

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BAKER TILLY US, LLP**

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 Baker Tilly US, LLP, an Illinois limited liability partnership (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 the Effective Date and terminate on March 31, 2027.

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 set forth in Section 1 of 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. Contractor shall have no authority to bind City to any third-party agreement. Though the services may include Contractor's advice and recommendations, all decisions regarding the implementation of such advice or recommendations shall be the responsibility of, and made by, City.

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. This section shall not apply to information which is (a) publicly known; (b) already known to the Contractor; (c) disclosed to Contractor by a third party without restriction; (d) independently developed without use of the City's confidential information; or (e) disclosed pursuant to legal requirement or order, or as is required by regulations or professional standards governing the services performed.

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 (the "Deliverables") 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. Notwithstanding the foregoing, Contractor will maintain all ownership right, title and interest to all Contractor's Knowledge. For purposes of this Agreement "Contractor's Knowledge" means Contractor's proprietary programs, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark and other intellectual property rights related thereto, that are (1) owned or developed by Contractor prior to the Effective Date of this Agreement ("Contractor's Preexisting Knowledge") (2) developed or obtained by Contractor after the Effective Date, that are reusable from client to client and project to project, where City has not paid for such development; and (3) extensions, enhancements, or modifications of Contractor's Preexisting Knowledge which do not include or incorporate City's confidential information. To the extent that any Contractor Knowledge is incorporated into the Deliverables, Contractor grants to City a non-exclusive, paid up, perpetual royalty-free worldwide license to use such Contractor Knowledge in connection with the Deliverables, and for no other purpose without the prior written consent of Contractor. Contractor warrants that the Services will be performed in accordance with generally accepted industry standards of care and competence. Except as warranted elsewhere in this Agreement, this section 12 is Contractor's only warranty concerning the Services and any Deliverable, and is made

expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of merchantability, accuracy, title, noninfringement or fitness for a particular purpose, or otherwise.

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 & LIMITATION ON DAMAGES

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 (each a "Covered Person") from and against any third party claim, injury, liability, loss, cost, and/or expense or damage, including all reasonable costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent such claim, injury, etc., arises from Contractor's negligence, willful misconduct, or fraudulent acts or omissions in Contractor's performance of the Services 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. 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. Notwithstanding the foregoing, City hereby releases Contractor, its subsidiaries and their present or former partners, principals, employees, officers and agents from, and acknowledges that such parties shall not be required to indemnify City or any Covered Person against, any costs, fees, expenses, damages and liabilities (including attorneys' fees and all defense costs) to the extent such costs arise solely as a result of the negligence, willful misconduct or fraudulent acts or omissions of City or any Covered Person. Furthermore, because of the importance of the

information that City provides to Contractor with respect to Contractor's ability to perform the Services, City hereby releases Contractor and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, incurred as a direct result of liability arising from any written information, including representations by management, provided by City, its personnel or agents, that is materially incomplete, inaccurate or not current.

- 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.
- D. The contractual liability (including attorney's fees and all other costs) of Contractor to City and its present or former partners, principals, agents or employees related to any dispute or claim for damages relating to the performance of Services under this Agreement shall not exceed the fees paid to Contractor for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Contractor relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable to the other related to a contractual dispute over performance of Services, for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages. This limitation of liability shall not apply to third-party claims which are subject to Contractor's indemnification requirements in Section 14(A) above.
- E. Any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within twenty-four (24) months after the performance of the Services for which the action is brought, without consideration as to the time of discovery of any claim or any other statutes of limitations or repose.

- F. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. The terms of this Section 14 shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Agreement.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: City Auditor's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at dnoce@santaclaraca.gov

And to Contractor addressed as follows:

Baker Tilly US, LLP
205 N. Michigan Ave. Suite 2800
Chicago, IL 60601
and by e-mail at kyle.orourke@bakertilly.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. THE PARTIES EXPRESSLY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN

ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER.

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.

26. DATA PRIVACY & SECURITY

- A. To the extent the Services require Contractor receive personal data or personal information from City, Contractor may process any personal data or personal information, as those terms are defined in applicable privacy laws, in accordance with the requirements of the applicable privacy law relevant to the processing in providing Services hereunder. Applicable privacy laws may include any local, state, federal or international laws, standards, guidelines, policies or regulations governing the collection, use, disclosure, sharing or other processing of personal data or personal information with which Contractor or its clients must comply. Such privacy laws may include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Contractor is acting as a Service Provider/Data Processor in relation to City personal data and personal information, as those terms are defined respectively under the CCPA/GDPR. City is responsible for notifying Contractor of any data privacy laws the data provided to Contractor is subject to and City represents and warrants it has all necessary authority (including any legally required consent from data subjects) to transfer such information and authorize Contractor to process such information in connection with the Services described herein.
- B. Contractor has established information security related operational requirements that support the achievement of its information security

commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Contractor's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define Contractor's approach to how systems and data are protected. City is responsible for providing timely written notification to Contractor of any additions, changes or removals of access for City personnel to Contractor provided systems or applications. If City becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, City should timely notify Contractor via email at dataprotectionofficer@bakertilly.com.

