

**AGREEMENT TO ADMINISTER  
THE SANTA CLARA TOURISM IMPROVEMENT DISTRICT  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
SILICON VALLEY/SANTA CLARA DMO, INC.**

**PREAMBLE**

This Agreement is entered into as of July 1, 2026 ("Effective Date") by and between the **City of Santa Clara**, California, a chartered California municipal corporation ("City") and **Silicon Valley/Santa Clara DMO, Inc.**, a California non-profit mutual benefit corporation ("Corporation"), acting as the Owners Association pursuant to Section 36651 of the California Streets and Highways Code, for the administration of the Santa Clara Tourism Improvement District, for the purpose of conveying special benefits to lodging businesses assessed as part of the Santa Clara Tourism Improvement District. City and Corporation may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. On May 25, 2021, the Santa Clara City Council ("City Council") acting pursuant to the Property and Business Improvement Act of 1994, Sections 36600, et seq., of the California Streets and Highways Code ("Act"), adopted Resolution No. 21-8964 ("Establishment Resolution"), which established the Santa Clara Tourism Improvement District ("SCTID") and levied assessment on the lodging businesses within the SCTID ("SCTID Hotels").
- B. On June 23, 2026, the City Council, adopted Resolution No. [Insert] ("Renewal Resolution"), which renewed the SCTID and levied assessment on the SCTID Hotels.
- C. The assessments levied and collected by the City shall be used only for the purposes set forth in the Renewal Resolution, which incorporates by reference the Management District Plan (as defined below).
- D. The services and activities to be performed by the Corporation are of a supplemental nature, such that were it not for the establishment of the SCTID, the supplemental services could not or would not be performed by City or by City employees, and such that the interests of City are better served by an agreement with the Corporation than by the performance or attempted performance of such supplemental services and activities by City.
- E. The City Council has authorized the City Manager's Office to execute and administer this Agreement with the Corporation to administer the SCTID.
- F. The Parties have specified herein the terms and conditions under which such services will be provided.

**AGREEMENT TERMS AND CONDITIONS**

**Now, therefore**, in consideration of the above Recitals and the mutual covenants contained herein, the Parties agree as follows:

**1. AGREEMENT DOCUMENTS**

- 1.1. The documents forming the entire Agreement between City and Corporation shall

consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A - Insurance Requirements

Exhibit B - Santa Clara Convention Center Booking Policy Guidelines

Exhibit C - Santa Clara Tourism Improvement District Management District Plan, dated April 21, 2026 ("Management District Plan").

1.2. This Agreement, including the Exhibits set forth above, contain 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 terms and conditions in the body of the Agreement and the Exhibits referenced in Section 1.1, the terms and conditions in the body of this Agreement shall govern and control, except that in the event of a direct conflict with Exhibit C (Management District Plan), the requirements of the Management District Plan shall control.

## **2. TERM OF AGREEMENT**

2.1. Term. The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2031.

2.2. No Automatic Renewals. There shall be no automatic renewal of this Agreement upon the expiration of the Term.

2.3. Operating Year. The SCTID's operating year shall mean each 12-month period of time during the Term beginning on July 1 and ending on June 30 ("Operating Year").

## **3. CORPORATION RESPONSIBILITIES**

3.1. Program Implementation and Operation. Corporation shall be responsible for developing, implementing, directing, and operating SCTID programs, improvements or activities as described in the Management District Plan (Exhibit C). Corporation understands and expressly agrees that it will comply with all applicable laws and regulations and maintain its non-profit status throughout the Term of this Agreement.

3.2. Corporation Performance Measurement and Strategic Key Performance Indicators. Corporation will continue to actively pursue and support citywide group business, including larger convention opportunities. City acknowledges that Corporation's scope of work extends beyond any single market segment or booking outcome and requires strategic flexibility to respond to evolving market conditions, competitive dynamics, and long-term positioning of the SCTID Hotels and the geographical area of the City and neighboring Silicon Valley as a desired and sought after destination.

