



Agenda Report

23-1532

Agenda Date: 2/7/2023

REPORT TO COUNCIL

SUBJECT

Action on an Agreement with David L. Gates & Associates, Inc. for Design Professional Services for the Henry Schmidt Park Playground Rehabilitation Project

COUNCIL PILLARS

Deliver and Enhance High Quality Efficient Services and Infrastructure
Enhance Community Sports, Recreational and Arts Assets

BACKGROUND

In 1965, the City of Santa Clara acquired eight and a half acres of farmland, previously used as a prune orchard, since 1894, from Martin and Ann Perlenda. Dedicated in 1977, Henry Schmidt Park master plan contains a recreation and restroom building, four tennis courts, a basketball court, a softball field, an open grass play area, a playground, an on-site parking lot, picnic areas, and various park amenities. The park is bounded by Los Padres Boulevard to the west, Saratoga Avenue to the south, and residential properties to the north and east. The 2018 facility condition assessment indicated that the playground and amenities were in poor condition and the building was in fair condition. However, since then, the playground condition was downgraded to critical as the apparatus (train station theme) were removed due to their unsafe condition.

The Henry Schmidt Park Playground Rehabilitation Project (Project) will be completed in two phases. Phase I of the Project includes reviewing the condition of the park site, obtaining community input, developing a prioritized renovation plan, and completing a preferred schematic design for the playground rehabilitation. Phase II of the Project includes development of the construction plans according to the approved schematic design meeting current regulations, and construction of the Project.

The proposed Agreement for Phase I of the Project includes the following scope of services: conduct a detailed site and facility condition assessment, and ADA evaluation; perform community outreach; and prepare an overall site plan, scope of work, and schematic design for the playground rehabilitation, including a presentation of the proposed plans to the Parks & Recreation Commission for recommendation to City Council. The scope of work for Phase II of the Project will depend on the results of Phase I, but will generally include: preparation of bid documents (plans, specifications, and engineer's estimate - PS&E) for public works bidding based on the approved schematic design and project site plan; assistance with obtaining Building and Fire permits; and provision of engineering support services during the bid, award, construction, and post-construction stages of the Project.

DISCUSSION

Pursuant to City Code Section 2.105.140(c) and State laws governing procurement of architectural and engineering services, the City followed a qualifications-based selection process whereby

proposers are evaluated and the most qualified is selected, subject to negotiation of fair and reasonable compensation.

In August 2022, the City published a Request for Proposal (RFP) seeking proposals from qualified engineering firms to provide engineering services to develop a park master design and construction documents for the Henry Schmidt Park and Warburton Park & Pool Rehabilitation Projects. Two proposals were received from the following firms:

- David L. Gates & Associates, Inc.
- O'Dell Engineering, Inc. (O'Dell)

The proposals were independently evaluated by a three-member team. Both firms were invited to participate in oral interviews to introduce their proposed project team members and demonstrate their experience and capacity to meet the City's requirements. After concluding the evaluation process, the team recommends the award of the Henry Schmidt Park Playground Rehabilitation Project to David L. Gates & Associates, Inc. and the Warburton Park & Pool Rehabilitation Project to O'Dell Engineering, Inc. Staff will bring the agreement with O'Dell Engineering, Inc. for Council approval under a separate report.

Staff will return to Council for Phase II services after Council and the Parks & Recreation Commission have reviewed and approved the final schematic design at the end of Phase I.

ENVIRONMENTAL REVIEW

This action is for design professional services and the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") Guidelines section 15378 because it does not pose a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

The proposed Agreement for David L. Gates & Associates, Inc. is for a total not-to-exceed amount of \$109,566. This amount includes \$99,605 for basic services and a contingency of \$9,961 (10%) for additional services due to the age of the playground, park site, building and unforeseen conditions that may require additional effort. There is current funding of \$235,000 for this agreement (Phase 1) in the Henry Schmidt Park Playground Rehabilitation Project in the Parks & Recreation Capital Fund. When additional funding is needed to implement Phase 2, Park In-lieu fees will be requested for allocation towards the Project.