- C. Contractor does not treat de-identified data or aggregate consumer information as personal data or personal information, and Contractor reserves the right to convert City personal data or personal information into de-identified data or aggregate consumer information for Contractor's own purposes. As a benefit of benchmarking City to others in its industry, City allows Contractor to enter City's confidential accounting and/or financial data into the third party benchmarking software that Contractor utilizes. By signing this Agreement, City expressly authorizes Contractor to make such disclosure of City's confidential accounting and/or financial data, as Contractor may elect within its discretion, with the understanding that, in doing so, City will not be specifically identified.

27. CONTRACTOR ENTITY

Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

[Signature page follows]

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: _____

Office of the City Attorney
City of Santa Clara

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

“CITY”

BAKER TILLY US, LLP
AN ILLINOIS LIMITED LIABILITY PARTNERSHIP

Dated: February 23, 2022

By (Signature): Kyle O'Rourke

Name: Kyle O'Rourke

Title: Principal

Principal Place of
Business Address: 205 N Michigan Ave. Chicago, IL 60601

Email Address: Kyle.orourke@bakertilly.com

Telephone: 312 228 7248

Fax: 630 645 6294

“CONTRACTOR”

EXHIBIT A
SCOPE OF SERVICES

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

1. INTRODUCTION

- 1.1. Contractor shall provide internal auditing and risk assessment consulting services in support of the City's Auditor's Office.
- 1.2. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's SOQ 21-22-83 (including subsequent updates), Contractor's proposal response dated August 2, 2021, Contractor's oral presentation materials dated December 1, 2021, and Contractor's clarification document dated December 3, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. CITYWIDE RISK ASSESSMENT AND ANNUAL AUDIT WORK PLAN

- 2.1. **Task 1 – Citywide Risk Assessment.** The scope of assessment includes conducting all required work necessary to identify and prioritize a wide area of risks, including strategic, compliance, financial, and operational risks. At a minimum, Contractor shall:
 - 2.1.1. Review administrative and financial policies, procedures, and practices.
 - 2.1.2. Identify risks that may impact the City's ability to achieve its strategic goals. For more information on the City Council's strategic pillars, visit <https://www.santaclaraca.gov/our-city/government/mayor-and-council/city-council-goals-and-priorities>.
 - 2.1.3. Examine methods, procedures, and practices used to provide reasonable assurance that City assets are safeguarded, and that staff is complying with approved policies, procedures and practices.
 - 2.1.4. Assess the City's overall control environment by reviewing:
 - 2.1.4.1. Management's philosophy and operating style regarding integrity and ethical values.
 - 2.1.4.2. Staff's philosophy and operating style regarding integrity and ethical values.
 - 2.1.4.3. Assignments of authority and responsibilities for ensuring protection of City assets and compliance with policies.
 - 2.1.4.4. Existing policies and procedures.
 - 2.1.5. Review the City's ongoing identification and assessment of risk, including:

- 2.1.5.1. The City's approach to risk identification and risk mitigation.
 - 2.1.5.2. The alignment of the City's objectives with the assessment of risk.
 - 2.1.6. Review the City's control activities (for protection of assets and compliance with policies), including:
 - 2.1.6.1. Separation of duties
 - 2.1.6.2. Authorization and approval
 - 2.1.6.3. Custodial and security protocols
 - 2.1.6.4. Review and reconciliation
 - 2.1.6.5. Variance analysis
 - 2.1.6.6. Adequate documentation
 - 2.1.6.7. Physical inventories
 - 2.1.7. Survey senior management, mid-management and supervisory responsiveness to identified problems/weaknesses, including:
 - 2.1.7.1. The timeliness with which internal control deficiencies are identified and communicated.
 - 2.1.7.2. Appropriateness of management's selection of appropriate risk response – avoidance, acceptance, reduction, or sharing of an identified risk.
 - 2.1.8. Identify the strengths, weaknesses, challenges and key areas of risks.
 - 2.1.9. Make recommendations for improvement and help to identify future audit priorities.

