

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
WOODARD AND CURRAN  
FOR  
SANITARY SEWER HYDRAULIC MODEL MAINTENANCE AND SUPPORT**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and **WOODARD AND CURRAN**, a Maine 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 design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

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**

### **2.1 Initial Term**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the Initial Term of this Agreement shall begin on July 1, 2023 and terminate on June 30, 2026 (“Initial Term”).

### **2.2 Options to Extend**

The City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional one-year terms through June 30, 2028 (“Option Periods”). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of the Agreement.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

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

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

## **4. WARRANTY**

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended 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 million dollars (\$1,000,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

**7. TERMINATION**

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

**8. ASSIGNMENT AND SUBCONTRACTING**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or

transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

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

**9. NO THIRD PARTY BENEFICIARY**

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

**10. INDEPENDENT CONTRACTOR**

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

**11. CONFIDENTIALITY OF MATERIAL**

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

**12. OWNERSHIP OF MATERIAL**

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

**13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of

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

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

**14. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

**15. INSURANCE REQUIREMENTS**

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

**16. WAIVER**

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

## 17. NOTICES

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

City of Santa Clara  
Attention: Public Works Department—Engineering / Design Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 985-7936

And to Contractor addressed as follows:

Gisa Ju, Principal-in-Charge, Vice President  
Woodard & Curran  
51 E. Campbell Avenue, Suite 128  
Campbell, CA 95008  
and by e-mail at [gju@woodardcurran.com](mailto:gju@woodardcurran.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: \_\_\_\_\_

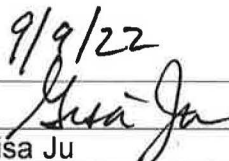
Dated: \_\_\_\_\_

Office of the City Attorney  
City of Santa Clara

Rajeev Batra  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**WOODARD AND CURRAN**  
a Maine corporation

Dated: 9/9/22  
By (Signature):   
Name: Gisa Ju  
Title: Principal-in-Charge, Vice President  
Principal Place of Business Address: 51 E. Campbell Avenue, Suite 128, Campbell, CA 95008  
Email Address: gju@woodardcurran.com  
Telephone: (408) 831-4800  
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. Consultant and Contractor are used interchangeably in this Exhibit A.

### **I. OBJECTIVE**

The City of Santa Clara (City) desires to engage a qualified firm (Consultant) to perform professional services for ongoing maintenance and support of the City's sanitary sewer hydraulic model on an as-needed basis.

### **II. BACKGROUND**

City has a population of approximately 130,000 and is served by a wastewater collection system consisting of approximately 288 miles of sewer pipelines and seven sewage pump/lift stations. The collection system conveys wastewater flows to the San Jose-Santa Clara Regional Wastewater Facility (RWF), located north of Highway 237 in San Jose. The City also receives flow from the Cupertino Sanitation District (CuSD) at Homestead Road under an agreement with the City. The wastewater is conveyed from the City to the RWF at two locations: at the northeast corner of the City just east of Lafayette Street, where flow is pumped via the Northside and Rabello pump stations in force mains to the RWF; and on the eastern side of the City east of De La Cruz Boulevard and Highway 101, where flow discharges by gravity into a 48-inch sewer in Trimble Road that conveys the flow to the City of San Jose's interceptor in Zanker Road.

At the time services commence under this Agreement, it is anticipated that the City's sanitary sewer hydraulic model, using InfoWorks ICM, will represent the entire sanitary sewer collection system (all-pipes model). The system includes approximately 5,200 manholes and 5,600 pipe segments. The original model was developed in 2007 and has been updated several times. In 2009, an update was completed to include land uses consistent with the City's General Plan update which includes future land uses based on the 2035 planning horizon. A major update to the model was completed as part of the 2016 Sanitary Sewer Master Plan Update. The model has also been continuously updated to reflect developments with intensified land uses and to incorporate sanitary sewer projects impacting the model pipe network. At the time services commence under this Agreement, it is anticipated that the City will be in the process of completing the most recent update to the hydraulic model as part of the Sanitary Sewer Master Plan (SSMP) Update (scheduled to begin late 2022 and complete in 2024).

The hydraulic model is anticipated to include three flow scenarios based on the SSMP Update work: 1) existing; 2) near-term; and 3) future.

### **III. BASIC SERVICES—GENERAL**

The Consultant shall provide professional services to maintain and support the City's sanitary sewer hydraulic model including the following major activities: 1) perform hydraulic model runs for development projects; 2) perform as-needed model runs and analysis based on City requests; and 3) perform general model maintenance and updates.

Consultant shall provide all equipment, software, materials and experienced personnel necessary to provide the professional services.

### **IV. BASIC SERVICES**

The Consultant shall perform the professional services required to achieve the project objective(s). Tasks are anticipated to include, but are not necessarily be limited to, those listed below.