COORDINATION

This report has been coordinated with the Parks & Recreation Department, Public Works Department, the Finance Department, and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the

public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Authorize the City Manager to execute an agreement with David L. Gates, Inc. to provide professional design and engineering services for the Henry Schmidt Park Playground Rehabilitation Project, with maximum compensation not-to-exceed \$109,566; and
2. Authorize the City Manager to execute amendments to the Agreement with David L. Gates, Inc. to make minor revisions and to extend the term, as needed.

Reviewed by: James Teixeira, Director of Parks & Recreation

Approved by: City Manager's Office

ATTACHMENTS

1. Agreement - David L. Gates & Associates, Inc.

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
DAVID L. GATES & ASSOCIATES, INC.**

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 David L. Gates & Associates, Inc., a California corporation (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Consultant 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

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 December 31, 2025.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Consultant 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 Consultant 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

Consultant 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. Consultant agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant 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. CONFLICT OF INTEREST (FORM 700)

In accordance with the California Political Reform Act (Government Code section 81000 et seq.) and the City's Conflict of Interest Code, Consultant shall cause each person who will be principally responsible for providing the service and deliverables under this Agreement as having to file a Form 700 to do each of the following:

- A. Complete and file the Form 700 no later than thirty (30) calendar days after the date the person begins performing services under the Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- B. File the Form 700 with the City's Clerk Office.

7. COMPENSATION AND PAYMENT

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant 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 Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

8. 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 Consultant.
- B. Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.
- C. Upon termination, each Party 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

9. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subcontractors without express written permission from City.

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

10. 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.

11. INDEPENDENT CONSULTANT

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

12. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

13. 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 Consultant 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, Consultant 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.

14. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant 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.

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

15. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including 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 Consultant, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

16. INSURANCE REQUIREMENTS

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

17. WAIVER

Consultant 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.

18. NOTICES

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

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

And to Consultant addressed as follows:

David L. Gates & Associates
Attention: Casey Case
1655 N. Main Street, Suite 365
Walnut Creek, CA 94569
and by e-mail at casey@dgates.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.

19. COMPLIANCE WITH LAWS

Consultant 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, Consultant’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

20. CONFLICTS OF INTEREST

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

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

21. FAIR EMPLOYMENT

Consultant 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.

22. NO USE OF CITY NAME OR EMBLEM

Consultant 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.

23. 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.

24. 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.

25. CHANGE PROCEDURES AND AUTHORIZATION

A. Change Orders. Any changes to this Agreement that relate to (i) the deletion of Services, (ii) adding additional Services, or (iii) changing or modifying Services, not to exceed the maximum compensation of this Agreement, shall be made by a written change order authorized by the designated project managers.

B. Amendments. Any changes to this Agreement that relate to (i) an increase in the maximum compensation of this Agreement, or (ii) the term of this Agreement, or (iii) any other terms or conditions of the Agreement not covered by the Change Order provisions set forth above, may only be made by a written amendment duly authorized and executed by the Parties to this Agreement.

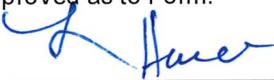
26. COUNTERPARTS

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

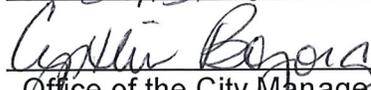
Approved as to Form:



Office of the City Attorney
City of Santa Clara

Dated:

2/13/2023



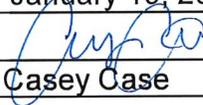
Office of the City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408)
615-2210 Fax: (408)
241-6771

"CITY"

DAVID L. GATES & ASSOCIATES, INC.
a California corporation

Dated: January 19, 2023

By (Signature):



Name: Casey Case

Title: President

Principal Place of Business Address: 1655 N. Main Street, Suite 365
Walnut Creek, CA 94569

Email Address: casey@dgates.com

Telephone: (925) 736-8176, ext 2000

Fax: ()

"CONSULTANT"

EXHIBIT A SCOPE OF SERVICES

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

1. INTRODUCTION

- 1.1. Consultant shall perform or caused to be performed in accordance with this Agreement all work and services required to develop a master plan for the Henry Schmidt Park Rehabilitation Project (the "Project").
- 1.2. To the extent not inconsistent with this Agreement between the City and Consultant including this Scope of Services, the City's SOQ 22-23-17 (including subsequent updates), Consultant's proposal response dated September 12, 2022, and presentation materials dated October 12, 2022 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. DOCUMENTS

