

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
WESTWOOD PROFESSIONAL SERVICES, INC.**

PREAMBLE

This Agreement dated _____ (“Effective Date”) is entered into between the City of Santa Clara, California, a chartered California municipal corporation (“City”) and Westwood Professional Services, Inc., a Texas corporation, (“Consultant”). City and Consultant 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” (“Services”);
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. Consultant 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 Consultant will 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 – Assignment of Work Procedures

Exhibit C – Schedule of Fees

Exhibit D – Insurance Requirements

Exhibit E – Labor Compliance Addendum

Exhibit F – Rate Schedule

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 will 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 will begin on the Effective Date and terminate on December 31, 2032.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Consultant will perform those Services specified in Exhibit A when requested, on an on-call, as needed basis according to the procedures set forth in Exhibit B. Time is of the essence.

- A.** All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant will 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, will bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

4. WARRANTY

Consultant expressly warrants that all materials and services covered by this Agreement will be fit for the purpose intended, will be free from defect and will conform to the specifications, requirements and instructions upon which this Agreement is based. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant will 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 Consultant's performance of Services, City will pay Consultant for all materials provided and services rendered by Consultant in accordance with and at the rates identified in Exhibit C, entitled "SCHEDULE OF FEES", provided, however, that the maximum compensation under this Agreement is **Two Million Three Hundred Thousand Dollars (\$2,300,000)**, subject to budget appropriations, which includes all payments that may be authorized for services and for expenses, supplies, materials and equipment required to perform the services. All work performed or materials provided in excess of the maximum compensation will be at Consultant's expense. Consultant will not be entitled to any payment above the maximum compensation under any circumstance. There is no minimum compensation guarantee under this Agreement.

7. TERMINATION

- A. Termination for Convenience. City will have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- C. Upon termination, each Party will 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

Consultant will 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 Consultant is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement will be held confidential by Consultant and will 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 Consultant which is otherwise known to Consultant or becomes generally known to the related industry will be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which will 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 will be the property of City but Consultant may retain and use copies thereof. City will not be limited in any way or at any time in its use of said material. However, Consultant will 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 CONSULTANT

City, through its authorized employees, representatives or agents will 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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this

Agreement, including termination of Consultant. Consultant 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 will be disallowed by City. Consultant will 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.

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

14. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, including California Civil Code Section 2782.8, Consultant 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 a 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 Consultant or its subcontractors.

The Parties expressly agree that this Section 14 (HOLD HARMLESS/INDEMNIFICATION) will survive the expiration or early termination of the Agreement.

15. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit D, Consultant will provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit D.

16. WAIVER

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement will 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 will 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 will, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Damon Sparacino
Parks and Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at DSparacino@santaclaraca.gov

And to Consultant addressed as follows:

Westwood Professional Services, Inc.
6200 Stoneridge Mall Road, Suite 330
Pleasanton, CA 94588
and by e-mail at chad.kennedy@westwoodps.com

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

18. COMPLIANCE WITH LAWS

Consultant will 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant will 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

Consultant will 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 will 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 will 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 will, for any reason, be held invalid, illegal or unenforceable in any respect, it will not affect the validity of the other provisions, which will 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 will be deemed to be an original, but both of which will constitute one and the same instrument.

26. ELECTRONIC SIGNATURES

Each Party agrees that this Agreement and any other documents to be delivered in connection with this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

Signatures on next page

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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

"CITY"

WESTWOOD PROFESSIONAL SERVICES, INC.
a Texas corporation

Dated: _____

By (Signature): _____

Name: Chad Kennedy

Title: Principal Landscape Architect

Principal Place of Business Address: 6200 Stoneridge Mall Road, Suite 330
Pleasanton, CA 94588

Email Address: Chad.kennedy@westwoodps.com

Telephone: 925-223-8340

Fax: _____

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

1. BACKGROUND

In April 2017, the City conducted a comprehensive facility condition assessment of 47 parks and 65 buildings managed by the Parks and Recreation Department. The assessment evaluated park and architectural elements; mechanical, electrical, and plumbing systems; fire sprinkler and alarm systems; accessibility compliance; life-safety hazards; and other structural deficiencies.