2.2. Task 2 – Annual Audit Work Plan

- 2.2.1. Each year during the term of the agreement, Contractor shall prepare and submit an Audit Work Plan to the City's Auditor. This Audit Work Plan shall consider the results of the Citywide Risk Assessment, input from the City Auditor and City Audit Committee, and must contain at a minimum the following items:
 - 2.2.1.1. An overview.
 - 2.2.1.2. A list of proposed audit assignments.
 - 2.2.1.3. Any other items Consultant believes should be included.
- 2.2.2. Each Audit Work Plan is subject to review and approval of the City's Auditor.

- 2.2.3. Contractor shall prepare and submit all necessary reports, including making necessary presentations at regular City Council meetings.

3. INTERNAL AUDIT WORK / OTHER AUDIT SERVICES

3.1. Internal Audit Work. The City's Auditor will review the proposed audit assignments and determine if internal staff can accomplish the audit assignments on the work plan. The City will request Contractor to provide a quote as to the cost, based on the per hour rate as set forth in Exhibit B. The City reserves the right to negotiate the quote or decline to engage the Consultant's services for such. If the City determines Consultant will be utilized to perform any of the internal audits as outlined in the annual audit plan, Consultant shall conduct such audits according to the International Professional Practices Framework of Internal Auditing as set forth by the Institute of Internal Auditors (IIA). Procedures that should be included, but not limited to the following:

- 3.1.1. Perform sampling procedures to test and evaluate areas of the City's internal controls, taking into account risk, control weaknesses, size, and complexity of operations.
- 3.1.2. Make use of and build upon the internal control evaluation work done by the City's independent external auditor during that firm's annual financial statement audit.
- 3.1.3. Review any recommendations regarding the internal controls with the City Auditor and City Audit Committee.
- 3.1.4. Prepare reports which analyze significant findings and recommend changes for strengthening internal controls and reducing identified risks.
- 3.1.5. Present draft results of audit projects per the audit plan to the City Auditor with the final report to the Council Audit Committee including:
 - 3.1.5.1. Provide estimated costs by audit project.
 - 3.1.5.2. Provide an opportunity for feedback and response by departments under audit along with the City Auditor.
 - 3.1.5.3. Provide regular reports on the status of ongoing internal audits.
 - 3.1.5.4. Provide written reports with results of audits, and publish audits to the City Auditor's Web page. Based on the audit work performed, Consultant shall provide written reports and oral PowerPoint presentations. The presentations must address the audit findings and conclusions, audit recommendations that will improve the efficiency and effectiveness of the departments or programs audited, and corrections needed to address any operational deficiencies or non-compliance issues found.
 - 3.1.5.5. Work with City Auditor to implement recommendations.

3.1.6. Audit Reports. An audit report must be issued for each project selected from the annual audit plan by the Council Audit Committee. The contents of the audit report will vary depending on nature of the audit. However, each audit report will contain, as a minimum, these elements:

3.1.6.1. The objective and scope of the engagement.

3.1.6.2. A management summary of the results of the audit.

3.1.6.3. The general procedures utilized on the audit.

3.1.6.4. The specific recommendations or findings, with adequate descriptions of the opportunities for improvement or weaknesses identified.

3.1.6.5. Comments from the auditee regarding the recommendations or findings.

3.1.6.6. The appropriate and reasonable action steps to implement recommendations or recommendations to correct the identified findings.

3.2. Other Audit Services. Additional audit services, when authorized in writing by the City, Contractor shall be compensated for by a fee mutually agreed upon between the City and Contractor, or on a time-and-materials basis in accordance with Contractor's hourly rates set forth in Exhibit B.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The maximum compensation the City will pay Contractor for all professional fees, costs and expenses provided under this Agreement shall not exceed **Four Forty-Six Thousand Seven Hundred Fifty Dollars (\$446,750)**, subject to annual appropriation of funds. Any additional professional fees, costs and expenses requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

| Cost Element | Amount |
|---|------------------|
| Citywide Risk Assessment and Annual Audit Work Plan | \$196,750 |
| Internal Audit Work/Other Audit Services | \$250,000 |
| Maximum Compensation | \$446,750 |

2. CITYWIDE RISK ASSESSMENT AND ANNUAL AUDIT WORK PLAN FEE SCHEDULE

The following sets forth the estimated annual cost for Contractor to perform the services described in Section 2 of Exhibit A (Scope of Services). Contractor shall invoice the City based on hours incurred up to the annual not to exceed amount. In the event Contractor incurs cost in excess of the annual not-to-exceed amount, the City shall not be required to pay, unless the City has agreed in writing authorizing the additional cost.

