

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
TEN OVER STUDIO, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Ten Over Studio, Inc., a California corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

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 August 18, 2026 and terminate on June 30, 2027.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Two Hundred Thirty-Three Thousand Three Hundred and Thirty-Six Dollars (\$233,336), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

Consultant has full rights to manage its workers, contractors and or employees in their performance of Services.

Consultant shall enter into written agreements with all persons it engages, hires, contracts with, or employs to perform Services or provide labor and or materials to City, which state the persons are not employees of the City, and such persons are required to immediately report to Consultant any and all instances of any of the following, if they occur during the time the persons provide labor and or materials to City: (a) The way a person supplies labor and or materials to City is supervised by City or City's designee; (b) The person is informed they should follow instructions given by City concerning how the person's labor and material are to be provided; (c) The person is informed they should give City access to on-going review of the person's labor and or materials; (d) The person is informed by City they should participate or attend training; (e) The person is unavailable to promote or otherwise make their labor and or materials available to the general public as a result of the provision of labor and materials to City; (f) The person is informed they are City's employee; or (g) The person forms a belief or opinion they are City's employee.

Consultant must immediately provide written notice to City of any report under Section 10 and provide related information as reasonably requested by City. The Parties agree failure of Consultant to immediately provide written report to City of any notice it receives from any source, relating to Section 10, constitutes material breach of this Agreement.

Consultant will inform and train persons it engages, hires, contracts with, or employs to provide labor and or materials to City on the requirements of Section 10. Consultant shall require that its workers and or personnel immediately report to their respective Consultant supervisor any perceived occurrence under Section 10.

11. CONFIDENTIALITY OF MATERIAL

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

furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

14. HOLD HARMLESS/INDEMNIFICATION

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

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at MNguyen4@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Ten Over Studio, Inc.
539 Marsh Street
San Luis Obispo, CA 93401
and by e-mail at Cyrusb@tenoverstudio.com

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

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections

may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

Due to the nature of the Services to be performed, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200, et seq.

19. CONFLICTS OF INTEREST

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

CONTINUED ON PAGE 9

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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

"CITY"

TEN OVER STUDIO, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of
Business Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

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

I. BACKGROUND

The City of Santa Clara intends to modernize Fire Station 7 to meet current and future operational, safety, and service needs. The City is evaluating options that include renovation and expansion of the existing facility, or the demolition and construction of a new fire station.

This project is funded through Measure I, a voter-approved general obligation bond measure approved by Santa Clara voters in November 2024. Measure I provides funding for the repair, replacement, and modernization of critical City infrastructure and public safety facilities, including fire stations. Bond proceeds allocated under Measure I will be used to support the demolition of the existing facility and construction of a new fire station on the current site. The project is subject to all applicable Measure I requirements, including use-of-funds restrictions and oversight provisions.

II. PROJECT DESCRIPTION AND REQUIRED SERVICES

The City proposes upgrading Fire Station 7 by either renovation or rebuilding of the existing fire station. Upgrades may consist of demolishing and rebuilding of the fire station, or expansion in the apparatus bay for aerial apparatus, redesign of staff areas, HVAC and electrical system upgrades and driveway reconfiguration. Based on this upgrade criteria, Consultant shall provide a recommendation to either renovate or to rebuild based on a cost benefit analysis as part of this study.

The services of Consultant shall include a survey of existing conditions of the fire station, testing and assessment of building materials, a cost benefit analysis for renovation versus rebuilding options, recommendations for other desirable fire station features, and provide schematic plans and alternatives.

