

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
ADAMS POOL SOLUTIONS**

PREAMBLE

This Agreement is entered into as of the City’s execution date (Effective Date) between the City of Santa Clara, California, a chartered California municipal corporation (City) and Adams Pool Solutions, a California corporation, (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A1, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A1 – Scope of Services

Exhibit A2 – Racing and Training Pool Pictures

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Exhibit E – Payment Bond

Exhibit F – Performance Bond

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 the Effective Date and terminate upon the project completion date, not notice of completion issued by the City.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A1 within the time stated in Exhibit A1. Time is of the essence.

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is specified in Exhibit B, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

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

City of Santa Clara
Attention: Dale Seale
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at dseale@santaclaraca.gov

And to Contractor addressed as follows:

Adams Pool Solutions
3675 Old Santa Rita Road
Pleasanton, CA 94588
debbie@adamspools.com

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

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

GLEN R. GOOGINS
City Attorney

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

"CITY"

ADAMS POOL SOLUTIONS
a California corporation

Dated: _____

By (Signature): _____

Name: Debra Eula

Title: CFO

Principal Place of Business Address: 3675 Old Santa Rita Road
Pleasanton, CA 94588

Email Address: debbie@adamspools.com

Telephone: (925) 828-3100

Fax: N/A

"CONTRACTOR"

EXHIBIT A1 SCOPE OF SERVICES

The following Scope of Services defines the Services and responsibilities of Contractor and City for replastering services at the George F. Haines International Swim Center.

The Scope of Services include Exhibit A1 and Contractors bid response dated August 30, 2024 provide context, supplemental information, and are incorporated by reference to the extent not inconsistent with the Agreement.

1. OVERVIEW

- 1.1 Contractor shall provide pool replastering services for one racing pool and one training pool at the George F. Haines International Swim Center (ISC), including all labor, material, equipment, tools, etc. to provide services, in support of the Department of Parks & Recreation.
- 1.2 Site Address: 2625 Patricia Dr., Santa Clara, CA 95051
- 1.3 There are two pools that require replastering at the ISC, see below:
 - 1.3.1 Racing Pool: Measures 164' 1 ½" long x 75' 1" wide and holds 599,000 gallons of water.
 - 1.3.2 Training Pool: Measures 75' 1" long x 42' wide and holds 70,686 gallons of water.
- 1.4 See Exhibit A2 for pictures of the training and racing pool.
- 1.5 In addition, Contractor shall provide services to upgrade the drain in the training pool.

2. SCOPE OF SERVICES:

- 2.1 Services shall include, but are not limited to, the following:
 - 2.1.1 Replastering the pool surface,
 - 2.1.2 Replacing all underwater tiles with like in-kind color non-slip type,
 - 2.1.3 Replacing missing tiles above water line with like and kind,
 - 2.1.4 Replacing broken tiles above water line with like and kind,
 - 2.1.5 Removing and replacing section of pool deck concrete west side middle pool ladder and resetting ladder sleeves,
 - 2.1.6 Replacing all pool drain covers with new,
 - 2.1.7 Replacing all pool water returns covers with new, and
 - 2.1.8 Refilling pools once ready with potable water from hydrant across parking lot across from main entrance to the ISC.
- 2.2 The City shall be responsible for draining the pool prior to the commencement of services and will restart all pool circulation system components upon City's

- final approval after the completion of work.
- 2.3 Contractor shall pull all necessary permits with the County of Santa Clara prior to the commencement of services and finalize all permits with the County upon completion of services.
 - 2.4 There are no permits required by the City.
 - 2.5 Time is of the essence therefore the contractor must complete the project in an expeditious manner for the City to re-open the International Swim Center as soon as feasibly possible.
 - 2.6 All materials furnished by Contractor, or used in the performance of services, shall be in new and unused condition.

