

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
HEXAGON TRANSPORTATION CONSULTANTS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Hexagon Transportation Consultants, Inc., a California corporation (Consultant). City and Consultant may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

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 May 1, 2023 and terminate on April 30, 2026 (Initial Term). The City reserves the right, at its own sole discretion, to extend the term of this Agreement as may be required.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

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

6. CONFLICT OF INTEREST (FORM 700)

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

- A. Complete and file the Form 700 no later than thirty (30) calendar days after the date the person begins performing services under the Agreement

and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and

B. File the Form 700 with the City's Clerk Office.

7. COMPENSATION AND PAYMENT

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is set forth in Section 1 of Exhibit B, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the maximum compensation under any circumstance.

8. TERMINATION

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

9. ASSIGNMENT AND SUBCONTRACTING

City and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. City provides permission for Consultant to hire TDM Specialists, Inc, as a subcontractor under this Agreement. Consultant shall not hire any other subcontractors without express written permission from City.

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

10. NO THIRD PARTY BENEFICIARY

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

11. INDEPENDENT CONTRACTOR

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

12. CONFIDENTIALITY OF MATERIAL

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

13. OWNERSHIP OF MATERIAL

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

14. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the

cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

15. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant to perform any portion of the Scope of Services – 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.
- B. Consultant'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 Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

16. INSURANCE REQUIREMENTS

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

17. WAIVER

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

18. NOTICES

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

City of Santa Clara
Attention: Community Development Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at acrabtree@santaclaraca.gov

And to Consultant addressed as follows:

Hexagon Transportation Consultants, Inc.
100 Century Center Court, Suite 501
San Jose, CA 95112
and by e-mail at gblack@hextrans.com

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

19. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

20. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant

and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

21. FAIR EMPLOYMENT

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

22. NO USE OF CITY NAME OR EMBLEM

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

23. GOVERNING LAW AND VENUE

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

24. SEVERABILITY CLAUSE

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

25. AMENDMENTS

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

26. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

Office of the City Attorney
City of Santa Clara

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

“CITY”

HEXAGON TRANSPORTATION CONSULTANTS, INC.
a California corporation

Dated: 3/27/2023

By (Signature): _____ 

Name: Gary Black

Title: President

Principal Place of Business Address: 100 Century Center Court, Suite 501
San Jose, CA 95112

Email Address: gblack@hextrans.com

Telephone: (408) 971-6100

Fax: (408) 971-6102

“CONSULTANT”

EXHIBIT A
SCOPE OF SERVICES

1. INTRODUCTION

- 1.1. Under this Agreement, Consultant shall provide all necessary services to prepare and monitor Transportation Demand Management (TDM) requirements for the City's development projects.
- 1.2. To the extent not inconsistent with this Agreement between the City and Consultant including this Scope of Services, the City's SOQ 21-22-75 (including subsequent updates) and Consultant's proposal response dated June 14, 2022 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

2. SCOPE OF WORK

2.1. Task 1 – Establish TDM Parameters

- 2.1.1. Consultant shall establish a monitoring system to review approved development projects compliance with TDM obligations once per year. This task includes:
 - 2.1.1.1. Identify each project's vehicles miles traveled (VMT) reduction requirements as established through conditions of approval during the entitlement process.
 - 2.1.1.2. Identify the project's specific TDM measures to achieve VMT reduction requirements before issuing the Building Permit.
 - 2.1.1.3. If projects have occupied and implemented TDM measures, they must comply with annual monitoring throughout the project's life.
 - 2.1.1.4. Review each project's built TDM infrastructure (e.g., bike lockers, showers, carpool facilities, kiosks, etc.) via physical inspection.
 - 2.1.1.5. Obtain from projects an annual TDM commuter survey report. The report shall provide employee commuter mode-use activities, employee miles traveled, and confirmation of implemented TDM/commuter programs.

2.2. Task 2 – Track Compliance

- 2.2.1. Consultant shall perform an initial review of TDM compliance for the City's approximately 60 existing development projects approved with TDM requirements. The City will provide to Consultant the list of all development

projects with TDM reduction requirements as part of their conditions of approval.

- 2.2.2.** Annually, Consultant shall contact all owners and developers that have not filed reports and instruct them on how to proceed to establish compliance. Subject to City's approval, the monitoring program may utilize the OneCommute customer relationship manager platform to track a developer's specific TDM requirements for each project and manage categories for key performance indicators.
- 2.2.3.** Consultant shall provide monitoring and compliance information to the City quarterly, or sooner if noncompliance issues arise.
 - 2.2.3.1.** The OneCommute database will be available for the City to check at any time.
 - 2.2.3.2.** Consultant shall notify the City of any developments that have failed to submit reports after two attempts at contact to determine a strategy for escalating communication.
 - 2.2.3.3.** Quarterly, Consultant shall notify the City of any development projects where monitoring has shown non-compliance with their TDM reduction goals. Consultant shall prepare recommendations to address and resolve the issue for the City's consideration.
- 2.2.4.** Consultant shall provide the City, developers, and owners with data and recommendations to address issues relating to TDM compliance. This coordination will utilize the OneCommute platform to show underperforming development projects and measures for consideration to boost their TDM effectiveness. Projects that meet or exceed TDM performance requirements will be acknowledged and included in the annual reporting and city website (as discussed below).