The Corporation's Board of Directors will be delegated the authority to establish and adopt annual Key Performance Indicators ("KPIs") that measure Corporation's effectiveness in driving overall economic impact and return on investment from SCTID funding. These KPIs will acknowledge the Corporation's influence across sales, marketing, and operations while

also addressing other strategic focus areas identified by the Board as critical to the Corporation's success. KPIs may include both quantitative and qualitative measures and will be reviewed and approved by the Board annually to ensure they remain relevant, disciplined, and reflective of the Corporation's strategic priorities.

3.3. Program and Budget Reports. Corporation shall prepare and submit to the City an annual report for each year for which Assessments are to be levied and collected by the City. Corporation shall submit to the City the various applicable SCTID program reports, including the following:

- A. Board Meeting Packets. Corporation shall submit to City copies of Board meeting packets for meetings at which SCTID programs, improvements and activities; KPI performance, or statistical and financial data, including, but not limited to, budget-to-actual comparison, are discussed. The Board Meeting Packets shall be submitted to the City Manager's Office on a monthly basis.
- B. Annual Audit Report. Corporation shall prepare and submit to the City Manager's Office and file with the City Clerk's Office, an annual audit report ("Annual Report") for each Operating Year for which Assessments are to be levied and collected. The Annual Report shall be prepared in accordance with Section 36650 of the Streets & Highways Code and shall contain all items required by said Section. The Annual Report shall be submitted and filed within one hundred twenty (120) days after the end of the Operating Year, or within any such longer time period as may be reasonably requested by the Corporation and approved by the City in its reasonable discretion. The Corporation shall also present the Annual Report at the end of each Operating Year to the City Council, and the City Council may approve the report as filed by the Corporation or, after consultation with the Corporation, may modify any particular section contained in the report and approve it as modified. Any modification shall be made after conducting the proceedings required by Sections 36635 and 36636 of the Streets and Highways Code.

3.4. Audits.

- A. Financial Statement Audit. Within one hundred fifty (150) days after the end of each Operating Year, or as otherwise approved by the City Manager in their sole discretion, Corporation agrees to provide the City a certified audited financial statement and management's report on internal control over financial reporting on the accounts and records as kept by the Corporation. Costs associated with obtaining such certified audit report shall be a Corporation expense, which expense shall be permitted to be included in Corporation's Annual Budget that is approved by the Corporation's Board of Directors. The financial statement audit shall be performed by an external auditor approved by the City, such approval not to be unreasonably withheld or delayed, and shall be conducted in accordance with generally accepted auditing standards.
- B. Agreed Upon Procedure Report: Corporation shall retain an external auditor approved by the Board of Directors and acceptable to the City in its sole discretion, to conduct an audit of the SCTID Hotels and prepare an Agreed Upon Procedure (AUP) Report to validate the SCTID assessment collection amount, calculation, and timely remittance to the City. The AUP shall be submitted to the

City within one hundred fifty (150) days after the end of each Operating Year, or as otherwise approved by the City Manager, along with the Financial Statement Audit. Costs associated with retaining the external auditor and preparing the AUP Report shall be a Corporation operating expense, which expense shall be permitted to be included in the Annual Budget that is approved by the Corporation's Board of Directors.

- C. Performance Audit. City (through its Director of Finance or other authorized officer or designee) may also cause, at its own expense, a Performance Audit to be conducted and completed by a performance auditor (the person or firm so selected referred to herein as the "Auditor") or by the City Auditor. The Performance Audit shall assess Corporation's performance during the previous Operating Year. A draft report of the Performance Audit shall be made available for comment by City and Corporation prior to completion of the audit. The Performance Audit will include any performance measures agreed each year as part of the budget process.

3.5. Program Coordination. Corporation shall render services described in Section 3.1 ("Services") in accordance with the Management District Plan and the terms of this Agreement and shall cooperate with the City Manager's Office in the execution of the Management District Plan and this Agreement.

3.6. Support Services. Corporation assumes responsibility for the contracting of support services as required and paying for all such direct and indirect expenses as may be necessary for the timely completion the Services. Any obligations or expenditures for items not budgeted in Corporation's Annual Budget (as it may be revised or updated from time to time) shall not be paid through assessments collected for the SCTID, unless approved by the Corporation's Board of Directors. In administering subcontracts as necessary for providing SCTID programs, improvements or activities, Corporation shall comply with all applicable State, County and City laws and regulations.