This Exhibit contains the following Appendices:

- 2.1. Appendix A1 – City's Project Management Software E-Builder
- 2.2. Appendix A2 – Draft Project Schedule

3. GENERAL REQUIREMENTS

- 3.1. Consultant shall perform all design and engineering services in accordance with the Department of Transportation Standard and Details, City Standard Plans and Specifications, Parks and Recreation Standard Specifications and Details, Americans with Disabilities Act (ADA) Design Guidelines, latest building and fire codes, and other applicable codes and standards. The City shall have the right to review all drawings, specifications, and other documents and electronic records relating to such services.
- 3.2. For any field work that involves subsurface excavation and/or coring, Consultant shall submit a plan of work for the City's review and approval prior to proceeding.
- 3.3. Any changes to the project team through the course of the Services shall be approved in writing by City.

4. RESPONSIBILITIES OF CITY

The City will provide to Consultant the following information and support for the Project as available and as required for the Project:

- 4.1. Record drawings.

- 4.2. City's Standard Details, Specifications, Benchmark, and Design Criteria.
- 4.3. Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps.
- 4.4. Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles.
- 4.5. Payment of permit application fees with other internal departments.
- 4.6. Filing exemption under the California Environmental Quality Act.
- 4.7. Any other relevant data or records.

5. PROJECT MANAGEMENT

Generally, Consultant shall:

- 5.1. Utilize the City's Project Management Software E-Builder for general project management. See Appendix A1.
- 5.2. Manage its team and overall project activities consistent with the requirements set forth in this Agreement including but not limited to maintaining the Project within schedule and budget.
- 5.3. Manage subconsultants, maintain schedule and budget, anticipate and mitigate potential design issues and delays, and coordinate and update the City on the overall progress of the Project.
- 5.4. Organize and attend project meetings with the City to discuss project progress, decisions and direction, and to coordinate activities. Meetings shall be held at key project milestones and shall include, but are not limited to:
 - 5.4.1. Kick-off Meeting
 - 5.4.2. Preliminary/Evaluation Meeting
 - 5.4.3. Community Meeting
 - 5.4.4. Parks and Recreation Commission Meeting(s)
 - 5.4.5. City Council Meeting(s)
- 5.5. Coordinate with all affected parties, including the City, design team members, consultants, utility companies, and other governmental agencies as may be required for completion of project deliverables and coordination of Quality Assurance/Quality Control (QA/QC) activities.
- 5.6. Meetings shall be budgeted for and invoiced under each respective task or activity requiring a meeting and not as project management. Preparation for meetings shall be considered as included in the task or activity for which the meeting is involved. A kick-off meeting shall be conducted with designated City staff prior to beginning work to review anticipated tasks and schedule, review available information and needs, and address any outstanding questions regarding the project moving forward raised by City or Consultant.

During the course of the agreement, while there is active work on the Project, Consultant shall schedule and attend brief bi-weekly (every other week) conference call with the City. The purpose of these bi-weekly conference calls will be to keep City apprised on the Project's progress and address any issues that may arise during the course of the Project.

- 5.7. Provide monthly progress reports.
- 5.8. Coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate any necessary accommodations into the final submittal documents.
- 5.9. Provide Review/Plan Check Log (Response Matrix) summarizing comments received from various City Departments/Divisions and agencies. Response Matrix shall include, but not be limited to, commenting department/division or agency, comments, response to comments, action items, and person responsible for follow up. Consultant shall be responsible for resolving comments from each commenter and shall identify to City any comments that cannot be resolved to have final discussion and resolution. Submit Response Matrix in electronic format with each route of plan check submittal.
- 5.10. Conduct QC reviews in accordance with its QA Program guidelines. Consultant shall provide a copy of its QA Program guidelines and shall provide a QC report at the end of each task. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review and not as Project Management.
- 5.11. Consultant administrative staff time spent preparing invoices shall be considered as included in the overhead of the Consultant's basic hourly rates and shall not be billed. Additionally, addressing administrative issues, such as preparing additional services requests or budget modifications, shall also be considered as included in the overhead of the Consultant's basic hourly rates and shall not be billed to the City as additional cost.
- 5.12. **Deliverables:**
 - 5.12.1. Progress schedules in Microsoft Project format (submitted electronically as an 11" x 17" PDF file and in native Microsoft Project format).
 - 5.12.2. QA Program guidelines and QC reports for each task (in PDF file).
 - 5.12.3. Meeting agendas, preparation materials, and meeting minutes for each project meeting (in PDF file).
 - 5.12.3.1. Monthly progress reports and invoices (in PDF file).
 - 5.12.3.2. Estimate – One (1) PDF and one (1) Microsoft Excel file.
 - 5.12.3.3. Miscellaneous project information (as requested).
 - 5.12.3.4. Meeting minutes – one (1) PDF and one (1) Microsoft Word file.