2. SCOPE OF SERVICES

Consultant will perform project specific services requested by City through the process outlined in Exhibit B (Assignment of Work Procedures). For each project request, Consultant will independently assess each project and provide recommendations for improvements to meet each project's objectives and perform the specific services requested.

Consultant's Services will include all professional services required to prepare construction bid documents (plans, specifications, and engineer's estimate - PS&E) for public works bidding of the specifically requested project.

- A.** For each specific project, Consultant will complete the following items, if applicable:
- 1.** Assist the City in presenting the project to the Parks and Recreation Commission and City Council
 - 2.** Perform detailed site assessment and investigation for the project
 - 3.** Review all existing as-builts and available data related to the project
 - 4.** Perform all necessary geotechnical engineering assessments required for the project
 - 5.** Perform all necessary soil sampling to characterize necessary off haul of materials for the project
 - 6.** Prepare schematic design that includes alternatives in order to stay within the available budget and permit constraints for the project
 - 7.** After receipt of written approval from the City Engineer of schematic design, proceed with detail design and prepare construction documents for the project
 - 8.** Identify potential traffic issues affecting local residents and prepare a traffic

control plan to minimize disruption and impacts.

- 9.** Assist the City in coordinating with outside agencies for any potential utility conflicts presented by the project.
- 10.** Reach out to outside agencies using City's Notice of Intent to Construct forms to obtain existing utility maps for the area.
- 11.** Identify any potential CEQA and environmental impacts based on the proposed improvements for the project.
- 12.** Perform topographic survey and property line survey for the portion of work within private right-of-way.
- 13.** Complete field investigations of all infrastructures that will be affected by the project. Based on the field investigations, prepare plans showing any existing infrastructure including utilities that have potential conflicts with new scopes.
- 14.** Prepare plans showing all existing manholes, catch basins, utility covers, cabinets, pull boxes, poles, and structures within the project area.
- 15.** Prepare plans showing all existing utility wires, conduits, and pipes within the project area.
- 16.** Prepare plans showing all landscaping, trees, and irrigation pipes and valve covers within the project area.
- 17.** Recommend necessary potholes to confirm potential utility conflicts.
- 18.** Lessons learned from previous similar projects that will be incorporated into the project.
- 19.** Provide assistance in obtaining all required permits, if necessary for the project.
- 20.** Evaluate and survey existing site and constraints, including access within the project area.
- 21.** For any field work that involves subsurface excavation and/or coring, submit a plan of work for the City's review and approval prior to proceeding.
- 22.** Provide construction bidding and construction management support
- 23.** Provide Americans with Disabilities Act (ADA) compliance design for related improvements and for compliance during construction.

24. Identify the appropriate disposal classification for off-haul soils.
25. Identify lead times for specialty equipment and materials in order to facilitate the project schedule. Determine needs and help facilitate orders as soon as possible. Contact applicable manufacturers and contractors to obtain accurate lead time for specialty equipment and materials.

B. METHODOLOGY

Unless otherwise requested by the City in a Work Request, each project will consist of two phases, as further described below.

1. PHASE ONE – INITIAL SITE ASSESSMENTS, SCHEMATIC DESIGNS & PUBLIC INPUT

Phase One will include the following at a minimum:

- 1.1 Perform a detailed site assessment for each approved project.
- 1.2 Evaluate ADA compliance and structural and electrical deficiencies
- 1.3 Prepare schematic plans that meet Project goals, initial cost estimates, and schedules
- 1.4 Assist the City in presenting the Project to the Parks and Recreation Commission and City Council

2. PHASE TWO – PS&E, BID DOCUMENTS, & PRE/POST CONSTRUCTION SUPPORT

Phase Two will include the following at a minimum:

