

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
NORTH AMERICAN YOUTH ACTIVITIES, LLC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and North American Youth Activities, a California Limited Liability Company, DBA Kidz Love Soccer (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

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 January 1, 2019 and terminate on December 31, 2019.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is One Hundred Seventy-Six Thousand, One Hundred Eight-Three dollars and Twenty cents (\$176,183.20), (Base \$140,946.56 plus a 25% contingency) 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: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kcastro@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

North American Youth Activities
PO Box 337
Corte Madera, CA 94976
and by e-mail at malcolm@kidzlovesoccer.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

“CITY”

NORTH AMERICAN YOUTH ACTIVITIES
A California Limited Liability Company

Dated: _____

By (Signature): _____

Name: Malcom Guthrie

Title: Managing Partner

Principal Place of
Business Address: PO Box 337 Corte Madera, CA 94976

Email Address: malcolm@kidzlovesoccer.com

Telephone: (408) 774-4629

Fax: N/A

“CONTRACTOR”

EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

Contractor shall provide a turn-key soccer program with experienced coaching staff to introduce the basic and creative fundamentals of soccer. Contractor shall provide field-tested soccer curriculum that incorporates imaginative games, skill demonstrations and scrimmages in a high-energy, motivating and non-competitive environment. Through the age appropriate curriculum, the goal is to improve their physical abilities, build self-confidence, cultivate a foundation of good sportsmanship and learn the value of effort, all while having fun. Contractor shall offer programs for toddlers through school age children.

The above-described Courses are summarized in the table below, by Title name, Sessions, Number of Meeting Dates (also referred herein as “classes”), Minimum Enrollees (also referred to herein as “Participants”) per Session, Maximum Enrollees per Session, and Day, Times and Duration.

Activity / Class Number	No. of Meeting Dates	Minimum Enrollees per Session	Maximum Enrollees per Session	Days of Week, Start Time, and Duration
15502	9	5	20	Sat, 8:45 AM, 30m
15503	9	5	20	Sat, 9:20 AM, 30m
15498	9	5	30	Sat, 10:00 AM, 30m
15489	9	5	30	Sat, 10:30 AM, 35m
15493	9	5	36	Sat, 11:05 AM, 45m
15496	9	5	36	Sat, 11:50 AM, 45m
15499	9	5	30	Sat, 2:15 PM, 30m
15490	9	5	30	Sat, 2:45 PM, 35m
15494	9	5	36	Sat, 3:20 PM, 45m
15497	9	5	36	Sat, 4:05 PM, 45m
15504	9	5	20	Sat, 5:00 PM, 30m
15491	8	5	36	Mon, 3:30 PM, 45m
15500	8	5	30	Mon, 4:15 PM, 35m
15505	8	5	20	Mon, 5:00 PM,

				30m
15492	9	5	36	Thu, 3:10 PM, 45m
15495	9	5	36	Thu, 3:55 PM, 45m
15501	9	5	30	Thu, 4:40 PM, 30 m
15506	9	5	20	Thu, 5:20 PM, 30m
15867	4	8	30	M, T, W, Th 9:00 AM, 3hrs
15868	4	8	30	M, T, W, Th 9:00 AM, 3hrs
15866	8	5	36	Mon, 4:00 PM, 45m
15851	8	5	36	Mon, 4:45 PM, 45m
15882	8	5	30	Mon, 5:30 PM, 35m
15886	8	5	20	Mon, 6:15 PM, 30m
15896	8	5	20	Thu, 9:00 AM, 30m
15880	8	5	30	Thu, 9:40 AM, 35m
15852	8	5	36	Thu, 3:10 PM, 45m
15859	8	5	36	Thu, 3:55 PM, 45m
15883	8	5	30	Thu, 4:40 PM, 35m
15887	8	5	20	Thu, 5:25 PM, 35m
15888	8	5	20	Sat, 8:45 AM, 30m
15889	8	5	20	Sat, 9:20 AM, 30m
15878	8	5	30	Sat, 10:00 AM, 30m
15847	8	5	30	Sat, 10:30 AM, 35m
15853	8	5	36	Sat, 11:05 AM, 45m
15860	8	5	36	Sat, 11:50 AM, 45m
15879	8	5	30	Sat, 2:15 PM, 30m
15848	8	5	30	Sat, 2:45 PM, 35m
15854	8	5	36	Sat, 3:20 PM, 45m
15861	8	5	36	Sat, 4:05 PM, 45m
15890	8	5	20	Sat, 5:00 PM,