6. PROJECT SCHEDULE

- 6.1. Attached as Appendix A2 is the Draft Project Schedule. The Parties shall agree on the Approved Project Schedule as set forth in Section 8.1.2.
- 6.2. Consultant shall monitor and update the Approved Project Schedule throughout the course of the Project. The Approved Project Schedule shall show significant milestones for the Project. Consultant shall notify City if there are delays or potential delays in any phase of the Project. In such event, Consultant shall make up the schedule in subsequent phases of the Project or provide information to City substantiating a request for time extension (which may not be approved by the City). The Approved Project Schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- 6.3. Changes to the Approved Project Schedule shall be at no additional cost, unless there are changes or additions to this Scope of Services. Any changes to the Approved Project Schedule must be mutually agreed to and incorporated into a revised Approved Project Schedule.

7. KEY PERSONNEL

- 7.1. The following individuals are designated as Key Personnel as of the Effective Date of this Agreement.

Name	Title
Chuck Gardella	Principal-in-Charge
Kimmy Chen	Project Manager
Casey Case	Outreach Coordinator
Name of Subconsultants	Role
Sandis	Civil Engineering
BSK Associates	Geotechnical Engineers
Atium Engineering	Electrical Engineers
Lionakis	Structural Engineers
Woodwreeve	Arborist
Proactive Risk Solutions	Playground Inspector

- 7.2. Any replacement of Key Personnel whether requested by the City or Consultant is subject to the City's final approval.

8. PHASE 1 - SITE SURVEY, COMMUNITY OUTREACH, AND SCHEMATIC DESIGN

8.1. Task 1: Project Research and Site Assessment

Consultant shall gather, review, and assess existing data, records, and reports relative to the Project and conduct necessary investigations and analyses required to identify issues that could impact or be impacted by the project. This task includes:

8.1.1. Task 1.1: City Kick-Off Meeting

Consultant shall meet with City to review and discuss options for park program, public outreach, City standards for materials, etc. for the park design.

8.1.2. Task 1.2: Project Schedule

Consultant shall update the Draft Project Schedule with the information received during the kick-off meeting. Upon the City's approval, the schedule shall be designated as the Approved Project Schedule.

8.1.3. Task 1.3: Arborist Tree Inventory Report

Consultant shall visit the site, tag trees, measure the diameter at breast height (DBH), and review the general health, structure, apparent disease or deformities, and provide a tree inventory report to the City. This report will be useful in determining the impact of any potential work within the tree protection zone of each tree.

8.1.4. Task 1.4 Electrical Infrastructure Investigation

Consultant shall explore the existing infrastructure and assess potential for service upgrades and/or new infrastructure and support for buildings and park amenities. The electrical engineering, fiber requirements, and site lighting approach would be predicated on an initial review of existing equipment, power and lighting to identify opportunities for improvements along pathways, parking lots, and play areas. Further, it will explore and assess the existing infrastructure to determine capabilities as well as the requirements for "smart park" features (WIFI, irrigation, automated doors and gates).

8.1.5. Task 1.5: Topographic Survey and Mapping

Consultant shall perform a topographic survey including all hardscape and softscape, and locate surface-visible utility features and improvements. At manholes and accessible structures, measure invert elevations will be noted of all gravity storm drains and sewer pipes.