2.3. Task 3 – Communicate with Owners and Developers

Consultant shall schedule developer check-in calls and send reminders about their TDM monitoring requirements. Ongoing communication with developers may include written letters, emails, automated notices from the OneCommute platform, phone calls, and site visits. Reminder notices must emphasize the need to prepare a survey and driveway vehicle trip data and provide a list of current commuter programs, contact information for their transportation coordinator, etc.

2.4. Task 4 – Create Website

Consultant shall create and maintain a basic website that links to the City's website. The website will be publicly reviewed and contain development

project TDM reports. The website shall meet the City's accessibility standards, allow data to be queried for information on individual project compliance, and show development project trends based on project type.

2.5. Task 5 – Submit Annual Report

Consultant shall work with the City to generate a custom annual report that aggregates development projects to show total performance.

2.6. Task 6 – Create Menu of TDM Measures

Consultant shall create a menu of TDM measures with identified VMT reduction percentages for pending and future projects. The list will sort each measure's estimated value from highest to lowest to reduce peak-period traffic congestion and ability to reduce VMTs. The list will utilize CAPCOA research and the monitoring program's reported performance of other developments in the City. Consultant shall provide the list of TDM measures to developers and make it available on the City's TDM website.

2.7. Task 7 – Recommend Ordinance Changes

Consultant shall research and recommend ordinance or policy changes to ensure the incorporation of TDM measures for streamlined projects that would be limited to ministerial approvals by the City and/or to improve the effectiveness of TDM implementation. Research may include a literature review of northern California ordinances.

2.8. Task 8 – Conduct Monitoring

As needed, conduct site visits and collect data as necessary to verify TDM compliance in projects or make recommendations to improve efficacy of measures. This work shall be pre-approved by the City and billed on a time and materials basis.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The maximum compensation the City will pay Consultant for all professional fees, costs and expenses provided under this Agreement shall not exceed **Two Hundred Thousand Dollars (\$200,000)** during the initial three-year term, subject to appropriation of funds. Any additional professional fees, costs and expenses requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement.

2. FEES

For Tasks 1 – 7, Consultant shall be paid on a fixed fee basis as set forth in Table B1 below.

For Task 8, the City has set aside the amount of \$27,620 to be billed on a time and materials basis in accordance with the hourly rates in Section 4 of this Exhibit.

Table B1: Fee Schedule

Cost Element/Task	Year 1	Year 2	Year 3
Task 1: Establish TDM Parameters	\$4,680		
Task 2: Track Compliance - Initial Review of Existing Projects	\$19,460		
Task 2: Track Compliance - Ongoing Review		\$7,980	\$7,980
Task 3: Communicate with Owners and Developers		\$27,000	\$27,000
Task 4: Create Website	\$8,240		
Task 4: Maintain Website (inclusive of content update and software/hosting)		\$13,060	\$13,060
Task 5: Submit Annual Report		\$11,080	\$11,080
Task 6: Create Menu of TDM Measures	\$11,880		
Task 7: Recommend Ordinance Changes	\$9,880		
Subtotal (Tasks 1 - 7)	\$54,140	\$59,120	\$59,120
Task 8: Conduct Monitoring (as needed)		\$27,620	
Maximum Compensation (3 years)		\$200,000	

3. ADDITIONAL SERVICES

Any additional related services requested by the City shall be negotiated on a fixed fee or time and materials basis in accordance with the hourly rates set forth in Section 4 of this Exhibit. The City may utilize any unused funds for additional services, provided that the maximum compensation of this Agreement is not exceeded.

4. HOURLY RATES

Consultant's hourly rates are set forth in Tables B2 and B3.

Table B2: Hexagon Transportation Consultants, Inc. Hourly Rates

Position/Description	Rate
President	\$330 per hour
Principal	\$285 per hour
Senior Associate II	\$265 per hour
Senior Associate I	\$245 per hour
Associate II	\$220 per hour
Associate I	\$195 per hour
Planner/Engineer II	\$165 per hour
Planner/Engineer I	\$135 per hour
Admin/Graphics	\$120 per hour
Assistant Engineer/Planner	\$110 per hour
Technician/Intern	\$80 per hour

Table B3: TDM Specialists, Inc. Hourly Rates

Name	Rate
President/Principal Planner	\$225.00 per hour
NorCal Commute Programs Manager	\$165.72 per hour
Commuter Concierge, Program Manager	\$126.00 per hour
TDM Program Manager & OneCommute Lead	\$113.85 per hour

5. RATE ADJUSTMENTS

Consultant may request adjustments to its hourly rates after the initial three-year term. Any rate increases are subject to approval by the City and must be substantiated by the Consultant to the satisfaction of the City. All rate adjustments must be approved by the City in writing.

6. INVOICING

- 6.1. With respect to progress payments for Tasks 1 – 7. Consultant shall base its invoice on the percentage of services completed during the previous month.
- 6.2. For Task 8 and any additional services, Consultant shall base its invoice on the hours approved by the City at the hourly rates listed in Table B2.
- 6.3. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C
INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous

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

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

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

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be

considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

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

Or by mail to:

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

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.