- 2.1 Develop selected schematic plans into bid documents for public works bidding
- 2.2 Provide construction bidding and construction management support as requested by the City, including but not limited to preparing bid documents, providing bid and award phase assistance, support administering the construction contract, and ongoing construction project management assistance
- 2.3 Provide assistance in obtaining all required Building and Fire permits
- 2.4 Provide engineering support services during bid and award, construction, and post-construction phases
- 2.5 Complete Site Surveys, Base Setup, and Geotechnical Reports as needed

- 2.6** Assess connection to all existing park walkways and public sidewalks. The design will ensure that it meets ADA regulations and widths at this area are sufficient for safety of mobility impaired persons to get into the park area and playground
- 2.7** Design new irrigation system for the new landscaping from existing water meter. Existing water meter may need to be upgraded to meet new standards from the City's Water and Sewer Department
- 2.8** Recommendations to existing lighting or installation of new lighting for security and safety
- 2.9** Conform to C.3 requirements, as applicable
- 2.10** Perform field exploration services to obtain soil samples to profile soils for offsite disposal
- 2.11** Upgrade existing irrigation to recycled water for all new planting and trees. All recycled water design will meet SBWR's requirements. The formatted drawings will be color coded highlighting both potable and reclaimed water lines. Drawings will be reviewed and approved by the City's Water and Sewer Department, South Bay Water Recycling (SBWR), and the State Department of Drinking Water
- 2.12** Prepare abatement specifications for construction in accordance with building codes and applicable laws and regulations, if applicable for any building work
- 2.13** Provide and coordinate with certified playground safety inspector from feasibility design stage to final construction. The certified playground safety inspector will review all design aspects throughout all project stages and will provide final approval at construction completion. Safety surfacing attenuation testing is not included
- 2.14** Assess and upgrade existing men and women restrooms for compliance with the latest building codes. Design upgrades will be limited to interior of the restroom and will not include major structural building design.
- 2.15** Provide all necessary structural and civil calculations required by building codes
- 2.16** In the event that impacted soils are reported onsite, Consultant will prepare a Soil Management Plan to guide subcontractors on safe handling and disposal requirements

2.17 In the event that impacted soils are discovered during soil sampling, the City may request Impact Soil Delineation to limit the extent of Class I or Class II soils for disposal

2.18 In the event that proposed geotechnical ad/or environmental sample locations are paved over, and no nearby unpaved locations exist where we may obtain soil samples, the City may request that Consultant retain a coring subcontractor to remove pavement in proposed boring locations. If multiple sample rounds are required, this may be required for each iteration of sampling

3. RESPONSIBILITIES OF CITY

City will provide the following information and support for each proposed project, if available and applicable:

- Record drawings (if available) City's Standard Details, Specifications, Benchmark, and Design Criteria.
- Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps (if available).
- Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles, if available.
- Payment of permit application fees with other internal departments, if required.
- Filing exemption under the California Environmental Quality Act, if applicable

Besides the above, the City will work closely with the Consultant to provide any other data or records, as available and necessary for the work involved.

EXHIBIT B ASSIGNMENT OF WORK PROCEDURES

- 1.** Consultant acknowledges that Consultant is one of three firms selected to provide as-needed parks rehabilitation design professional services, pursuant to separate agreements (collectively, the “Parks Design Professional Services Agreements”). The City will select a consultant for each specific project in accordance with the process outlined in this Exhibit B. Consultant is not guaranteed to be selected for any project under this Agreement.
- 2.** The City will assign specific projects by submitting a work request detailing the services requested (“Work Request”) to consultants holding Parks Design Professional Services Agreements. The Work Request may be informal (e.g. via email or letter) but will include a description of the proposed project, the services required, and any other pertinent information. The Work Request will also include project specific evaluation criteria, such as qualifications of personnel, lead time, or overall timeline, as examples.
- 3.** If Consultant is interested in and qualified to perform the services identified in the Work Request, Consultant will prepare and submit to the City a written proposal (Proposal) in response to the Work Request, within the time specified by the City within the Work Request. Consultant’s Proposal must include all information requested by the City in the Work Request, including all costs associated with the completion of the requested services, in accordance with Exhibit C. Provided that the Proposal includes all applicable items listed in the Work Request, the City and the selected consultant may negotiate whether the cost for the Task Order will be fixed price (lump sum) or based on specific rates of compensation (time-and-materials) for completion of the Services. The Proposal will clearly state that all work performed or materials provided in excess of the Cost Proposal will be at consultant’s expense, unless consultant requests and receives approval, in writing, from the City to exceed the cost in advance of incurring additional costs.
 - 3.1.** If a fixed fee or lump sum is authorized by the City, Consultant must include the following within their Proposal. will
 - 3.1.1.** A payment schedule tied to the completion of specific milestones. Payment milestones will be connected to deliverables and will not include payment for labor subject to prevailing wage in advance of such labor taking place.
 - 3.1.2.** A clear breakdown of materials and labor indicating taxable and non-taxable items, along with an estimate of required taxes.
 - 3.1.3.** Separation of materials subject to tax so that payment for such materials and the associated taxes occur in a single payment.