3.7. Procurement of Goods and Services. Corporation shall follow best procurement practices in the purchase of goods and services that are paid for through this Agreement. The term "best procurement practices" shall entail Corporation acting in a commercially reasonable manner in: (i) implementing and maintaining responsible management and oversight so as to manage its procurement contracts fairly and effectively, (ii) considering factors such as the requirements of Corporation's business operations, alternatives, timing, supply strategy and total life cycle costs of the good or service when evaluating vendors' submissions, (iii) providing all qualified vendors with fair access so as to avoid conflict of interest, and to choose the successful vendor through a fair and non-discriminatory process, (iv) assuring that it is receiving quality service and goods at the right place and time, and (v) otherwise promoting integrity, professionalism, accountability, transparency, compliance to internally articulated requirements, and continuous improvement.

To the maximum extent possible, Corporation shall provide economic opportunities to the City's local businesses and vendors through the Corporation's procurement of goods and services, and actively market, promote and disseminate information to City businesses and vendors with regard to the Corporation's procurement policies (in an effort to provide increased competition and awareness to City businesses and vendors of future bids,

proposals, and other procurement opportunities issued by the Corporation). Corporation shall report such efforts to City when reasonably requested by the City.

3.8. Budget. Each program, improvement or activity specified in the Management District Plan, and as described in section 36622 of the Act, or the Annual Report, shall be implemented by Corporation. Corporation and City agree that amounts shown in the Management District Plan or the Annual Reports were the best estimates of the cost of those programs, improvements, or activities at the time those estimates were made. Deviations from those estimates may be anticipated and made by mutual agreement of the Parties and subsequent update to Corporation's Annual Budget. City and Corporation also agree that the programs, improvements, and activities may not be completed within the year budgeted, given normal delays that can be expected in these types of programs. Corporation will use all commercially reasonable efforts to implement and complete all programs, improvements and activities specified in the Management District Plan. If Corporation decides to make any material changes to the Management District Plan, Corporation will request City Council authorization to make said modifications pursuant to Sections 36635 and 36636 of the Act. In no event may Corporation spend more than the total amount actually collected pursuant to collection rate in the Management District Plan for any given year, including delinquent payments, interest income, and rollover funds, without City Manager's Office or City Council approval.

3.9. DMO Board of Director Composition & Management. Corporation's Board of Directors shall serve as the authoritative body responsible for identifying, interviewing, and making decisions regarding the composition of the Board. A majority of the voting members of the Corporation's Board of Directors shall be representatives of SCTID Hotels. The Board will seek to ensure a thoughtful and diverse representation of the community, industry, and business leadership. The City shall be represented on the Board through an Ex-Officio, non-voting advisory position. This advisor shall be designated by the City Manager.

#### **4. CITY RESPONSIBILITIES**

The City Manager's Office may assist with the resolution of any discrepancies in individual Assessment amounts, calculations, or benefits. The City reserves the right to:

4.1. Make reasonable efforts to effect the timely collection of the SCTID assessment on a monthly basis, including City assessments and direct billed assessments;

4.2. The City shall disburse to Corporation the SCTID assessments within thirty days of collection.

A. The SCTID assessments dispersed to Corporation shall be those assessments actually received, less the recoverable City Manager's Office costs, net of any Finance Department charges or City Administration Fees required by Section 7.1 of this Agreement, and less any Overdue Charges or Interest required by Section 7.3 of this Agreement.

B. Notwithstanding, the above, the City may also withhold either all or some portion of the SCTID assessments collected if: a) Corporation has failed to maintain records or follow generally accepted accounting principles, b)

Corporation is in violation of this Agreement, or other law, c) any portion of the assessment is challenged or likely to be challenged, or d) Corporation has materially failed to perform its obligations under this Agreement due to inadequate staffing, as evidenced by documented, uncured performance deficiencies directly attributable to staffing levels. Prior to withholding any revenue, the City will notify Corporation and set forth the specific problems and issues. The City, at its sole discretion, will provide Corporation a reasonable opportunity to resolve such problems and issues before the City withholds the funds. If the City withholds any funds under this section, it will release such funds upon the implementation of an acceptable resolution, subject to the approval of the City Manager and possible modification of the disbursement. This section does not alter or diminish the City's right to invoke other appropriate remedies, including termination of this Agreement as set forth in Section 15.