8.1.6. Task 1.6: Geotechnical Investigation

Consultant shall perform subsurface exploration including two to three borings, with laboratory soils testing, including infiltration rate testing. Consultant shall prepare a geotechnical report summarizing the results and providing recommendations. The report will provide valuable information for use in engineering of the buildings, structure footings, pavement, and potential retaining walls.

8.1.7. Task 1.7: Site Analysis & Data Review

Consultant shall gather, review, and assess existing data, records, and reports relative to the Project and conduct necessary investigations and analyses required to identify issues that could

impact or be impacted by the Project, including but are not limited evaluating ADA pedestrian pathway and completing site survey and base setup.

8.2. Task 2: Schematic Design/Public Outreach

8.2.1. Task 2.1 Public Outreach Preparation

Consultant shall prepare public outreach materials such as image boards with the preliminary schematic park plan, options for park elements, playground imagery, site furniture, and an existing condition exhibit.

8.2.2. Task 2.2: Survey Preparation

Consultant shall work with the City to develop an online survey with questions and images focusing on Primary Design Elements and options, and meet with the City to review prior to presenting at the public meetings.

8.2.3. Task 2.3: Public Outreach Meeting

8.2.3.1. Consultant shall prepare all presentation materials, including graphic boards, reports, etc., and present amenity options to the public in a two-hour meeting. Public, user groups, potential donors, and staff may attend. This may be an online meeting or an in-person meeting, as determined by the City.

8.2.3.2. Consultant shall also gather input from the community via online polling and surveys.

8.2.3.3. Consultant shall document the feedback and consensus achieved.

8.2.4. Task 2.4: Preliminary Schematic Designs

Consultant shall develop two to three preliminary schematic designs which incorporate input from the public, user groups, potential donors, and City staff.

8.2.5. Task 2.5: Preliminary Cost Estimate

Consultant shall prepare a Rough Order of Magnitude (ROM) style of cost estimate for the preliminary schematic designs to aid the City in its decision-making.

8.2.6. Task 2.6: Parks and Recreation Commission Review Meeting #1

8.2.6.1. Consultant shall meet with the PRC to initiate public outreach for the Project.

8.2.6.2. Consultant shall present to the PRC the public input received and two to three preliminary schematic park plans.

8.2.6.3. Consultant shall gather input and feedback from the PRC.

8.2.7. Task 2.7: Final Schematic Design

8.2.7.1. Based on the input gathered from the community, the PRC, and the City, Consultant shall develop an accurate and scaled Site Plan and Draft Schematic Design (SD) for written approval by the City that will include:

8.2.7.1.1. overall location and site plan;

8.2.7.1.2. existing conditions;

8.2.7.1.3. schematic design options, including building as necessary

8.2.7.1.4. playground use matrix with elements of play;

8.2.7.1.5. elevations/grading/drainage;

8.2.7.1.6. irrigation & planting plan;

8.2.7.1.7. lighting plan;

8.2.7.1.8. American with Disabilities Act (ADA) compliant accessible routes;

8.2.7.1.9. other tables; and

8.2.7.1.10. materials/equipment specifications.

8.2.7.2. The City shall notify Consultant as to whether it approves or disapproves the Draft Schematic Design documents. The City will review the Draft Schematic Design documents and will mark them to indicate whether changes and/or corrections are required. Consultant shall address all material comments and questions appropriately including, when appropriate, incorporating the comments, corrections and/or changes on the original documents and resubmitting the documents.

8.2.8. Task 2.8: Final Schematic Design Cost Estimate

Consultant shall update the cost estimates to reflect any changes or refinements depicted in the Final Schematic Design.

8.3. Final Draft Schematic Designs

8.3.1. Task 2.9: Parks and Recreation Commission Review Meeting #2

Consultant shall present to the PRC a Final Schematic Design for recommendation to the City Council for approval.

8.3.2. Task 2.10: City Council Review Meeting

8.3.2.1. Consultant shall present to the City Council the recommended Schematic Design.

8.3.2.2. Consultant shall gather input and feedback from the City Council and make revisions to the Final Schematic Design if necessary.

8.3.2.3. Consultant shall provide unlimited revisions to the Final Draft Schematic Designs, at no additional cost, to ensure the City's satisfaction with the document.

