

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
GROUNDSWELL DESIGN LANDSCAPE ARCHITECTS PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Groundswell Design Landscape Architects, (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 design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. 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,
- D. 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 – Labor Compliance Addendum

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

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 July 1, 2019 and terminate on June 30, 2022.

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.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

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 is four hundred and seventy-nine thousand, five hundred dollars (\$479,500), 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

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, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

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: City Managers Office, Manuel Pineda
1500 Warburton Avenue Santa
Clara, CA 95050
and by e-mail at mpineda@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Peter Jensen
Groundswell Landscape Design
P.O. Box 447
Palo Alto, 94302

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.

CONTINUED ON PAGE 8

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"

GROUNDSWELL DESIGN LANDSCAPE ARCHITECTS
an Individual

Dated: _____
By (Signature): _____
Name: _____
Title: _____
Principal Place of
Business Address: _____
Email Address: _____
Telephone: _____
Fax: _____

EXHIBIT A
SCOPE OF SERVICES

Groundswell Landscape will perform all design, engineering, and project management related work necessary to prepare plans and specifications for a complete rebuild of the Playground, a new restroom facility, and accessible pathway(s) suitable for Public Works bidding. Groundswell Landscape services shall include, but are not limited to: Playground project design management, schematic design, design development, public outreach, finalized design, bid documents including specifications and estimates, bidding support, and construction administration support services to the extent these are requested, as further detailed below:

1. Task No. 1: Project Management

1.1. **Services:** Groundswell Landscape shall be responsible for all project management related work required to prepare the plans, specifications, and estimates necessary for the public bidding of the project, including but not limited to the following:

- 1.1.1. Groundswell Landscape shall participate in meetings with City's designated team and Groundswell Landscape to advise on all aspects of playground design, including but not limited to equipment selection, site preparation meetings, and criteria consistent with other Groundswell Landscape sites. Groundswell Landscape shall be responsible for coordinating design meetings and preparing and distributing **meeting agendas and minutes**.
- 1.1.2. Groundswell Landscape shall be responsible for managing the project's **design schedule and consultant contract budget** during the design phase of the project. City will be responsible for managing the project's construction/budget schedule during the construction phase of the project. In addition, Groundswell Landscape is expected to **attend monthly progress meetings** during the design and construction phase of the project and prepare **action item logs** for subsequent follow-up. Groundswell Landscape is expected to maintain frequent and timely communication with City staff throughout the duration of the project.
- 1.1.3. All **project schedules** shall be prepared in Gantt chart format, utilizing Microsoft Project software. Three weeks for each City review shall be included. Schedule updates shall be provided at all progress meetings.

1.2. **Deliverables:** See bolded items above.

2. Task No. 2: Schematic Design and Design Development Services

2.1. **Services:** Groundswell Landscape shall perform design services as follows:

2.1.1. Schematic Design Phase

Groundswell Landscape shall prepare a **site plan** outlining the Playground design for the City's consideration. A **preliminary cost estimate** and **project schedule** shall be included along with other supporting information.

Schematic Design Phase to Include the Following (at a minimum):

A. Site Analysis and Reconnaissance: **Perform one site visit** to confirm base mapping, including **lighting study and plan** for all needed changes to existing underground infrastructure, and thorough review of existing conditions including underground utilities; **Map the horizontal and vertical location of all utilities** that may be impacted by the project.

B. Project Base Mapping: Using information provided by the City of Santa Clara survey team, **prepare base mapping of the project**. Survey information provided will be in AutoCAD format and will depict surface amenities such as walkways, benches, play equipment, tables, etc. Topographic information will be provided in one-foot contour intervals. Surface location and elevation of visible utilities (e.g., sewer manholes, storm drainage, etc.) will be provided. Invert elevations, pipe sizes and types for storm drainage within the project area will be provided as part of the base mapping. Subsurface information on other utilities will not be included in City provided information. C. Bike and Pedestrian Review: Groundswell Landscape will work with the City to **review bike/pedestrian access and bike parking location**.

D. Image Boards: Provide **precedent image boards** to review plan options, materials, furnishings, and necessary items to comment on design intent.

2.1.2. Design Development Phase

Groundswell Landscape shall **develop a "Preliminary Concept Plan"** for Community review and City approval. **Provide a rendered plan** of the final design upon the completion of community and City boards and commission meetings, but prior to the City Council meeting. City staff will coordinate the location of the meeting and assist with public notification.