4.3. Make reasonable efforts with the Finance Department to pursue delinquent SCTID assessments and remit such assessments to Corporation, including penalties subject to City's right to recover costs for pursuing such assessments;

4.4. Provide to Corporation monthly reports, which shall include the amount of SCTID assessments collected and the administrative fee retained.

4.5. Maintain a continual liaison with Corporation, including assisting with the coordination of services from various other City departments, bureaus, and agencies as needed;

4.6. Conduct reviews of existing primary data; verify assessment data as provided by the Finance Department; verify exemption request to substantiate a claim made by a lodging business owner subject to assessment in the SCTID, with the cooperation of Corporation; maintain confidentiality of certain City records as City deems appropriate, in its sole discretion;

4.7. Make reasonable efforts with the Finance Department to make changes or corrections to the reporting process for lodging businesses as needed;

4.8. The City shall provide written notice to the Corporation or any affected SCTID Hotel of any action by the City Manager's Office of its intent to conduct an investigation. The Corporation shall provide any documentation requested as it relates to the investigation. All City Manager's Office costs associated with such supplemental investigations may be recovered from the SCTID assessments collected, subject to existing or future City policies and procedures regarding recoverable costs and expenses. Such costs will be in addition to those costs set forth in Section 7 of this Agreement.

## **5. RIGHT OF CITY TO INSPECT RECORDS OF CORPORATION**

5.1. 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 Corporation for the purpose of verifying any and all expenditures made by Corporation in connection with the Services rendered by Corporation under this Agreement. Corporation

agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all expenditures made by Corporation in connection with the Services rendered by Corporation. Any expenses not so recorded shall be disallowed by the City. Corporation shall bear the cost of the audit if the audit determines that there has been a substantial non-recording of expenditures by Corporation.

5.2. Corporation shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Corporation agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Corporation's Services hereunder. Corporation shall turn over to City all records which demonstrate performance under this Agreement upon termination or completion of this Agreement.

## **6. DISBURSEMENTS**

6.1. Based upon the assessments collected pursuant to the collection rate in the Management District Plan or Annual Reports, and with the exception of recoverable City Manager's Office costs, net of any Finance Department charges or City Administration Fees, or withheld as outlined in Section 4.2, City shall disburse to Corporation the actual revenues received from SCTID assessments in accordance with Section 4 of this Agreement.

6.2. Corporation agrees to use any funds received from the SCTID solely for the Corporation's performance of Services consistent with the requirements of this Agreement and the District Management Plan.

6.3. Within sixty (60) days of the date of SCTID renewal, the City shall initiate a third-party audit of all SCTID assessment funds held by the City under the Second Amended and Restated Fiscal Sponsorship Agreement effective as of July 1, 2025 between the City and Corporation, the cost of which shall be borne by the Corporation. The audit shall be conducted by an independent third-party auditor selected by the City and shall be completed within one hundred twenty (120) days of initiation. Prior to any disbursement, all audit findings, deficiencies, or exceptions identified in the audit shall be fully resolved to the mutual satisfaction of the City and Corporation, which satisfaction shall not be unreasonably withheld or delayed. Within thirty (30) days following the completion of the audit and the resolution of any such findings, deficiencies, or exceptions by both parties, the City shall disburse all SCTID assessment funds held by the City to the Corporation.

6.4. The City Manager's Office may withhold either all or some portion of the actual revenues received from assessments if the City Manager's Office finds that the Corporation is not properly administering its Annual Budget in accordance with the Annual Report and Section 3 (insofar as it requires Corporation to create an Annual Budget and expend funds pursuant to this Agreement, the Management District Plan and the Annual Report, and in compliance with the Act) in any material manner. The City Manager's Office will notify Corporation and set forth the specific problems and issues relative to the Corporation's failure to properly implement the improvements and activities stated in Section 3 of this Agreement, the Management District Plan, and the Annual Report. The City Manager's Office and Corporation will immediately attempt to cure the problems if, at the City Manager's Office's sole discretion, a cure is appropriate. Funds will be released upon the implementation of an acceptable cure, subject to the approval of the City

Manager's Office, and possible modification of the disbursement schedule. This does not alter or diminish in any way City's right to proceed in a manner consistent with California Streets and Highways Code, Section 36670, or other applicable law, or to invoke other appropriate remedies, including termination of this Agreement.