3. GENERAL REQUIREMENTS

Contractor shall:

- 3.1 Comply with all applicable federal, state, and local codes and ordinances.
- 3.2 Ensure all work is performed in a professional manner within the standards of the industry and original manufacturer of equipment, using proper equipment, methods, materials, and employees.
- 3.3 Provide training and certification, including OSHA safety training, for Contractor's employees engaged in the performance of services specified herein.
- 3.4 Take necessary steps to protect the public and all property from damage during operations and shall be responsible for any damage to the work or property caused by the Contractor's employees.
- 3.5 Repair or replace any property that is damaged directly or indirectly resulting from Contractor's work. This includes privately owned, as well as City-owned properties. This repair and/or replacement shall be done to the satisfaction of the City.
- 3.6 Ensure the worksite is left clean and in safe condition at the end of each workday, and at the conclusion of the project. The City shall not be responsible for any tools or equipment left onsite.
- 3.7 Safely remove and dispose of all debris.

4. POOL RESURFACING SERVICES

Contractor shall:

- 4.1 Provide all labor, materials, tools, transportation, supervision, and equipment necessary to resurface the racing pool and training pool at the ISC.
- 4.2 Remove all old plaster from the water line tile downward and apply new, white plaster using industry-standard methods. Finish shall be smooth throughout.
- 4.3 Remove all black, blue, and white tiles on the bottom of the pool, and replace them with new, slip-resistant tiles in matching colors.

- 4.4 Remove and replace, like in-kind, all main drain covers.
- 4.5 Remove and replace all pool water return covers.
- 4.6 Replace any missing or broken tiles above water line with like in-kind color and size.
- 4.7 Cut out cracked concrete around ladder handrail and replace it with new concrete and set handrails back in place. West side middle, long side, of the pool.
- 4.8 Refill the two pools with potable water once the plaster has been allowed to harden (cure), and in accordance with the manufacturer's recommended timeline. Pool shall be filled to waterline. The fire hydrant located outside of ISC front doors will be an available option for filling.

5. UPGRADE SERVICES FOR DUAL MAIN DRAIN SETUP FOR THE TRAINING POOL

Contractor shall provide the following services:

- 5.1 Saw cut the floor of the pool and excavate at existing main drain 2'x8'.
- 5.2 Replumb the existing main line to meet code.
- 5.3 Backfill with gravel, as applicable.
- 5.4 Tie new steel.
- 5.5 Install concrete.

6. SCHEDULE OF PERFORMANCE

- 6.1 All work shall be performed during normal business hours, Monday to Friday between the hours of 7:00 a.m. and 4:00 p.m. Pacific Time.
- 6.2 Should the weather or other conditions not be suitable for the performance of work, the City Project Manager shall have the authority to suspend the work.
- 6.3 If the City Project Manager orders a suspension of all the work or a portion of the work, due to unsuitable/inclement weather or to such other conditions as are considered unfavorable to the suitable execution of the work, the days on which the suspension is in effect shall not be considered working days.

7. INSPECTION

- 7.1 All work shall be subject to inspection by the City, at any time during the Contractor's performance of services.
- 7.2 When the contract work has been satisfactorily completed and the final clean-up performed, the City Project Manager will conduct a final inspection.

8. WORKMANSHIP WARRANTY REQUIREMENTS

- 8.1 All work shall be guaranteed against defects in workmanship and materials for

a period of no less than (1) year from date of completion of work. Typical wear, abuse, or neglect will be exempt.

- 8.2 Contractor shall repair or replace at his/her expense all other work, equipment, and/or material, including soil, that is damaged because of such defects.

9. WARRANTY REQUIREMENTS

- 9.1 The warranty period for materials shall be for a period of one year or within the manufacturers' warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the City. Contractor shall provide the City's authorized representative with all manufacturers' warranty documents upon completion of service and prior to leaving the job site.
- 9.2 Contractor shall warrant all work provided against any defects in workmanship or product and shall satisfactorily correct, at no cost to the City, any such defect that may become apparent within a period of one year after completion of work. The warranty period shall commence upon date of acceptance by the City.

