receiving Party, including all copies of such Confidential Information, notes or other documents with respect to or reflecting such Confidential Information and materials derived from such Confidential Information in its possession or in the possession of its Representatives.

**11. ENTIRE AGREEMENT.**

This Agreement embodies all of the understandings between the Parties concerning the subject matter hereof, and merges all prior discussions and writings between them as to confidentiality of information other than as expressly provided in this Agreement, or as duly set forth subsequent to the date hereof in writing and signed by both Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party except in connection with the sale of all or substantially all of the business or assets of the assigning Party.

**12. REMEDIES.**

Without prejudice to the rights and remedies otherwise available to the Disclosing Party, the Disclosing Party will be entitled to equitable relief by way of injunction if there is a breach or threat of breach of any of the provisions of this Agreement by the Receiving

Party. The Parties agree and acknowledge that damages would not be an adequate remedy in the event of a breach of this Agreement.

**13. AUTHORITY.**

Each Party represents and warrants to the other Party that it has the full unrestricted authority to disclose its Confidential Information and to discuss or enter into this Agreement without breaching any agreement or commitment with another party(ies) which would prohibit such discussions, disclosure or contract.

**14. GOVERNING LAW.**

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA EXCLUDING ITS CONFLICT OF LAW RULES. STATE AND FEDERAL COURTS SITUATED IN THE STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION WITH EACH PARTY IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION.

**15. SEVERABILITY.**

The provisions of this Agreement are severable, and if any one or more of such provisions is determined to be judicially unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

**16. INDEPENDENT CONTRACTOR.**

The Parties acknowledge that no agency, joint or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

**17. NO FURTHER AGREEMENTS HEREUNDER.**

Neither Counterparty nor City or any parent, subsidiary or affiliate thereof, shall be under any obligation to enter into any further agreements with the other signatory to this Agreement or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. The Parties shall be free at all times to hold negotiations or enter into agreements with any other persons whatsoever (including with respect to projects under discussion by the Parties) in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement or any obligations owed to the other Party hereunder. Each Party reserves the right, in its sole discretion, to decline and make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

**18. AMENDMENT.**

This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties.

**19. WAIVER.**

No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**20. 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; and the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

**21. ASSIGNMENT.**

This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties.

**22. HEADINGS.**

The headings used herein are for aid in reference only and shall not be used to interpret the substantive portions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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: \_\_\_\_\_

\_\_\_\_\_  
Glen R. Googins  
City of Santa Clara

\_\_\_\_\_  
Jõvan D. Grogan  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**\*INSERT CONTRACTOR’S NAME**  
\*choose one: corporation/partnership/individual

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Person executing the Agreement on behalf of  
Counterparty)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Local Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

“COUNTERPARTY”

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