6.5. If the Corporation is dissolved, dissolves itself, or no longer has non-profit status, prior to or upon the expiration of this Agreement, any unexpended monies will be immediately transmitted to City for distribution as described in Section 10 of this Agreement. Corporation will immediately notify the City Manager's Office of any such change in corporation status.

## **7. COSTS AND EXPENSES**

7.1. Administration Fee. Per the Management District Plan, the Corporation shall pay the City a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration which may include but are not limited to: staffing costs, legal services, telephone, supplies, postage, and other general office expenses. The Administrative Fee shall be deducted from the assessment funds the City will forward to the Corporation.

7.2. The Administrative Fee shall be reflected in the monthly report required by Section 4.4 of this Agreement.

7.3. Interest and Overdue Charges. The Corporation shall reimburse the City for any costs associated with collecting unpaid assessments in accordance with the Management District Plan.

## **8. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit A, Corporation shall provide and maintain in full forces, at no cost to City, insurance policies set forth in Exhibit A.

## **9. NOTICES**

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

City of Santa Clara  
Attention: City Manager's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Corporation addressed as follows:

Silicon Valley/Santa Clara OMO, Inc.  
Attention: Board of Directors  
5001 Great America Parkway  
Santa Clara, CA 95054

And by e-mail at [DSCAdmin@discoversantaclara.org](mailto:DSCAdmin@discoversantaclara.org)

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.

## **10. REVENUES AND ASSETS OF THE DISTRICT**

In the event the SCTID is disestablished, expires, or otherwise terminates, or the Corporation ceases to be a non-profit corporation, all remaining revenue, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, shall be returned to the City and refunded in the manner described in Section 36671 of the Act.

## **11. CONFLICT OF INTEREST**

11.1. Corporation certifies that to the best of its knowledge, no City officer, employee, or authorized representative has any financial interest in the business of the Corporation and that no person associated with Corporation has any interest, direct or indirect, which could reasonably be expected to conflict with the faithful performance of this Agreement. Corporation 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. Corporation will advise City if a conflict arises.

11.2. For the duration of this Agreement, Corporation and its employees or agents will not act in a manner which is reasonably likely to create any SCTID-related conflict of interest. In particular, Corporation's Board of Directors and the Chief Executive Officer must disclose any material financial interest they have in any matter coming before them for decision by or involving the Corporation. Any Board member, Chief Executive Officer or employee of Corporation acting in such capacity shall refrain from participating in the decision-making process relating to any matter in which they may have a material financial interest or conflict of interest.

11.3. Nothing in this Section prohibits or precludes Corporation's officers, members, directors, agents, or employees from providing or presenting to other interested parties or entities, information or assistance related to the SCTID's establishment or operations, or to the establishment or operation of other proposed or existing districts throughout the City, where such information or assistance does not create a conflict of interest or disclose confidential information. However, Corporation may not provide the services discussed in Section 3 of this Agreement to any other Business Improvement District unless the bylaws of both Corporation and such Business Improvement District are amended to permit the provision of such services.

## **12. ASSIGNMENT AND SUBCONTRACTING**

City and Corporation 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. Corporation may use subcontractors to provide any portions of the services necessary to carry out obligations pursuant to Section 3.1 with written notice to the City and approval by the Corporation's Board of Directors. In no event may Corporation subcontract or delegate for the implementation of the whole Management

District Plan. The use of subcontractors shall not relieve Corporation from any liability or obligation under this Agreement. Corporation shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Corporation. Corporation shall ensure that its subcontractors comply with all of the terms of this Agreement. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and City.