DRAFT

EXHIBIT A2 RACING AND TRAINING POOL PICTURES

1. Racing Pool Pictures

Racing Pool



Southeast View of Racing Pool



Southwest View of Racing Pool



2. Training Pool Pictures

Training Pool



South View of Training Pool



Training Pool



**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The maximum amount payable for services provided by Contractor under this Agreement shall not exceed **Four Hundred Twenty Thousand Seventy-Two Dollars (\$420,072)** during the term of the Agreement, subject to the appropriation of funds. Any additional services or materials requested by the City that would exceed the preceding amount would be addressed in an Amendment to the Agreement. The compensation is specified below:

Labor Costs			
Description	Number of Hours	Hourly Rate	Total Labor Cost
Labor to Replaster the Racing Pool	1480	\$152.46	\$225,641
Labor to Replaster the Training Pool	409	\$149.20	\$61,023
Labor to Upgrade the Main Drain Setup for the Training Pool	30	\$160.00	\$4,800
TOTAL LABOR COSTS			\$291,464
Material Cost			
Description	Total Material Cost		
Material Cost for Replastering the Racing Pool	\$97,283		
Material Cost for Replastering the Training Pool	\$17,880		
Material Cost for Upgrade to the Main Drain Setup for the Training Pool	\$3,200		
TOTAL MATERIAL COSTS			\$118,363
Bonds Cost			\$10,245
MAXIMUM COMPENSATION NOT-TO-EXCEED			\$420,072

2. PRICING

Pricing is fixed for the term of the Agreement.

3. RATES FOR AS-NEEDED SERVICES

3.1. Should additional services be required the following rates shall apply:

3.1.1. Hourly Rate: \$115

3.1.2. Parts/Materials Cost Markup %: 15%

4. INVOICING REQUIREMENTS

- 4.1. Contractor shall provide an invoice to the City upon project completion and City approval of work completion. The City shall pay Contractor within thirty (30) days of City's receipt of an approved invoice.
- 4.2. Invoice shall include, at a minimum, the following:
 - 4.2.1. Date of Service
 - 4.2.2. Description of Services
 - 4.2.3. Unit Price/Hourly Rate/Parts Markup %
 - 4.2.4. Quantity/Number of Hours
 - 4.2.5. Extended Price
 - 4.2.6. Other Pertinent Information

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other

insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of

complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be emailed to:

ctsantaclara@ebix.com

Or mailed to:

EBIX Inc.
City of Santa Clara Department of Parks and Recreation
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall

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

DRAFT

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.

I. 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.

J. 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.

K. 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.

**EXHIBIT E
PAYMENT BOND**

DOCUMENT _____

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

This Construction Labor and Materials Payment Bond ("Bond"), dated _____, 200__, is in the penal sum of _____ Dollars, (\$ _____ .00), and is entered into by and between the parties listed below to ensure the payment of claimants under of the Construction Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 13, attached to this page. Any singular reference to _____ ("Contractor"), _____ ("Surety"), the City of Santa Clara, California, a chartered California municipal corporation ("City") or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

City of Santa Clara _____, Contract - - - -

Dated: _____ 200__

In the amount of \$ _____ Dollars

CONTRACTOR AS PRINCIPAL:

SURETY:

Contractor Name

Surety Name:

Principal Address of Business

Principal Address of Business

(Corp. Seal)

(Corp. Seal)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to Form:

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to City, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless City from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided City has promptly notified Contractor and Surety (at the address set forth on the signature page of this Bond) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety, and provided there is no City Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. If Contractor or its subcontractors however, fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, then Surety will pay for the same, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.
4. Consistent with the California Mechanic's Lien Law, Civil Code §3082, et seq., Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.
6. Amounts due Contractor under the Construction Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of Contractor and Surety under this Bond.
7. City shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations. Surety further hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract, or to the work to be performed thereunder, or materials or equipment to be furnished thereunder or the specifications accompanying the same, shall in any affect its obligations under this Bond, and it does hereby waive any requirement of notice or any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the specifications or any other changes.
9. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, per Civil Code §3249, must be commenced

before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §3184.