2.1. Year 1 – Cost summary

| Activity | Hours | Total Fees |
|---|--------------|-------------------|
| Task 1: Conduct Citywide RiskAssessment | 280 | \$61,400 |
| Task 2: Preparation of the Annual Audit Work Plan | 60 | \$15,300 |
| TOTAL ANNUAL NOT TO EXCEED | | \$76,700 |

2.2. Year 2 – Cost summary

| Activity | Hours | Total Fees |
|---|--------------|-------------------|
| Task 1: Conduct Citywide RiskAssessment | 135 | \$29,475 |
| Task 2: Preparation of the Annual Audit Work Plan | 30 | \$7,650 |
| TOTAL ANNUAL NOT TO EXCEED | | \$37,125 |

2.2.1. Interviews limited to ten to twelve (10-12) individuals, likely consisting of members of Council and key department heads.

2.2.2. Conducting a risk assessment survey to obtain feedback from other members of management. The survey will focus on changes to operations

from year 1, emerging risks, and each participant's assessment of key risk areas specific to their area of focus.

2.3. Year 3 and 5 – Cost summary

| Activity | Hours | Total Fees |
|---|--------------|-------------------|
| Task 1: Conduct Citywide Risk Assessment | 0 | \$0 |
| Task 2: Preparation of the Annual Audit Work Plan | 40 | \$9,925 |
| TOTAL ANNUAL NOT TO EXCEED | | \$9,925 |

2.3.1. In years 3 and 5, Contractor will meet with City audit staff to make adjustments to the Audit Plan. This will enable the City to be agile and adapt to emerging risks, but limit resources devoted annually to the risk assessment process. In these years, Contractor will leverage its knowledge of the City, the evolving risk landscape, and conversations with City audit staff to 1) evaluate the Annual Audit Work Plan, and 2) determine if any adjustments should be made. If necessary, the Annual Audit Work Plan will be amended to meet the audit needs of the City at the time.

2.4. Year 4 – Cost summary

| Activity | Hours | Total fees |
|---|--------------|-------------------|
| Task 1: Conduct Citywide RiskAssessment | 240 | \$53,150 |
| Task 2: Preparation of the Annual Audit Work Plan | 40 | \$9,925 |
| TOTAL ANNUAL NOT TO EXCEED | | \$63,075 |

2.4.1. In year 4, Contractor will conduct an engagement similar in scope to year 1. Keydrivers of the reduction in costs from year 1 include limiting the on-boarding and introductions necessary to complete work and familiarity with City processes. Contractor anticipates conducting a risk assessment survey in year 4.

2.5. Assumptions

2.5.1. The City will provide adequate support, preparedness and cooperation during each phase or project.

2.5.2. City staff will be available for interviews as scheduled.

2.5.3. The City provides requested information in a timely manner, in preferred formats (Excel for financials, Word for other documents) and Contractor does not need to make significant modification or manipulation.

2.5.4. There are no significant changes in scope.

3. INTERNAL AUDIT WORK/OTHER AUDIT SERVICES

The City has set aside the amount \$250,000 for the payment of internal audit work and other audit services as described in Section 3 of Exhibit A (Scope of Services). Contractor shall prepare a statement of work based on the City's requirements, propose a fee based on the rates set forth in the table below, and obtain written approval from the City prior to commencing work under this section.

| Staff level | Hourly rate |
|--------------------|--------------------|
| Partner/Director | \$375 |
| Senior Manager | \$275 |
| Manager | \$245 |
| Senior Consultant | \$210 |
| Consultant | \$150 |

4. INVOICING

- 4.1. If Contractor invoices monthly for a "fixed fee," then Contractor will base its monthly invoice on the percentage of services completed during the previous month.
- 4.2. If time and materials is the basis of compensation, then Contractor will base its invoice on the hours and professional fees associated with the services completed during the invoice period.
- 4.3. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

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 (if any), non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of 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. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of 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 for the Commercial General Liability and Business Automobile Liability insurance policies.
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. Contractor shall provide written notice to City at least ten (10) days prior to the effective date of any material modification or cancellation of the insurance coverages required herein. 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. Contractor shall provide written notice to City at least thirty (30) days prior to the effective date of any material modification or cancellation of the insurance coverages required herein. 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 E of this Exhibit C, above.

F. 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.

G. 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.

H. 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. 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 provided by email to: **ctsantaclara@ebix.com**.

Or by mail to:

EBIX Inc.
City of Santa Clara – City Auditor’s Office
P.O. Box 100085 – S2
Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

I. 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.