				30m
15870	5	8	30	M,T,W,Th,F, 9:00 AM, 3hrs
15872	5	8	30	M,T,W,Th,F, 9:00 AM, 3hrs
15863	8	5	36	Mon, 4:00 PM, 45m
15856	8	5	36	Mon, 4:45 PM, 45m
15885	8	5	30	Mon, 5:30 PM, 35m
15892	8	5	20	Mon, 6:15 PM, 30m
15862	8	5	36	Thu, 4:00 PM, 45m
15855	8	5	36	Thu, 4:45 PM, 45m
15884	8	5	30	Thu, 5:30 PM, 35m
15891	8	5	20	Thu, 6:15 PM, 30m
15893	7	5	20	Sat, 8:45 AM, 30m
15894	7	5	20	Sat, 9:20 AM, 30m
15876	7	5	30	Sat, 10:00 AM, 30m
15849	7	5	30	Sat, 10:30 AM, 35m
15857	7	5	36	Sat, 11:05 AM, 45m
15864	7	5	36	Sat, 11:50 AM, 45m
15877	7	5	30	Sat, 2:15 PM, 30m
15850	7	5	30	Sat, 2:45 PM, 35m
15858	7	5	36	Sat, 3:20 PM, 45m
15865	7	5	36	Sat, 4:05 PM, 45m
15895	7	5	20	Sat, 5:00 PM, 30m
15871	5	8	30	M,T,W,Th,F, 9:00 AM, 3hrs
15873	5	8	30	M,T,W,Th,F, 9:00 AM, 3hrs

Contractor Responsibilities:

Contractor shall:

1. Provide all staffing required to host and conduct each Course.
2. Provide all necessary supplies and equipment required for the class including balls, goals, cones, and general coaching equipment.
3. Record and file all attendance at each Course, and submit all attendance records to the City at the end of the class, or as requested by the City during the Class.
4. Conduct participant surveys as provided by the City designed to measure participant satisfaction.
5. Contact designated City of Santa Clara staff member(s) in the event that a Course needs to be cancelled.
6. Contractor and contractors' staff shall be fingerprinted, and bear all such related costs prior to conducting any work under this agreement. Results of the check are processed by the Department of Justice through the City and the City in its sole discretion shall review and determine the results of the background check.
7. Contact the City at least one week prior to the commencement of a Course to obtain the class size and general enrollment information.
8. Make reasonable accommodations for all enrollees with special needs.
9. Contact the City's designated program supervisor and obtain prior written approval if Contractor wishes to advertise the Class.
10. Contractor may add course sections based on interest, facility and instructor availability.

City Responsibilities:

City shall:

1. Conduct all advertising of the Class
2. Provide the venue (Park Open Space) where the classes will be conducted, located at various neighborhood parks in Santa Clara CA
3. Provide the registration portal to enroll class participants and collect all registration fees from the enrollee.
4. The City will set registration fees in correlation to the contractor-provided "Base fee," as set forth for each Course in Exhibit B.

Contractor shall NOT be responsible for providing personal clothing or gear that is worn by the Class participants.

EXHIBIT B
SCHEDULE OF FEES

1. TIMING OF INVOICES AND PAYMENTS

City shall compensate Contractor in arrears at the conclusion of each Course conducted under this Agreement. Contractors shall invoice City within five (5) days after the end of the last Meeting Date of each Course. City shall pay Contractor within (30) thirty days of receiving a timely and properly completed invoice.