III. SCOPE OF WORK

Task 1: Building Preliminary Study and Cost Benefit Analysis

The Consultant shall:

1.1 Visit and verify the existing site, building condition, equipment and facilities to identify opportunities and constraints based on Fire Department needs and the following criteria:

1.1.1 Inspect the existing site and the existing building for the configuration of the driveway.

- a. Evaluate the turning radius into the back of the fire station that would allow fire engines and tiller trucks to make the turn and pull through without backing.
- 1.1.2** Inspect and evaluate the building's interior space for the proposed:
- a. Single-story or two-story fire station building layout, depending on optimal site design and operational needs. Provide alternatives for both options. All designs shall be done in accordance with the ADA Design Guidelines and Regulations, latest building and fire codes, and other applicable codes and standards recommended by the Consultant.
 - b. Three (3) apparatus bays. The bays must be sized to accommodate a fire engine, tiller truck, and ambulance or reserve apparatus in the future.
 - c. Ten (10) individual sleeping dorm rooms to accommodate ten personnel.
 - d. "Jack and Jill" style bathrooms serving the dorm rooms. Each bathroom module will include a central double-sink vanity accessible from two sides, separate lockable rooms for the toilet and shower to ensure privacy, two independent entrances from each adjacent dorm room, use of locking pocket doors where to maximize interior space and avoid blocking open areas, and durable, easy-to-clean materials appropriate for high-use and contamination-control needs.
 - e. A dedicated laundry room.
 - f. A community room with access to a public restroom, independent from station staff access.
 - g. Computer workstation space for a minimum of ten (10) personnel.
 - h. A gym located away from the dormitory area to reduce noise impacts.
 - i. The gym which shall include both an interior door providing direct access to the apparatus floor and an exterior double door leading to a covered outdoor exercise patio. Provide a window from interior living space into gym so that visual can be made on personnel inside the gym in case of a medical emergency.
 - j. Extend water and electrical utilities adjacent to gym to support potential future installation of health and fitness equipment.
 - k. Water filtration station for water bottles adjacent to gym.
 - l. A kitchen with space to accommodate a minimum of three (3) refrigerators, with capacity for up to four (4) refrigerators preferred.
 - m. A dayroom/kitchen layout that includes added windows with blinds between the kitchen and dayroom spaces to allow for natural light and controllable privacy. Position dayroom and patio on the Mark Avenue side of the building.
 - n. Apparatus bays equipped with vertical accordion-style apparatus doors. See video link for example:
<https://www.youtube.com/watch?v=LV8J8i8fAeU>
 - o. Driveway access design shall position the security gate sufficiently far from the street to allow a sixty-foot (60') truck to wait without obstructing roadway traffic.
 - p. HVAC system throughout building for heating and cooling, including apparatus bays.
 - q. Diesel fueling station/reservoir on grounds.
 - r. Radio antennae relocation if necessary. Antennae must remain on property.
 - s. Gray water capture system on property to allow for vehicle washing inside or outside.

- 1.1.3** Recommend HVAC criteria for rebuild.
- 1.1.4** Recommend electrical system criteria for rebuild.
- 1.1.5** Evaluate the existing building and HVAC system for a proposed air evacuation system of apparatus floor to evacuate the air out of the apparatus floor and remove all exhaust and particulate from the running apparatus. Recommend air evacuation system criteria for rebuild option. Inspect the entire building for potential upgrades per the current building standards code.
- 1.1.6** Recommend design criteria capable of supporting LEED Silver and in compliance with the City's Climate Action Plan and all applicable City's reach codes.
- 1.2** Perform all necessary soil test and hazardous material inspection and assessments to identify and address any potential issues and concerns related to the building renovation and rebuild options.
- 1.3** Provide additional recommendations on building renovation and upgrades not mentioned in the criteria that the City should consider.
- 1.4** Develop probable construction cost and cost benefit analysis for rebuild.
- 1.5** Develop a construction schedule for building rebuild.
- 1.6** Meet with City staff to obtain additional information and input as needed. Consultant shall attend at least 2 meetings (one kick off and one follow up meeting).
- 1.7** At the City's request, Consultant may be required to conduct a community meeting or present to City Council for public input. Consultant to prepare all necessary documents, presentation materials, and renderings to support the outreach.