8.4. Phase 1 Deliverables:

8.4.1. Site Topographic Survey

8.4.2. Geotechnical report(s)

8.4.3. Arborist Tree Inventory Report

8.4.4. Two to Three Preliminary Schematic Designs and Preliminary Cost Estimates

8.4.5. One Final Scaled Schematic Design and Final Schematic Design Cost Estimates

8.4.6. PowerPoint Presentations

8.4.7. Meeting Attendance

**APPENDIX A1 TO EXHIBIT A
CITY'S PROJECT MANAGEMENT SOFTWARE E-BUILDER**

General Requirements:

- a. Consultant and Subcontractors shall provide at a minimum, the following to its staff:
 - i. **Computer:** Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher.
 - ii. **Computer Operation System:** Windows XP, Windows Vista, or Windows 7
 - iii. **Web Browser:** Microsoft Internet Explorer 9
 - iv. **Work and Spreadsheet Processors:** Microsoft Office Word, Excel and Outlook
 - v. **Scheduling Software:** Microsoft Project or Primavera
 - vi. **Internet Service Provider:** A reliable ISP in the area of the Project
 - vii. **Connection Speed/Minimum Bandwidth:** DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream
- b. Consultant and Subcontractors shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis.

Project Web Requirements:

- a. This project will utilize a web-based project management tool called e-Builder Enterprise™. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
- b. Consultant and Subcontractors shall conduct Project controls, outlined by the Owner, Development Manager, and Construction Manager, utilizing e-Builder Enterprise™. **This designated web-based application will be provided by the Consultant to the Subcontractors.** No additional software will be required. Furthermore, the Development Manager will assist Consultant in providing training of Subcontractor's personnel.
- c. Consultant and Subcontractors shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Variation Directives, Potential Variation Orders, Variation Order Requests, Variation Orders, and the like. All supporting data including but not limited to shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests and the like will be submitted in digital format via e-Builder Enterprise™.

Electronic File Requirements:

In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Consultant and Subcontractors shall also submit all closeout documents including all "As-Built Drawings", catalog cuts and Owner's Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Adobe Acrobat (.PDF) file format and uploaded to e-Builder Enterprise™.