### **13. GENERAL FUND NOT LIABLE**

Neither the General Fund of City, nor any other fund, revenue source or monies whatsoever of City, except for the actual collected SCTID assessment net revenue, shall be liable for payment of any obligations arising from this Agreement. Said obligations are not a debt of City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon its income, receipts, or revenues.

This Agreement embodies all of Corporation's reimbursement rights and no promissory note or other document shall be required to be executed by City in connection therewith.

### **14. CORPORATION NOT AGENT OF CITY**

Neither Corporation or any of Corporation's employees, agents, representatives, or subcontractors are or shall be considered to be agents of City, nor shall Corporation be considered a legislative body, relative to the performance of Corporation's obligations under this Agreement or for any other purpose.

### **15. TERMINATION**

15.1. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than sixty (60) days prior written notice to Corporation. Upon receipt of said notice, Corporation shall immediately take action not to incur any additional obligations, cost, or expenses, except as may be reasonably necessary to terminate its activities. City shall pay Corporation its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Corporation to effect such termination. Thereafter, Corporation shall have no further claims against City under this Agreement.

15.2. City shall have the right to suspend this Agreement immediately with written notice to the Corporation in the event City determines that misappropriation of funds, malfeasance, or other violations of law have occurred in connection with Corporation's management of the SCTID. City retains the right to immediately commence disestablishment proceedings in accordance with Streets and Highways Code Section 36670, which states in pertinent part that "[a]ny district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council. . . [i]f the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment." Streets and Highways Code § 36670(a)(1). In addition, City may seek all other available appropriate remedies pursuant to law. Corporation will have 10 business days to respond in writing to City's notice of suspension and begin a dispute resolution process.

15.3. Further notwithstanding the foregoing, City may immediately terminate this Agreement if Corporation ceases to be a non-profit or if a federal or state proceeding for

relief of debtors is undertaken by or against Corporation, or if Corporation makes an assignment for the benefit of creditors.

15.4. In the event City terminates this Agreement as provided in this Section, City may procure upon such terms and in such manner as City may deem appropriate, services similar in scope and level of effort to those terminated, and Corporation shall be liable to City for all its direct costs and damages, including, but not limited to, any excess costs for such services.

15.5. All documents and materials produced or procured by Corporation pursuant to its performance under this Agreement, including the Management District Plan or the Act shall become City property upon date of such termination.

15.6. The rights and remedies of this Agreement are not exclusive and are in addition to any other rights or remedies provided by law or under this Agreement.

## **16. STANDARD OF CARE**

Corporation represents and maintains that it has the expertise necessary to perform the services required under this Agreement, and its duties and obligations, expressed and implied, contained herein, and City has entered into this Agreement in consideration of such representations. Corporation shall perform such services and duties with the degree of skill and care ordinarily exercised by destination marketing organizations of comparable size, scope, and budget serving communities of similar character within the State of California.

## **17. BROWN ACT AND PUBLIC RECORDS ACT**

17.1. The Board of Directors of the Corporation is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

17.2. Notwithstanding Section 17.1 above, the Board of Directors of the Corporation, when hearing, discussing, deliberating, and taking actions on matters within the subject matter of the SCTID will comply with the provisions of the Ralph M. Brown Act (Chapter 9, commencing with Section 54950 of Part 1 of Division 2 of Title 5 of the Government Code).

17.3. Notwithstanding Section 17.1 above, Corporation and the Board of Directors are also subject to and must comply with the California Public Records Act (Government Code section 7920.000 et seq.).

## **18. SEVERABILITY**

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.

## **19. 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.

## **20. AMENDMENT**

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

## **21. EXCUSABLE DELAYS**

In the event that performance on the part of any Party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said Party, none of the Parties shall incur any liability to the other Parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the Parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires, floods; pandemics; epidemics; quarantine restrictions; strikes, freight embargoes or delays in transportation, to the extent that they are not caused by the Party's willful or negligent acts or omissions, and to the extent that they are beyond the Party's reasonable control.

## **22. WAIVER**

Corporation 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.

## **23. INDEPENDENT CONTRACTOR**

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

## **24. FAIR EMPLOYMENT**

Corporation 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.