Task 1 Deliverables:

- 1. A draft report to document the existing building conditions and necessary building code upgrades. It shall include site opportunities and constraints and preliminary cost benefit analysis and recommended option (renovate or rebuild), also recommendation of other upgrades not mentioned in the criteria that the City should consider, and a list of Pros and Cons of renovate vs. rebuild options (electronic copy).
- 2. A draft probable construction cost estimate for build options (electronic copy).
- 3. A draft construction schedule for rebuild options (electronic copy).
- 4. A draft and final meeting minutes with action items, identifying responsible parties and scheduled completion dates (electronic copy).

Task 2: Final Recommendations

Based on City staff's review and comments on the draft documents in Task 1, Consultant shall revise the draft documents and submit the final documents to the

City. Consultant shall meet with the City staff for a final review and document revision.

Task 2 Deliverables:

1. Final report documenting the existing building conditions and necessary building code upgrades, the cost benefit analysis rebuild, recommendation for other upgrades not mentioned in the criteria that the City should consider, final recommendation (electronic copy).
2. Construction cost estimate for the recommended option (electronic copy).
3. Construction schedule for recommended option (electronic copy).

EXHIBIT B
SCHEDULE OF FEES

I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$210,124, plus any authorized Reimbursable Expenses, which shall not exceed \$2,000. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$21,212. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$233,336, subject to budget appropriations.

II. BASIC SERVICES

Compensation shall be in proportion to services rendered and shall be billed monthly as percentages of completion for each phase listed below. Fees shall be lump sum and not-to-exceed per task as listed below. City may re-allocate remaining budget from any finished tasks to any un-finish tasks as need to complete works within the Basic Services.

Tasks denoted as Optional Tasks, as stated in Exhibit A, require pre-approval in writing by CITY prior to performing any services under the task. Payment for any Optional Task is allowed only if written authorization is given by the City in advance of the work to be performed. Fees for Optional Tasks shall be considered as Basic Services.

Description		Amount
Task 1	Building Preliminary Study / Cost Benefit Analysis	\$172,969
Task 2	Final Recommendation	\$25,055
Optional Services		
Task 3	Soil Sampling	\$12,100
Total		\$210,124

In no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed Two Hundred and Ten Thousand One Hundred and Twenty-Four dollars (\$210,124), subject to budget appropriations.

III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not exceed \$2,000 without prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the

Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. Reimbursable expenses shall be billed at cost without any markup. Receipts and invoices detailing the Reimbursable Expenses shall be included with each billing where a Reimbursable Expense is invoiced.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance), including meals and gas
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Duplicating Cost for Plans and Reports as specified in Section III, Scope of Work, of Exhibit A
- Presentation Materials
- Delivery Services, when requested by City.
- Courier Services when requested by City.

City may re-allocate remaining budget from reimbursable expenses to additional services. All reimbursable costs, other than those listed above, shall be approved in advance by City.

IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the terms set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed \$21,212 without approval by the City.

V. RATE SCHEDULE

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

Rates by classification are listed below. No adjustment to the rates will be allowed during the term of this Agreement unless otherwise agreed in writing by City. Any classifications added, or staff members changing classifications, shall be approved in writing by City.

Consultant - Ten Over Studio:

Classification	Hourly Rate
Principal in Charge	\$ 300
Project Manager	\$ 240
Senior Architect	\$ 234
Architect	\$ 186
Senior Designer	\$ 162

Sub-consultants:

BCA	
Classification	Hourly Rate
Principal	\$ 305
Engineering Manager	\$ 245
Project Engineer	\$ 205
Assistant Engineer	\$ 170

GLUMAC	
Classification	Hourly Rate
Vice President	\$ 400
Project Manager	\$ 290
Project Engineer	\$ 290
Designer	\$ 250
BIM	\$ 200
Project Coordinator	\$ 175

BKF	
Classification	Hourly Rate
Principal In Charge	333
Senior Project Executive	309
Project Manager	287
Surveying Manager	264
Field Crew (2)	490
Project Surveyor	215
Project Engineer	215

SFMI	
Classification	Hourly Rate
Principal	\$ 220
Senior Egnineer	\$ 175
Engineer	\$ 160
CAD	\$ 120