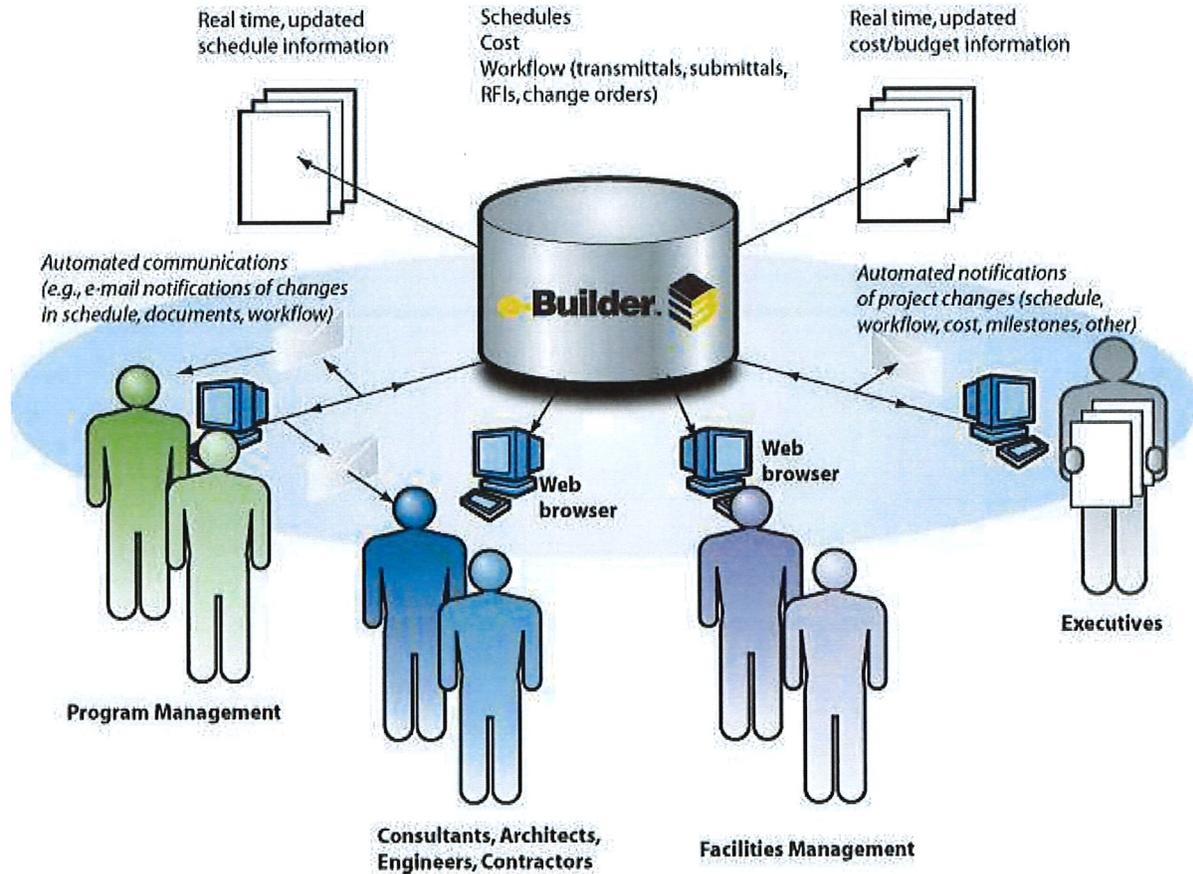
Builder Implementation Requirements

e-Builder Enterprise™ is a comprehensive Project and Program Management system that will be implementing for managing documents, communications and costs between the Consultant, Subcontractors, Design Consultants and Owner. e-Builder Enterprise™ includes extensive reporting capabilities to facilitate detailed project reporting in a web-based environment that is accessible to all parties and easy to use.

Central Document Vault: e-Builder Enterprise™ system includes a central database that maintains all project information and manages project communications amongst team members.

Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.

Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder Enterprise™



Reporting: All of the project and program data including documents, communications and costs are accessible through integrated online reports. These reporting tools are completely configurable by each user. All reports can be exported to Excel for added flexibility.

E-Builder Licensing Requirements

E-Builder Enterprise™ User Licenses: Each user license is for access to the site consisting of unlimited data storage. Users can be direct employees of the Consultant as well as its Subcontractors and/or Suppliers.

Each user license includes full access to e-Builder Enterprise™ including all of the documents and reports mentioned above. Furthermore, each user license provides the e-Builder software as a service (SaS) including:

- All hosting, operation, maintenance, and data backup of the e-Builder Enterprise™ software and documents which are maintained in state-of-the-art data centers located throughout the United States.
- Quarterly e-Builder Enterprise™ software enhancements
- Unlimited phone, email, and web-based support 24-hours:

e-Builder Enterprise™ user licenses shall be obtained by the Owner, Development Manager, Construction Manager, Design Consultants, QA/QC Agencies, and Project Management staff in which the Consultant is not responsible.

APPENDIX A2 TO EXHIBIT A – DRAFT PROJECT SCHEDULE

PROJECT SCHEDULE: Henry Schmidt Park - PHASE 1

12/20/2022

		2023											
		January	February	March	April	May	June	July	August				
TASK 1 – PROJECT RESEARCH AND SITE ASSESSMENT													
Subtask 1.1	City Kick Off Meeting	●											
Subtask 1.2	Proejct Schedule		●										
Subtask 1.3	Arborist Tree Inventory Report												
Subtask 1.4	Elctrical Infrastructure Investigation												
Subtask 1.5	Topographic Survey and Mapping												
Subtask 1.6	Geotechnical Investigation												
Subtask 1.7	Site Analysis & Data Review												
TASK 2 – SCHEMATIC DESIGN/PUBLIC OUTREACH													
Subtask 2.1	Public Outreach Preparation												
Subtask 2.2	Survey Preparation												
Subtask 2.3	Public Outreach Meeting (03/18/23)												
Subtask 2.4	Preliminary Schematic Designs												
Subtask 2.5	Preliminary Cost Estimate												
Subtask 2.6	PRC #1 - Draft /Final Slide Deck Deliverable Date (5/16/23)												
	Parks and Recreation Commission Review Meeting #1												
Subtask 2.7	Final Schematic Design												
Subtask 2.8	Final Schematic Design Cost Estimate												
TASK 3 – FINAL DRAFT SCHEMATIC DESIGNS													
Subtask 3.1	Draft/Final Slide deck deliverable date (7/18/23)												
	Parks and Recreation Commission Review Meeting #2												
Subtask 3.2	City Council Review Meeting (8/8/23)												