- 4.** willCity may accept or enter into negotiations with the highest-ranked Proposal submitted in response to the Work Request. Negotiations may include, but are not limited to, the scope of work, schedule to perform scope, and technical specifications. The City will not renegotiate any established rates as set forth in Exhibit C but may negotiate the level of effort required for the services. The City may negotiate with more than one firm if necessary to meet the schedule or scope requirements. Consultant must submit a revised proposal to the City based upon such negotiations.
- 5. Authorization of Work; Issuance of Task Order**

 - 5.1.** Once City and the selected consultant agree in writing on the final pricing, scope, and specific requirements of the proposed services, the City will issue a Task Order. The Task Order will at a minimum identify the specific scope of services, a maximum compensation, and such other information the City may require.
 - 5.2.** willConsultant will have seven (7) calendar days from the date of the City's issuance of the Task Order to return a fully executed copy of the Task Order to the City. Upon full execution, the Task Order will be incorporated into this Agreement, including that such services will be included in "Services" as defined in this Agreement. The Services will be performed in accordance with the Terms and Conditions of this Agreement.
- 6. Additional Services or Modifications**

 - 6.1.** Consultant will promptly notify the City when a situation occurs that may result in a change to an approved Task Order, including the need for additional work or modifications to the Services approved under the Task Order. Consultant will provide the reason for the change specific to each Task Order. Consultant will submit an updated Proposal to the City for review and approval by the City in advance of performing any additional work or services. For such changes, Consultant will submit justification demonstrating that changes in cost are associated with changes in scope.
 - 6.2.** If the City determines that the change is within the general scope and intent of the original Task Order, the City may approve the modification, and issue an amended Task Order authorizing the additional or revised services. Any such amended Task Order will be incorporated into the Agreement and any work described therein will be included within the Services.
 - 6.3.** Consultant will not be entitled to additional compensation for issues such as errors in calculation of original pricing, changes in staff, or other changes that are not directly related to changes requested by City.
- 7.** A Task Order will not alter the terms and conditions of this Agreement. The terms and conditions of this Agreement will prevail over any and all terms and conditions contained in a Proposal or Task Order, even if the Proposal or Task Order expressly

states that it is intended to control. Any conflicting terms and conditions in a Proposal or Task Order are invalid and unenforceable. The order of precedence is as follows: (1) Agreement and any exhibits or amendments thereto, (2) Task Order, and (3) Proposal.

8. The City may terminate a Task Order for convenience with ten (10) days prior written notice to Consultant. In such event, the Consultant will have no further rights hereunder, except that Consultant will be paid for all Services rendered to the satisfaction of the City prior to such termination. The City will have no liability for Services not yet performed or deliverables not yet commenced as of the date of termination.
9. Upon termination of a Task Order, each Party will 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

EXHIBIT C SCHEDULE OF FEES

1. RATES

1.1. Rate Schedule

The rates applicable to the Services performed under this Agreement are listed in Exhibit F ("Rate Schedule"), which is attached hereto and incorporated herein by this reference. The rates shown in Exhibit F are fully burdened, including all costs such as labor, overhead and profit.