HALEY ALDRICH	
Classification	Hourly Rate
Principal	\$ 365
Senior Project Manager	\$ 270
Technical Expert	\$ 270
Senior Technical Specialist	\$ 230
Project Professional	\$ 200
Technical Specialist	\$ 200
Project Support	\$ 125
H&A Lab Testing	\$ 660

CUMMING GROUP	
Classification	Hourly Rate
Associate Director	\$ 260
Senior Cost Manager	\$ 225

Allowable sub-consultant markup: 10%

VI. PAYMENT PROVISIONS

6.1 Time and Materials

For Services authorized to be paid on a time and materials basis, Consultant shall provide an invoice to the City on a monthly basis for Services completed in the preceding month. The invoice must include the following information:

6.1.1 Invoice Number, Purchase Order Number, and Invoice Period.

6.1.2 Current amount due with a time and materials breakdown: titles, hours, hourly rates, and any City approved reimbursable expenses itemized with supporting documentation.

- 6.1.3** Sufficient detail for City to verify (a) that the charges are in accordance with the Purchase Order, (b) that rates listed in Appendix B1 are charged, and (c) where applicable, hours worked can be matched to certified payroll submittals.

6.2 Fixed Price

For Services authorized to be paid on a fixed price basis, Consultant shall base the invoice on either (a) the percentage of Services completed during the previous month or (b) a lump sum amount upon the completion of deliverable(s) and subject to the following:

- 6.2.1** Invoices must include the following information:

- 1.2.1.1** Invoice Number, Purchase Order Number, and Invoice Period.

- 1.2.1.2** Detailed information on the Services performed on each deliverable or task completed on each project, as applicable.

- 6.2.2** Consultant shall not invoice labor costs subject to prevailing wages in advance of performing the applicable Services.

- 6.2.3** With regard to milestone payments, Consultant shall invoice each milestone payment in full. Consultant shall not separate milestone payments into multiple invoices.

- 6.3** Consultant is not entitled to any payments until the City concludes that the Services and/or any furnished deliverables have been satisfactorily performed.

- 6.4** When applicable, Consultant and all subconsultants shall submit certified payroll records for all workers employed in the performance of the Services. All certified payrolls shall be submitted in accordance with the requirements set forth in Exhibit D (Labor Compliance).

- 6.5** Invoices shall be accurate, itemized, and submitted in a form acceptable to the City. If an invoice is incomplete or inaccurate, the City may return it to Consultant for correction and resubmittal before payment can be processed. Consultant shall not charge the City any interest, late fees, or penalties on any outstanding or delayed invoices due to inaccurate billing.

- 6.6** The City shall not pay for time associated with administrative or billing-related tasks, including but not limited to preparing responses to Work Requests, addressing billing issues, or communicating with auditors.

- 6.7** If there are no discrepancies or deficiencies in the submitted invoice and Consultant has submitted all required certified payroll, City shall process the invoice for payment.

6.8 Invoices and related payment documentation are public records and are not confidential, even if marked as confidential when submitted by Consultant.

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.

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 one million dollars (\$1,000,000) aggregate.

E. POLLUTION LIABILITY

Pollution Liability insurance covering liability for third-party bodily injury, property damage and cleanup costs resulting from a pollution incident with a limit not less than \$1,000,000 per occurrence.

F. 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. Claims Made Coverage. If coverage is obtained on a "claims made" policy form, the continuity or retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.
4. Deductibles and Self-Insured Retentions. Deductibles and self-insured retentions must be declared to the City.
5. 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.
6. 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.

G. **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.

H. 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.

I. 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 mailed to:

EBIX Inc.
City of Santa Clara Department of Public Works
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

J. 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 C-06 Professional Service Contract.doc

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.

Prevailing Wage Requirements

Contractor 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. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.

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.

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.

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.

As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.

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)].

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.

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 who fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.

Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Audit Rights

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

Enforcement

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.

Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.

The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

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