

EBIX Insurance No. S200003297

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
LPA, INC.
FOR THE INTERNATIONAL SWIM CENTER FACILITY ASSESSMENT**

PREAMBLE

This Agreement is entered into as of the City's execution date (Effective Date) between the City of Santa Clara, California, a chartered California municipal corporation (City) and LPA, Inc., a California corporation (Contractor or Consultant). 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 the Effective Date and terminate on June 30, 2026.

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 Services covered by this Agreement shall be performed in accordance with the Standard of Care set out in Section 6 covered by this Agreement shall be fit for the purpose intended, and shall conform to the specifications, requirements, and instructions which this Agreement is based. Contractor agrees to promptly 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 following reasonable notice and opportunity to cure, 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 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 Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

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

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this

Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

14. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, including California Civil Code Section 2782.8, 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. For claims based upon Contractor's professional errors or omissions, Contractor's indemnification including the duty to defend consists of reimbursement of damages and defense costs incurred by the Indemnified Parties in direct proportion to the Contractor's proportionate percentage of fault which will be determined, as applicable, by a court of law, jury or arbitrator.

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: Parks and Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at jteixeira@SantaClaraCA.gov

And to Contractor addressed as follows:

LPA, Inc.
Attention: Arash Izadi
60 South Market Street, Suite 1250
San Jose, California 95113
and by e-mail at Aizadi@LPADesignStudios.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. CHANGE PROCEDURES AND AUTHORIZATION

- A. Change Orders. Any changes to this Agreement that relate to (i) the deletion of Services, (ii) adding additional Services, or (iii) changing or modifying Services, not to exceed the maximum compensation of this Agreement, shall be made by a written change order authorized by the Director of Parks & Recreation.
- B. Amendments. Any changes to this Agreement that relate to (i) an increase in the maximum compensation of this Agreement, or (ii) the term of this Agreement, or (iii) any other terms or conditions of the Agreement not covered by the Change Order provisions set forth above, may only be made by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

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

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


CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: 8/10/23



GLEN R. GOOGINS
City Attorney



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

"CITY"

LPA, INC.
a California corporation

July 29, 2023

Dated: _____

DocuSigned by: _____

By (Signature) Jon Mills _____

Name: Jon Mills _____

Title: Chief Operating Officer _____

Principal Place of Business Address: 60 South Market Street, Suite 1250 _____

San Jose, California 95113 _____

Email Address: Jmills@LPADesignStudios.com _____

Telephone: (408) 780-7203 _____

Fax: () (949) 260-1190 _____

"CONTRACTOR"

DS
al

DS
mt

EXHIBIT A SCOPE OF SERVICES

1. INTRODUCTION

- 1.1.** This Scope of Services specifically addresses services to be provided by Contractor related to performing an initial review of the structure and operating components of the George F. Haines International Swim Center ("Phase 1 Services"). The structure and operating components include the diving pool and pool tower, racing pool, training pool, mechanical room and pools' systems, shower/restroom/office building, pool deck and viewing stands, and support building.
- 1.2.** The primary purpose of Phase 1 Services is for Consultant to report on the facility's current condition, identify systemic deficiencies, determine remaining operating life, and compliance with building codes as defined in this Scope of Services. If the City chooses, it may engage Consultant to provide detailed program and conceptual design including community outreach services ("Phase 2 Services") and provide all services necessary to prepare schematic designs, design development and construction documents, and provide engineering support services during bid and award, construction, and post-construction phases of the project ("Phase 3 Services").
- 1.3.** The City reserves the right to add, delete, or change the order of the tasks based on information received from Consultant during the course of the Project. Any changes to the scope will be approved through the change order process described in Section 24 of the main body of this Agreement.

2. PROJECT SCHEDULE

- 2.1.** Attached as Appendix A1 is the Draft Project Schedule. The Parties shall agree on the Approved Project Schedule as set forth in Section 4.3.
- 2.2.** Consultant shall monitor and update the Approved Project Schedule throughout the course of the Project. The Approved Project Schedule shall show significant milestones for the Project. Consultant shall notify City if there are delays or potential delays in any phase of the Project. In such event, Consultant shall make up the schedule in subsequent phases of the Project or provide information to City substantiating a request for time extension (which may not be approved by the City). The Approved Project Schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- 2.3.** Changes to the Approved Project Schedule shall be at no additional cost, unless there are changes or additions to this Scope of Services. Any changes

to the Approved Project Schedule must be mutually agreed to and incorporated into a revised Approved Project Schedule.