2. CONTENT OF INVOICE

A properly and completed invoice shall include the title/number of the course/class, attendance roster, with at least the course number and the course date range on the roster.

3. CALCULATION OF CONTRACTOR COMPENSATION

Based on the Invoices submitted by Contractor, City shall compensate Contractor based on the total number of Enrollees per Course, and Contractor shall receive a percentage of the Base fee for each Enrollee.

As set forth in the COMPENSATION TABLE below, the Contractor will be compensated per Enrollee according to the field titled "Compensation due to Contractor per Enrollee." Total Compensation per each course will be calculated by multiplying the product of the number of Enrollees (as reported by the Contractor in submitted invoices) by the "Base Fee per Enrollee," multiplied by the "Percentage of Base Fee due to Compensation."

If an Enrollee withdraws from a Course or enrolls after the start date of the Course, Compensation due to Contractor per Enrollee be pro-rated based on the actual Number of Meeting Dates the Enrollee attended.

The maximum compensation of this Agreement is not to exceed \$176,183.20 (Base \$140,946.56 plus a 25% contingency) for the duration of this Agreement, 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. The compensation described herein is inclusive of all expenses including but not limited to labor, materials, travel, overhead, general and administrative, and profit.

COMPENSATION TABLE

Course/Class Reg. #	Base Fee per Enrollee (\$)	Percentage of Base Fee due to Contractor	Compensation due to Contractor per Enrollee (\$)
15502	118	67.00	79.06
15503	118	67.00	79.06
15498	118	67.00	79.06
15489	118	67.00	79.06
15493	118	67.00	79.06
15496	118	67.00	79.06
15499	118	67.00	79.06
15490	118	67.00	79.06
15494	118	67.00	79.06
15497	118	67.00	79.06
15504	118	67.00	79.06
15491	107	67.00	71.69
15500	107	67.00	71.69
15505	107	67.00	71.69
15492	118	67.00	79.06
15495	118	67.00	79.06
15501	118	67.00	79.06
15506	118	67.00	79.06
15867	126	67.00	84.42
15868	126	67.00	84.42
15866	107	67.00	71.69
15851	107	67.00	71.69
15882	107	67.00	71.69
15886	107	67.00	71.69
15896	107	67.00	71.69
15880	107	67.00	71.69
15852	107	67.00	71.69
15859	107	67.00	71.69
15883	107	67.00	71.69
15887	107	67.00	71.69
15888	107	67.00	71.69
15889	107	67.00	71.69
15878	107	67.00	71.69
15847	107	67.00	71.69
15853	107	67.00	71.69
15860	107	67.00	71.69
15879	107	67.00	71.69

15848	107	67.00	71.69
15854	107	67.00	71.69
15861	107	67.00	71.69
15890	107	67.00	71.69
15870	147	67.00	98.49
15872	147	67.00	98.49
15863	107	67.00	71.69
15856	107	67.00	71.69
15885	107	67.00	71.69
15892	107	67.00	71.69
15862	107	67.00	71.69
15855	107	67.00	71.69
15884	107	67.00	71.69
15891	107	67.00	71.69
15893	96	67.00	64.32
15894	96	67.00	64.32
15876	96	67.00	64.32
15849	96	67.00	64.32
15857	96	67.00	64.32
15864	96	67.00	64.32
15877	96	67.00	64.32
15850	96	67.00	64.32
15858	96	67.00	64.32
15865	96	67.00	64.32
15895	96	67.00	64.32
15871	147	67.00	98.49
15873	147	67.00	98.49

4. ADDITIONAL SERVICES/CONTINGENCY

Should the City expand the “Maximum Enrollees per Session” of any Course, Contractor shall be compensated based on multiplying the number of additional Enrollees (as reported by the Contractor in submitted invoices) by the “Base Fee per Enrollee,” and further multiplied by the “Percentage of Base Fee due to Contractor.”

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 mailed to:

EBIX Inc.

City of Santa Clara [Parks and Recreation Department]

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

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.