## **25. COMPLIANCE WITH LAWS**

Corporation 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, Corporation'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), and Business Tax Certificate (SCCC section 3.40.060), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Corporation has read and agrees to comply with City's Ethical

Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## **26. HOLD HARMLESS/INDEMNIFICATION**

26.1. To the extent permitted by law, Corporation shall hold harmless, defend and indemnify the City, its City Council, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to reasonable attorneys' fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Corporation pursuant to this Agreement - including claims of any kind by Corporation's employees or persons contracting with Corporation pursuant to this Agreement - and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited. The City shall provide prompt notice to Corporation of any third-party claim or action for which it will seek indemnification from Corporation hereunder and provide Corporation with the opportunity to defend such claim or action with attorneys it selects. If Corporation does not exercise its right to defend such claim or action, then the City shall do so, but the City shall not settle any claim or action for which it will seek to be indemnified by Corporation hereunder without first obtaining the written consent of Corporation, which consent will not be unreasonably withheld or delayed.

26.2. Corporation's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors, or other agents of Corporation, against City (either alone, or jointly with Corporation), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

26.3. To the extent Corporation is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Corporation warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Corporation's responsibilities under the Act.

26.4. The Parties expressly agree that this Section 26 (HOLD HARMLESS/INDEMNIFICATION) will survive the expiration or early termination of the Agreement.

## **27. WARRANTY**

Corporation expressly warrants that all materials and services covered by this Agreement shall be completed in a manner consistent with professional standards practiced among those firms within Corporation's profession, doing the same or similar work under the same or similar circumstances. Corporation agrees to promptly replace or correct any incomplete, inaccurate, or defective work at no further cost to City when defects are due to the negligence, errors, or omissions of Corporation. If Corporation fails to promptly correct or replace services, City may make corrections or replace materials or services and charge Corporation for the cost incurred by City.

**28. 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. Electronic copies of signed signature pages transmitted electronically by any Party to the other Party either by facsimile or via the Internet (e.g., in a "pdf" or "if" format data file or comparable format) will be deemed binding originals for all purposes and will be deemed delivered for all purposes when any such copies are received by the other Party.

**29. ELECTRONIC SIGNATURES**

Each Party agrees that this Agreement and any other documents to be delivered in connection with this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

Approved as to Form:

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

\_\_\_\_\_  
Office of the City Attorney

\_\_\_\_\_  
Jovan Grogan  
City Manager  
1500 Warburton Avenue  
Santa Clara, Ca 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

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

By (Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Principal Place of  
Business Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

## EXHIBIT A INSURANCE REQUIREMENTS

Without limiting the Corporation's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Corporation 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 Corporation'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 Corporation; 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 Corporation 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<sup>1</sup>;
  - 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.

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<sup>1</sup> This requirement may make it difficult for Corporation to obtain such insurance. The DMO should confirm that such a policy type is available and obtain a premium cost estimate for such a policy.

## **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 Corporation 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 Corporation 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. CRIME**

Crime insurance including forgery or alteration coverage, computer fraud coverage, funds transfer fraud coverage, money and securities coverage, money orders and counterfeit money coverage, burglary, robbery, theft, payment instruction fraud, and employee dishonesty coverage with limit not less than \$1,000,000 per claim and in the aggregate. City shall be a loss payee to the extent of its interest.

## **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 Corporation'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 Corporation 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 Corporation's insurance.
3. Cancellation. 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.
  - a. 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.

2. 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**

Corporation and City agree as follows:

1. Corporation agrees to ensure that subcontractors, and any other party involved with the Services is not an employee of Corporation, and who is brought onto or involved in the performance of the Services by Corporation, provide the same minimum insurance coverage required of Corporation, except as with respect to limits. Corporation 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. Corporation 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. Corporation agrees to be responsible for ensuring that no contract used by any party involved in any way with the providing Services reserves the right to charge City or Corporation 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 Corporation 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, Corporation, 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. Corporation 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**

Corporation 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, Corporation shall submit to City copies of the actual insurance policies or renewals or replacements. Unless

otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.  
City of Santa Clara City Manager's Office  
P.O. Box 100085 - S2  
Duluth, GA 30096

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

**I. QUALIFYING INSURERS**

All of the insurance companies providing insurance for Corporation 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.