#### **Ongoing Model Maintenance and Support**

General—provide ongoing model maintenance and respond to as-needed modeling requests from City staff. Requests are irregular. Some months may pass with no requests, and, at other times, multiple requests will occur within a short period of time.

#### **Task 1—Development Reviews**

- a. Perform development reviews for proposed developments to assess available sewer capacity in the City's sanitary sewer system
  - i. Estimate sewer flows from development based on proposed land use, number of units, square footage, or other information provided by the developer and/or City
  - ii. Use professional knowledge and judgement to determine if the development's proposed flow is significant enough to require a sewer model run. Development projects that add negligible flow to the system only need to be added to the model. Model run and technical memo are not needed for development projects with negligible flow.
  - iii. Run the sewer model with the proposed development flow, if needed, to assess the impact of additional flow on the sewer system.
  - iv. Potentially extend the model network to include smaller diameter existing pipes that would serve the development.
  - v. Identify potential solutions to address capacity deficiencies, if requested by the City.
  - vi. Prepare a technical memorandum (one draft and one final, at a minimum), pipeline profiles documenting the hydraulic grade line results, and electronic files of the latest model. The technical memorandum must include a detailed listing of the flow assumptions,

- including the flows added and removed (if applicable) for the development.
- vii. The proposed development may include changes in land use, discharge entitlement per development agreement, pipe configuration, or lot line adjustment, etc. Update the model if City approves the changes. Update base flow scenarios based on tracked development status as provided by the City.
  - viii. Meet with City staff as needed to review and explain results of model runs and to discuss alternatives, if applicable, for resolving deficiencies.
  - ix. Periodically update base flow scenarios based on tracked development status (proposed, approved, constructed, etc.) as provided by the City
- b. Maintain a log of development project review requests
    - i. Track time expended for each individual review request
    - ii. Report to the City monthly the total time expended and fee for each request
    - iii. Provide a fiscal year-end summary of all review requests
  - c. Deliverables for Development Reviews
    - i. Technical memoranda (TM) summarizing model results for each model run including model inputs. TM shall include flows in the downstream model trunk, pipe profiles, and required larger trunk sewer sizes if needed to accommodate additional flows.
    - ii. Electronic files of updated model and model runs
    - iii. Time and fee tracking logs and summary reports

## **Task 2—As-Needed Model Requests**

- a. Provide General Model Support on an As-needed Basis
  - i. General—Consultant shall provide modeling support in response to specific requests by the City. The work shall include, but is not limited to the following tasks:
  - ii. Provide model predicted flows for given pipes
  - iii. Evaluate available pipe capacity to accommodate temporary flows in dry season or wet season
  - iv. Provide model runs and analysis in support of City design projects
  - v. Other as-needed requests from the City not related to development reviews
- b. Maintain a log of general model support
  - i. Track time expended for each type of general model support activity
  - ii. Report to the City monthly the total time expended and fee for each request

- iii. Provide a fiscal year-end summary of all as-needed general model support requests
- c. Deliverables for General Model Support on an As-Needed Basis
  - i. Results of model predicted flow for given pipes & pump stations
  - ii. Results of pipe capacity evaluation
  - iii. Time and fee tracking logs and summary reports

### **Task 3—General Model Maintenance and Updates**

- a. Provide General Model Maintenance and Updates
  - i. General—Consultant shall provide on-going model maintenance and updates. This task is intended for system-wide updates and general model maintenance. General model maintenance work that is necessary for keeping the model organized and the scenarios consistent shall be performed as agreed to by the Consultant and City or for addressing specific requests by City. The Consultant shall provide clear and detailed documentation in the monthly invoices of general model maintenance work performed. System-wide updates shall be conducted at the request of the City. The work shall include, but is not limited to, the following tasks:
    - ii. Provide on-going model maintenance, including periodic QA/QC reviews for consistent documentation in model files, maintaining model network and scenario organization, and maintaining consistent archiving of completed requests
    - iii. Update the model per record drawings for newly constructed sanitary sewer system improvements
    - iv. If requested by the City, review current water consumption data and update existing model flows
    - v. Provide other model update activities as needed, as requested and discussed with City staff
  - b. Maintain a log of general model maintenance work
    - i. Track time expended for each type of model maintenance work
    - ii. Report to the City monthly the total time expended and fee for each activity or request
    - iii. Provide a fiscal year-end summary of all model maintenance work
- c. Deliverables for General Model Maintenance and Updates
  - i. Model files and/or files and results exported from the model, as requested by the City
  - ii. Technical Memoranda or other documentation to describe requested updates and methodologies used

**EXHIBIT B  
SCHEDULE OF FEES**

**I. GENERAL PAYMENT**

The total payment to the Contractor for Basic Services, as stated in **Exhibit A**, shall not exceed \$1,000,000. In no event shall the amount billed to City by Contractor for services under this Agreement exceed \$1,000,000, subject to budget appropriations.