1.2. Fixed Rates

The rates listed in Exhibit F will remain fixed for the first two (2) years of the Agreement term and will not be subject to escalation or adjustment during that period, except as otherwise authorized by the City under this Exhibit C.

1.3. Additional Rates

If a specific rate, labor classification, equipment type, or service type required under this Agreement is not listed in Exhibit F, Consultant will submit a written Proposal in response to the City's Work Request. The City will review the Proposal, and, if acceptable, approve the proposed rate(s) through a Task Order or written amendment. Consultant must clearly provide justification for any additional rates. No such rates will be effective or compensable unless expressly approved by the City through a Task Order or written amendment.

2. RATE ADJUSTMENTS

After the first two years of the Agreement, rate adjustments may be negotiated no more than once annually. Consultant will submit any proposed rate adjustments in writing to the City at least ninety (90) days prior to the requested effective date. Rate increases will be made in accordance with the percentage change in the Consumer Price Index, not to exceed 3%. Any proposed rate adjustments are subject to approval by the City and must be substantiated by the Consultant to the satisfaction of the City.

3. REIMBURSEABLE EXPENSES

Contractor may pass through certain costs such as, but not limited to printing, materials, equipment, and travel as listed in the Reimbursable Expenses Schedule in this Section. Expenses will be reimbursable only to the extent that (1) Contractor submits sufficient documentation to City that the expenses were directly incurred in providing the required Services, (2) Contractor demonstrates that such expenses are not already included in the hourly rates or unit prices, where applicable, (3) such expenses were approved by the City in advance, (4) Contractor submits itemized receipts, invoices, or other supporting documentation demonstrating that such

reimbursable costs were incurred, and (5) any Mark Up conforms with the Reimbursable Expense Schedule below, and to the extent a reimbursable expense is not specifically identified on the Expense Schedule below, no mark up will be applied.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Charges for outside parts, materials, equipment, and services (including subcontractor fees, equipment, rental equipment, materials, and facilities not furnished directly by Contractor).	Not to exceed 10%
4.	Contractor may charge allowable mileage at the prevailing IRS rate per mile for business related travel. However, Contractor must submit backup documentation that includes the travel start and end locations, travel dates, and corresponding mileage cost. Mileage is not applicable to rental cars. Rental cars are reimbursed at actual fuel cost only.	No Markup
5.	Unless approved in writing (e-mail acceptable) in advance, reimbursement to Contractor (and any subcontractors) for meals, lodging, and related per diem will not exceed the rates outlined by United States General Services Administration (GSA) https://www.gsa.gov/travel-resources. Airfare and Rental Car: Airfare and rental car expenses, where applicable will be reimbursed at economy rates. Meals: Contractor may request reimbursement either as a meal per diem or for actual meal expenses, up to the applicable GSA per diem rate. When claiming per diem, receipts are not required. However, when claiming actual meal expenses, itemized receipts are required, and reimbursement will not exceed the applicable GSA rate for each meal. If the Contractor pays its employees a per diem rate lower than the GSA rate, the Contractor may not charge the City for any difference between the amount paid and the GSA rate. Lodging: Lodging costs will be reimbursed at actual cost, not to exceed the applicable GSA lodging rate.	No Markup

Reimbursable Expense Schedule		Mark Up
	Itemized lodging receipts are required for reimbursement. If Contractor elects to use corporate housing, a personal residence, or a relative's home in lieu of commercial lodging during the project engagement, written authorization from the City is required. Upon such authorization, the City will reimburse Contractor for housing costs up to fifty percent (50%) of the applicable GSA lodging per diem rate for the project location. This reimbursement will be provided in lieu of hotel lodging costs and will not exceed the actual amount incurred, if any. Contractor will certify in writing that no other lodging reimbursement is being claimed for the same period.	
6.	Other travel expenses such as taxi, parking, and tolls.	No Markup
7.	Contractor may provide tips or gratuities only in accordance with standard business practices and in amounts not to exceed twenty percent (20%) of the applicable charge. Any gratuities provided must be customary to the industry and will not be charged to the City unless expressly authorized in writing. Any non-customary gratuities or tips exceeding this cap will be the sole responsibility of the Contractor and will not be reimbursable by the City.	No Markup
8.	Other reimbursable expenses with prior written approval from the City.	No Markup