Design Development Phase to Include the Following (at a minimum):

- A. Preliminary Concept Plan: Prepare **preliminary concept plan** that depicts the proposed playground design, including playground features, restroom building (City to provide restroom building type) and ancillary improvements that may be required (e.g., sidewalk upgrades, etc.).
- B. Site Investigation: Groundswell Landscape will **perform one (1) site visit** for field investigation purposes to confirm existing conditions
- C. Community Outreach: **Prepare for, coordinate, attend and present at a maximum of three Community Outreach Process Meetings.** City staff will coordinate with Groundswell Landscape to identify the location of meetings and assist in notifications to the public.
- D. Special Studies and Environmental Review: CEQA for the Playground shall be addressed by the City. Groundswell Landscape shall coordinate with the City and provide any **reasonably necessary supporting documentation to be included in the CEQA effort. (Groundswell anticipates the project to be exempt from CEQA as its replacing an existing playground area).**
- E. City Commission Outreach: **Presentation to two City Boards and Commissions** – Parks and Recreation Commission and the Neighborhood Services Committee.
- F. City Council Meeting: **One presentation to City Council** for plan approval
- G. Meeting Minutes: **Prepare written summary of all meetings**
- H. Cost Estimate: **Provide preliminary cost estimate**
- I. Specifications: **Provide preliminary list of Specification sections**, both front end contract terms (template provided by the City) and technical specifications
- J. Preliminary Submittal: **Provide skeleton of Preliminary Submittal** set of drawings to include the following:
 - a) Cover page
 - b) General Notes
 - c) Existing Conditions
 - d) Site Plan
 - e) Layout/Materials Plan
 - f) Grading and Drainage Plan
 - g) Architectural Plans (if required)
 - h) Mechanical, Electrical and Plumbing Plans
 - i) Preliminary Construction Details
 - j) Irrigation Plan
 - k) Irrigation Details
 - l) Planting Plan
 - m) Planting Details

- n) City shall provide any standards details and information that may be available

2.2. **Deliverable:** See bolded items above.

3. **Task No. 3:** Construction Drawing and Specification Development Groundswell Landscape shall serve as the Engineer of Record for the Playground project and shall be responsible for design and preparation of **complete plans and technical specifications, bid forms** for the project. Front end contract documents (e.g., invitation to Bid, Notice to Bidders, etc.) shall be customized using a City provided template.

Plans and specifications shall provide sufficient detail to result in a good quality product while allowing competitive pricing where possible and appropriate, and provide options to the contractor where appropriate to obtain the same good level of quality for the best bid price.

All submittals shall include hardcopies (number specified below) and digital copies (PDF and native format) of all documents.

3.1 **Services:** Groundswell Landscape shall perform design services as follows:

3.1.1 **30% Construction Document Phase:** Submit 3 of 24" x 36" hardcopies.

Following City's approval of the Preliminary Concept Plan, Groundswell Landscape will move forward with the 30% design and will submit the **30% submittal** to the City for review and comments. The 30% submittal shall include an updated **30% project schedule** and a **30% construction cost estimate**.

As directed by City, Groundswell Landscape will coordinate and prepare **documentation** to facilitate permits and outreach with utility companies, regulatory agencies, and support coordination with the overall City project at the Playground site.

3.1.2 **75% Construction Document Phase:** Submit 3 of 24" x 36" hardcopies.

Following approval of the 30% design by the City, Groundswell Landscape shall provide **75% plans and project documents** in sufficient detail to allow for thorough and complete review including, but not limited to, the following:

- A. Plans: All subcontracted work and all project details shall be included in this submittal.
- B. Specifications: Technical specifications and bid forms, which may include sections describing elements in the following plans and details:
 - o Playground Layout and Construction Plan o Existing Site Survey Plan o Demolition and Tree Protection Plan o Grading & Drainage Plans
 - o Path of Travel Plan (showing accessible route between playground, restrooms, and parking, and parking restriping)
 - o Irrigation and Planting Plans
 - o Restroom Building Plans, including Structural Engineering Plans, Plumbing and Sanitary Sewer Plans o Photo-metric Plan, Electrical Plan, Utility Plan and Storm Water Pollution Prevention Plan o Signage plans, standards and requirements o Special provisions which will include at least the following:
 - Bid item descriptions and measurement and payment provisions
 - A list of minimum required submittals during construction
 - List of information available to Bidders, with disclaimer
 - A table listing all construction related inspections (including any special inspections and materials testing) and associated responsibility. Such list will be developed collaboratively with the City and Magical Bridge. Inspections are responsibility of the City.
 - A table list of materials
- C. **Responses to the City's review comments** on the 30% submittal, along with return of mark-ups.
- D. **75% project schedule** update.
- E. **75% construction cost estimate** in the format of the bid schedule.
- F. Utility conflicts have been resolved or a timeline for resolution of issues has been determined.

Groundswell Landscape to provide best effort to supply documents in format specified by City and support coordination within the project and integration with additional project materials.

3.1.3 100% Construction Document Phase: Submit 3 of 24" x 36" hardcopies.

Following approval by the city of 75% plans, Groundswell Landscape shall provide **100% plans and project documents** in sufficient detail to allow for thorough and complete review Including, but not limited to, the following:

- A. 100% plans
- B. 100% specifications o Reviewed and project specific bid instructions (City to provide)
 - o Finalized technical specifications
 - o Finalized Special Provisions
- C. **100% project schedule** update.
- D. **100% construction cost estimate** in the format of the bid schedule.
- E. **Responses to the City's review comments** on the 75% submittal, along with return of mark-ups.
- F. Other supporting **documentation** as necessary.