3. KEY PERSONNEL/PROJECT MANAGEMENT

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

Name	Title
Arash Izadi	Principal in Charge
John Courtney	Project Director
Steve Key	Senior Project Manager
Helen Pierce	Design Director
Casey Chapin	Project Designer
Name of Subconsultants	Role
HL Construction Management	Cost estimating
SGH	Investigation Consultant
Aquatics Design Group	Aquatics

- 3.2. Any replacement of Key Personnel whether requested by the City or Consultant is subject to the City’s final approval.
- 3.3. The Project Director shall be the primary person communicating with the City and keeping City fully apprised on the status and progress of the Project. The Project Director shall also be responsible for project schedule updates; creation and preparation of progress reports and meeting minutes; adherence to project scheduling; and general project coordination.
- 3.4. The Project Director shall submit progress reports to the City on the project status no less than once per week. Reports shall include a summary of activities undertaken, progress achieved compared to plan, percent of overall work completed, and any other information deemed important.
- 3.5. Consultant shall respond within two (2) business days or sooner as agreed upon between both parties for project-related activities.

4. TASK 1: PROJECT KICKOFF

Consultant shall conduct an onsite kick-off meeting to establish the following detailed requirements for the Project.

- 4.1. Review project process, schedule, goals, sustainability, budget, and milestones.
- 4.2. Review the investigation objectives and confirm the project understanding.

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

5. TASK 2: REVIEW OF CITY-SUPPLIED DATA

Consultant shall review existing project information including existing surveys, program information, record drawings, entitlements data, and other available information provided by the City.

6. TASK 3: INITIAL SITE VISIT, INTERVIEW OF KEY FACILITY PERSONNEL, AND HIGH-LEVEL VISUAL SURVEY

Consultant shall:

- 6.1. Conduct a site visit with its project team leadership to walk the facility with the City's facility engineer, pool operator, and facility maintenance personnel.
- 6.2. Familiarize itself with the facility, learn more about the use, repair and maintenance history, and identify areas for further exploration (non-destructive testing and material sampling), which will require City review, approval and budget allocation.
- 6.3. Interview building engineer, pool operator and key maintenance personnel in a single meeting, concurrent with the Initial Site Visit.
- 6.4. Perform a high-level visual survey of the Facility. This will focus on:
 - 6.4.1. Performing visual review of all primary pool features including: a) Pool Deck based on non-destructive examination, review areas of visible distress (cracks/spalls) and areas of little to no distress (control) to confirm visual assessments; b) an Aquatic Review to document existing conditions including Code violations, safety concerns, maintenance concerns, equipment conditions, mechanical and pool equipment; and c) Structural Review of structural components (including pool walls) such as grand stand canopy, building, dive tower, for compliance with current Code and potential structural life safety requirements).

7. TASK 4: INVESTIGATION AND FACILITY REVIEW PLAN REVIEW MEETING

Consultant shall:

7.1. Prepare and submit to the City a Draft Investigation Plan based on industry standard Facility Condition Assessment (FCA) approach. The document shall include but not limited to:

7.1.1. Cover page

7.1.2. List of Investigation Team Members

7.1.3. Investigation Approach

7.1.4. List of buildings, concrete, and pool systems to be assessed

7.1.4.1. Summary of relevant information from the kickoff meeting.

7.1.4.2. Summary of relevant information provided by the City.

7.1.4.3. Summary of findings from initial site walk and visual survey.

7.2. Meet with City Project Staff (virtual) to review the Draft Investigation Plan.

8. TASK 5: INVESTIGATION AND FACILITY REVIEW DOCUMENT UPDATE

Consultant shall incorporate reasonable City comments and responses and resubmit the Draft Investigation Plan to the City for review and approval. Should the Consultant's resubmittal not incorporate the appropriate comments or otherwise fail to meet the requirements outlined within this Scope of Services and representative of the investigation and agreed upon by Consultant, this cycle shall continue until the Consultant produces an acceptable submittal that is approved by the City in writing. The City will be responsible for providing one (1) comprehensive set of reasonable and applicable comments in a timely manner for Consultant review and inclusion, where applicable.

9. TASK 6: FIELD INVESTIGATION AND KEY MATERIALS AND SYSTEMS

9.1. Concrete Pool Deck. To the level feasible and available through non-destructive examination, view areas of visible distress (cracks and spalling) and areas of little to no visible distress (control) to confirm visual assessments.

- 9.2. Aquatic Review. Consultant shall document existing visible conditions, including:
 - 9.2.1. Code violations
 - 9.2.2. Safety concerns
 - 9.2.3. Maintenance concerns
 - 9.2.4. Equipment conditions
 - 9.2.5. Mechanical and pool equipment
- 9.3. GPR X-Ray of pool walls. Utilizing ground penetrating radar (GPR), x-ray the pool walls to locate the existing rebar and reinforcement in the pool walls.
- 9.4. Structural review. Consultant shall review structural components (including the pool walls as indicated in 9.3) including the shade structure, dive tower, mechanical room and buildings for compliance with current code and potential structural life safety requirements based on available as-builts.

10. TASK 7: DRAFT ADMINISTRATIVE REPORT

Consultant shall develop and submit a Draft Administrative Report for the City's review. Consultant understands that the report must sufficiently address concerns of the City. The draft report shall be develop based on industry standard Facility Condition Assessment (FCA), and shall include but not limited to:

- 10.1. Cover page
- 10.2. List of investigating team members
- 10.3. Investigative approach
- 10.4. A comprehensive list of buildings, roofing, water proofing, concrete, pool, deck, mechanical/plumbing/electrical systems estimated life cycle, and other primary pool features.
- 10.5. Rough Order of Magnitude Construction Cost.
- 10.6. Conditions, hazards, recommendations, etc.