10. All notices to Surety or Contractor shall be mailed or delivered to the address shown on the signature page, and all notices to City shall be mailed or delivered as provided in Document 00520, Agreement. Actual receipt of notice by Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law, including, but not limited to, Civil Code §§3247, 3248, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted here from and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. DEFINITIONS
 - 13.1 Claimant: An individual or entity having a direct contract with Contractor or with a subcontractor of Contractor to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §3181. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of Contractor and Contractor's subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in Civil Code §3248(b).
 - 13.2 Construction Contract: The agreement between City and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 13.3 City Default: Material failure of City, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify termination of the Construction Contract.

END OF DOCUMENT

**EXHIBIT F
PERFORMANCE BOND**

DOCUMENT _____

CONSTRUCTION PERFORMANCE BOND

This Construction Performance Bond ("Bond"), dated _____, 200__, is in the penal sum of _____ Dollars, (\$ _____ .00), which is equal to one hundred percent of the Contract Price, and is entered into by and between the parties listed below to ensure the faithful performance of the Construction Contract listed below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 12, attached to this page. Any singular reference to _____ ("Contractor"), _____ ("Surety"), City of Santa Clara, California, a chartered California municipal corporation ("City") or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

City of Santa Clara _____, **Contract** _ - - -

Dated: _____ 200__

In the amount of \$ _____ Dollars

CONTRACTOR AS PRINCIPAL:

Contractor Name

Principal Address of Business

(Corp. Seal)

Signature: _____

Name: _____

Title: _____

SURETY:

Surety Name:

Principal Address of Business

(Corp. Seal)

Signature: _____

Name: _____

Title: _____

Approved as to Form:

BOND TERMS AND CONDITIONS

14. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to City for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
15. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
16. If there is no City Default, Surety's obligation under this Bond shall arise after:
 - 3.1 City has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 City has agreed to pay the Balance of the Contract Sum:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2 To a contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
17. When City has satisfied the conditions of Paragraph 3, Surety shall promptly (within thirty (30) days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of City, to perform and complete the Construction Contract (but City may withhold consent, in which case the Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids from qualified contractors acceptable to City for a contract for performance and completion of the Construction Contract, and, upon determination by City of the lowest responsible bidder, arrange for a contract to be prepared for execution by City and the contractor selected with City's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to City the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with City, determine in good faith the amount for which it may then be liable to City under Paragraph 6, below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to City with full explanation of the payment's calculation. If City accepts Surety's tender under this paragraph 4.4, City may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default. If City disputes the amount of Surety's tender under this paragraph 4.4, City may exercise all remedies available to it at law to enforce Surety's liability under paragraph 6, below.
18. If Surety does not proceed as provided in Paragraph 4, above, then Surety shall be deemed to be in default on this

Bond ten (10) days after receipt of an additional written notice from City to Surety demanding that Surety perform its obligations under this Bond. At all times City shall be entitled to enforce any remedy available to City at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or contractors.

19. Surety's monetary obligation under this Bond is limited by the amount of this Bond. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective work;
 - 6.2 The responsibilities of Contractor under the Construction Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Construction Contract, actual damages caused by non-performance of the Construction Contract, including but not limited to, all valid and proper back charges, offsets, payments, indemnities, or other damages;
 - 6.3 Additional legal, design professional and delay costs resulting from Contractor Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
20. No right of action shall accrue on this Bond to any person or entity other than City or its successors or assigns.
21. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
22. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between City and Contractor regarding the Construction Contract, or in the courts of the County of Santa Clara, or in a court of competent jurisdiction in the location in which the work is located.
23. All notices to Surety or Contractor shall be mailed or delivered to the address shown on the signature page, and all notices to City shall be mailed or delivered as provided in Document 00520, Agreement. Actual receipt of notice by Surety, City or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
24. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
25. Definitions.
 - 12.1 Balance of the Contract Sum: The total amount payable by City to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Construction Contract.
 - 12.2 Construction Contract: The agreement between City and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, including but not limited to, "default" as provided in Document 00700 General Conditions.
 - 12.4 City Default: Material failure of City, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the

Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

DRAFT