- City Meeting/Check in call
- ◆ Public Outreach Meeting
- Public Meeting (Park + Rec Commission, Council)
- Work in progress

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The total maximum compensation the City will pay the Consultant under this Agreement shall not exceed **One Hundred Nine Thousand Five Hundred Sixty-Six Dollars (\$109,566)** during the term of the Agreement. Any additional fees, costs and expenses requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. FEE SCHEDULE

Consultant's compensation is set forth below. The fees include all labor, materials, equipment, overhead, general administrative costs, and profit.

Table B1: Fixed Fee Schedule

Description	Basis of Compensation	Total
TASK 1 – PROJECT RESEARCH AND SITE ASSESSMENT		
Task 1.1 Kick off meeting	Fixed fee	\$1,350
Task 1.2 Project Schedule	Fixed fee	\$600
Task 1.3 Arborist Tree Inventory	Fixed fee	\$4,750
Task 1.4 Electrical	Fixed fee	\$540
Task 1.5 Topographic Survey and Mapping	Fixed fee	\$29,980
Task 1.6 Geotech	Fixed fee	\$11,090
Task 1.7 Site Analysis	Fixed fee	\$6,085
Subconsultants	Fixed fee	
Subtotal (Task 1)		\$54,395
TASK 2 - SCHEMATIC DESIGN AND PUBLIC OUTREACH		
Task 2.1 Public Outreach Prep	Fixed fee	\$720
Task 2.2 Survey Preparation	Fixed fee	\$3,120
Task 2.3 Public Outreach Meeting	Fixed fee	\$5,400
Task 2.4 Preliminary Designs	Fixed fee	\$11,460
Task 2.5 Preliminary Cost Estimates	Fixed fee	\$2,440
Task 2.6 PRC Meeting #1	Fixed fee	\$3,500
Task 2.7 Final Design	Fixed fee	\$9,130
Task 2.8 Final Cost Estimate	Fixed fee	\$2,040
Task 2.9 PRC Review Meeting #2	Fixed fee	\$3,500
Task 2.10 City council presentation	Fixed fee	\$3,900
Subtotal (Task 2)		\$45,210
10% Contingency	See Section 3	\$9,961
MAXIMUM COMPENSATION		\$109,566

3. ADDITIONAL SERVICES

- 3.1. In the event additional services are required that are outside the scope, Consultant shall provide a quote to the City in writing. The quote may be on time and materials based on Consultant's rates listed in Table B2 or a lump sum amount. Cost of services and expenses charged to Consultant by outside consultants and professional or technical firms shall be at actual cost plus 10%. Reimbursable expenses will be billed at actual cost plus 10%.

Table B2: Consultant's Hourly Rates

Classification	Regular Hourly Rate
Partner	\$240
Principal	\$220
Associate Principal	\$200
Senior Associate	\$175
Job Captain	\$155
Sr. Irrigation Designer	\$175
Community Outreach Facilitator	\$160
Marketing Coordinator	\$150
Administrative/Drafter	\$135

- 3.2. Consultant shall not perform additional services until receipt of City's written authorization.

4. PAYMENT SCHEDULE

- 4.1. Consultant shall base its invoice on the percentage of services for each task completed during the previous month.
- 4.2. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant 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 Consultant or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage 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 Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum

insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There 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 Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) 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. Consultant 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

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

Or by mail to:
EBIX Inc.
City of Santa Clara – Parks & Recreation Department

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 Consultant 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.

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. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov .
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Consultant agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" 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, Consultant 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, Consultant 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 Consultant'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 Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant's failure to fully perform its obligations under these provisions 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.