Billing shall be on a monthly basis based on the services performed for each task. Contractor shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the Task invoiced, percent complete of the Task, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period. All invoices shall provide a written description of work performed during the invoice period, deliverables completed, and progress to date on Tasks being invoiced in order to support the amount invoiced.

**II. BASIC SERVICES**

The total payment to Contractor for all work necessary for performing all Tasks, as stated in Exhibit A, shall be on a time and materials basis.

The table below includes the initial budget amounts for each Task. The City may reallocate budget from Tasks to other Tasks and create new Tasks as appropriate for specific requests.

The Contractor shall bill time and materials spent on a Task under the appropriate Task and will not be allowed to charge to future or inactive tasks unless approved in writing by City. The Contractor shall provide a summary of dates and hours charged per date by individual, and individual timesheets, if requested by City. The hours and amounts charged to each Task shall be proportionate to the services rendered.

<b>Description</b>		<b>Amount</b>
Task 1	Development Reviews	\$450,000
Task 2	As-Needed Model Requests	\$450,000
Task 3	General Model Maintenance and Updates	\$100,000
<b>Total</b>		<b>\$1,000,000</b>

### III. MISCELLANEOUS EXPENSES

Miscellaneous Expenses including, but necessarily limited to, duplication costs, outside reproduction, courier fees, mailing fees, mileage, and travel shall not be paid or reimbursed separately. The cost for all miscellaneous expenses shall be deemed included in the Contractor rates and/or the total amount paid for the respective task.

### IV. RATE SCHEDULE

Charges for personnel engaged in professional and/or technical work shall be based on the actual hours directly chargeable to the work.

Rates by classification are listed below. The initial Rate Schedule included below shall remain fixed for the 2023 calendar year.

For calendar year 2024 and thereafter, the rate schedule may be updated to include rate increases consistent with the San Francisco Bay Area Consumer Price Index (with each yearly adjustment capped at 3%). Changes shall be based on the percentage difference between the CPI in October of the previous year and the CPI in October of the current year.

Any classifications added to the rate schedule, or staff members changing classifications, shall be approved in writing by City.

#### Woodard & Curran Rate Schedule (2023):

<b>Labor Category / Classification</b>	<b>Hourly Rate (\$)</b>
Engineer 1 (E1), Scientist 1 (S1), Geologist 1 (G1), Planner 1 (P1), Technical Specialist 1 (TS1)	194
Engineer 2 (E2), Scientist 2 (S2), Geologist 2 (G2), Planner 2 (P2), Technical Specialist 2 (TS2)	221
Engineer 3 (E3), Scientist 3 (S3), Geologist 3 (G3), Planner 3 (P3), Technical Specialist 3 (TS3)	254
Project Engineer 1 (PE1), Project Specialist 1 (PS1), Project Geologist 1 (PG1), Project Planner 1 (PP1), Project Technical Specialist 1 (PTS1)	265
Project Engineer 2 (PE2), Project Specialist 2 (PS2), Project Geologist 2 (PG2), Project Planner 2 (PP2), Project Technical Specialist 2 (PTS2)	281
Project Manager 1 (PM1), Technical Manager 1 (TM1)	302
Project Manager 2 (PM2), Technical Manager 2 (TM2)	319

<b>Labor Category / Classification</b>	<b>Hourly Rate (\$)</b>
Senior Project Manager (SPM), Senior Technical Manager (STM)	340
Senior Technical Practice Leader (STPL), National Practice Leader (NPL), Strategic Business Unit Leader (SMUL)	356
Software Engineer 1 (SE1)	178
Software Engineer 2 (SE2)	200
Software Engineer 3 (SE3)	216
Designer 1 (D1)	151
Designer 2 (D2)	184
Designer 3 (D3), Senior Software Developer (SSD)	189
Senior Designer (SD)	194
Project Assistant (PA), Project Accountant (PAC), Project Delivery Specialist (PDS)	130
Senior Assistant (SA), Billing Manager (BM), Senior Project Assistant (SPA)	151
Marketing Manager (MM), Graphics Manager (GM), Marketing Assistant (MA), Graphic Artist (GA)	151

## **V. SUBCONSULTANTS / SUBCONTRACTORS**

Contractor shall request City's approval in writing prior to engaging subconsultants/subcontractors for any work under this Agreement. If approved, subconsultants/subcontractors shall be billed as actual cost plus 10%. Total markup on subconsultant/subcontractor costs is capped at 10%.

**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.
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 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



## **EXHIBIT D LABOR COMPLIANCE ADDENDUM**

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

### **A. Prevailing Wage Requirements**

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://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](http://www.dir.ca.gov).
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards,

copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

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

## B. Audit Rights

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

or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

### C. Enforcement

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

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