4. ADDITIONAL PAYMENT PROVISIONS

4.1. Time and Materials

For Services authorized to be paid on a time and materials basis, Consultant will provide an invoice to the City on a monthly basis for Services completed in the preceding month at the rates set forth in the Rate Schedule attached as **EXHIBIT F**. The invoice must include the following information:

4.1.1. Invoice Number, Task Order Number, and Invoice Period.

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

- 4.1.3. Sufficient detail for City to verify (a) that the charges are in accordance with the Task Order, (b) that rates listed in Exhibit F are charged, and (c) hours worked can be verified.

4.2. Fixed Price

For Services authorized to be paid on a fixed price basis, Consultant will base the invoice on either (a) the percentage of Services completed during the previous month or (b) a lump sum amount upon the completion of deliverable(s) and subject to the following:

- 4.2.1. Invoices must include the following information:

- 4.2.1.1. Invoice Number, Task Order Number, and Invoice Period.

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

- 4.2.1.3. Consultant will not invoice labor costs subject to prevailing wages in advance of performing the applicable Services.

- 4.2.2. With regard to milestone payments, Consultant will invoice each milestone payment in full. Consultant will not separate milestone payments into multiple invoices.

5. PRE-PAYMENT

City will not be required to pay a deposit or any other form of pre-payment prior to Consultant beginning the Services.

6. BILLING FOR BILLING

The City will not pay for time associated with administrative or billing-related tasks, including but not limited to preparing responses to Work Requests, addressing billing issues, or communicating with auditors.

7. PAYMENT LIMITED TO SATISFACTORY WORK

Consultant is not entitled to any payments until the City concludes that the Services and/or any furnished deliverables have been satisfactorily performed.

8. ACCURATE INVOICE

Invoices will be accurate, itemized, and submitted in a form acceptable to the City. If an invoice is incomplete or inaccurate, the City may return it to Consultant for correction and resubmittal before payment can be processed. Consultant will not charge the City any interest, late fees, or penalties on any outstanding or delayed invoices due to inaccurate billing.

9. PAYMENT

If there are no discrepancies or deficiencies in the submitted invoice, City will process the invoice for payment.

10. CONFIDENTIAL

Invoices and related payment documentation are public records and are not confidential, even if marked as confidential when submitted by Consultant.

EXHIBIT D

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant will 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. With the exception of Worker's Compensation and Professional Liability, These policies will be primary insurance as to the City of Santa Clara so that any other coverage held by the City will not contribute to any loss under Consultant's insurance. The coverages, provisions and endorsements are as follows:

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 will 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 will be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits will follow otherwise.
3. The following provisions will apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage will be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There will be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage will 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 will apply to all owned (if any), non-owned and hired autos.

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 Consultant included in this Agreement will not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant 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 will be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage will 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 Consultant'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 Consultant will 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 will be considered excess insurance only and will not be called upon to contribute with Consultant's insurance.

3. Cancellation.

- a. Each insurance policy will contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums will 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 will be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy will 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 will 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 will 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 E of this Exhibit D, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant 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. Consultant 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 Consultant 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 will 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 Consultant 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, Consultant, and each and every subcontractor (of every tier) will, 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 will be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant will 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

Consultant or its insurance broker will 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 will be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant will 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 will be mailed to:

EBIX Inc.
City of Santa Clara, Department of Parks and Recreation
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 Consultant will have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or will

be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT E 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. Consultant will 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 will be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, Consultants 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. Consultants 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 will 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, Consultant 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" will 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, Consultant and all subcontractors will 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 will 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 who fail to register and maintain their status as a public works contractor will 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 will 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 will 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 will be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City will 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 Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant's failure to fully perform its obligations under these provisions will 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.