3.1.4 Bid Package Submittal

The **bid package** shall be finalized upon incorporation of the City's final comments from the 100% submittal.

The bid package submittal shall include:

- A. **One electronic copy (PDF format) of full-sized drawings** (24" x 36"), stamped and signed on each sheet by the Engineer of Record and by discipline. (City responsible for printing.)
- B. **One electronic copy of the specifications.**
 - o Technical specifications, with cover sheet stamped and signed by all necessary disciplines.
- C. **Final project schedule** update.
- D. **Final construction cost estimate.**

3.2 **Deliverables**: See bolded items above.

4. Task No. 4: Bid Support

- 4.1 **Services**: Groundswell Landscape will **attend one pre-bid meeting**, respond to all bidder's **requests for information ("RFIs")**, and support the City's coordination efforts to inform plan-holders of significant responses to RFIs and prepare **addenda** as necessary. During bidding, all proposers' communications will be directed through the City.

4.2 **Deliverables**: See bolded items above.

5. Task No. 5: Construction Support

5.1 Services: The City's construction management team will have primary responsibility for construction management and inspection. City shall have final authority on all construction and payment decisions. Groundswell Landscape shall provide construction support services as follows:

- A. Attend and prepare **informational memorandum** for an internal handoff meeting from the design team to the City's construction management team. Groundswell Landscape shall be prepared to address possible construction issues and items for the construction management team to be aware of.
- B. Attend one **pre-construction meeting**.
- C. Attend **five (5) periodic construction progress meetings** as requested by City.
- D. Participate in the final inspection and **development of punch lists**.
- E. Respond to **RFIs**, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
- F. Review and **provide responses to all submittals** within the period allocated in the contract documents and as necessary to avoid construction delays and claims.
- G. Review and provide **responses to proposed substitutions**, if any, for conformance to plans and technical specifications.
- H. Review and make **recommendations on proposed changes to the contract** (Request for Quotations and Contract Change Orders).
- I. Prepare **Record Drawings** based upon red-lines provided by the contractor and field reviews.
- J. Participate in a **"Project Close Out Meeting"** with all parties at the end of the project.

5.2 Deliverables: See bolded items above.

6 City Responsibilities: City is responsible for the following activities:

- 6.2** Identifying a location for the development of the Playground (the "Site");
- 6.3** Obtaining all required licenses, permits, and approvals for development of the Playground, including any required approvals from the City provided that Groundswell Landscape supplies the necessary documentation to support the application for Building Permits;
- 6.4** Providing survey data in AutoCAD format as defined in the project scope;
- 6.5** Performing a timely planning review of design plans and providing responses from all essential City departments regarding any and all concerns to be addressed in the Final Design;
- 6.6** Allowing for reasonable access to the Site by Groundswell Landscape employees and agents, including but not limited to the Groundswell Landscape landscape architect;

- 6.7** Facilitating meetings and discussions between Groundswell Landscape and various stakeholders which may include all Council districts, and other relevant and existing City email lists in order to ensure community support for the Playground;
- 6.8** Providing all reasonable assistance to Groundswell Landscape in arranging a meeting to develop the theme, colors, and unique features of the Playground; and
- 6.9** Except for Services set forth in Exhibit A, entering into and performing all obligations under all agreements with third party contractors performing services related to the Playground.

EXHIBIT B – SCHEDULE OF FEES

City shall pay Groundswell Landscape, referenced in Exhibit A – Scope of Services of the Agreement, according to the following schedule:

<u>Task</u>	<u>Payment Amount</u>
1 – Project Management	\$55,000
2 – Survey and Schematic Design	\$105,000
3 – Construction Drawings and Specifications	\$300,000
4 – Bid Support	\$7,500
5 – Construction Support	\$12,000
TOTAL	\$479,500

SCHEDULE OF FEES For Professional Services

<u>Time Charges</u>	<u>Hourly Rate Range</u>
Principal	\$185
Associates	\$135
Project Staff	\$100

Reimbursable Expenses - Mileage at the current IRS approved rate Other project expenses @ Cost plus 10%: Including printing, graphics, special shipping or delivery.

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 during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

COMMERCIAL GENERAL LIABILITY INSURANCE

- a. 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
- b. 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.
- c. 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:

Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

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.

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 (if any), 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 one million dollars (\$1,000,000) 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.

WORKERS' COMPENSATION

- d. 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.
- e. 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).
- f. 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.

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.

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.

- g. 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.
- h. 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.
- i. Cancellation.

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.

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 nonrenewal.
- j. 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 E of this Exhibit C, above.

ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- k. 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.

- I. 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.
- m. 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.

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.

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 City Managers Office
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

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
LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

A. Prevailing Wage Requirements

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor

Code Section 1720 *et seq*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.