11. TASK 8: DRAFT ADMINISTRATIVE REPORT REVIEW MEETING

In a “hybrid” (both in-person and virtual depending on the project team members), Consultant shall present and review the Draft Administrative Report with the City.

12. TASK 9: REPORT UPDATE

Based on City input and review of the Draft Administrative Report, Consultant shall incorporate reasonable City comments and responses and resubmit the Draft Administrative Report to the City for review and approval. Should the Consultant’s resubmittal not incorporate the appropriate comments or otherwise fail to meet the requirements outlined within this Scope of Services and representative of the investigation and testing performed and agreed upon by Consultant, this cycle shall continue until the Consultant produces an acceptable Final Administrative Report that is approved by the City in writing. The City will be responsible for providing one (1) comprehensive set of reasonable and applicable comments in a timely manner for Consultant review and inclusion, where applicable.

13. TASK 10: PUBLIC PRESENTATIONS

Consultant shall prepare for and attend up to two (2) public presentations to share and identify the findings, conclusions, and recommendations found within the Final Administrative Report. The public presentations may include:

- 13.1. City Manager’s Office, Public Works Department, Parks & Recreation Department
- 13.2. City Council

14. SUMMARY OF MEETINGS

Services consisting of meeting attendance and presentations by Consultant as follows:

- 14.1. One (1) – Kickoff Meeting
- 14.2. One (1) – Initial Site Visit & Interviews (concurrent with Project Kick Off)
- 14.3. One (1) – Facility Assessment (in person/on site)
- 14.4. One (1) – Administrative Draft Review (virtual)
- 14.5. One (1) – Final Document Review (virtual)
- 14.6. Up to two (2) – Public Presentations (in person)

15. SUMMARY OF DELIVERABLES

- 15.1.** Investigation Plan
- 15.2.** Draft Administrative Report
- 15.3.** Final Report
- 15.4.** Schedule
- 15.5.** Meeting Minutes
- 15.6.** Public Presentations (Up to 2)

16. SUPPLEMENTAL SERVICES

Consultant may provide the following supplemental services at the request of the City:

16.1. Utility Locating. The services include:

16.1.1. Find locatable utilities using the following methods to quality level (QL) B per ASCE 38-02:

16.1.1.1. Electromagnetic Locator (Locator)

16.1.1.2. Ground Penetrating Radar (GPR)

16.1.1.3. Locatable Duct Rodder (Ram Rod)

16.1.1.4. Mainline Crawler (Crawler)

16.1.1.5. CCTV Push Camera

16.1.2. Physically mark identified utilities on site for identification and placement on the topographical survey.

16.1.3. Perform closed-circuit television (CCTV) camera of the available sewer and storm drain lines. Not all utilities and lines can be inspected using CCTV cameras due to size criteria and ability for the camera to move within the line.

16.1.4. Locating Report.

16.1.5. CCTV Report.

16.1.6. Due to the materials, depth of utilities, soils, cover and other factors, not all utilities are locatable and can be identified. The utility locating service will be provided to Quality Level B which involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of identifiable utilities within the limits of the immediate aquatic facility.

16.2. Topographic Ground Survey. The services include:

16.2.1. Improvements within limit of work.

16.2.2. Locate all building corners, finish floor elevation (FFE) and door thresholds, recesses, and areas under canopies (where applicable).

16.2.3. Locate all existing site walls, fences, and gates, including top of wall and finish grade elevation.

16.2.4. Locate ramps, stairs, and railings. Show top of ramp and bottom of ramp elevations. Show landing areas.

16.2.5. Locate all existing drains, catch basins, etc. and finish grade at each.

16.2.6. If a catch basin or manhole is in the ground survey area, survey the size, invert elevation along with pipe sizes coming in and out.

16.2.7. Locate all vaults, electrical, telecom, etc.

16.2.8. Survey all top of curb, finish surface, finish grade, and flowline elevations.

16.2.9. Locate all utilities (aboveground appurtenances) within detailed survey areas.

16.2.10. Record utility location from the Utility Forensic markings on the survey file.

16.3. Pool Structure Leak Detection: This service includes performing leak detection for the actual pool structure.

16.4. Special Studies: Special Studies services include investigation, research, and analysis of the City's special requirements for the Project and documentation of findings, conclusions and recommendations for Master Planning to provide design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project during the construction phase.

16.5. Renderings: Renderings services relating to providing graphic pictorial representations include:

16.5.1. Elevation view(s) in color

16.5.2. Perspective view(s) in color

16.5.3. Plan view(s) in color

16.5.4. Photo realistic images

16.5.5. Video Fly-Thru's

16.5.6. Still Image Fly-Thru's

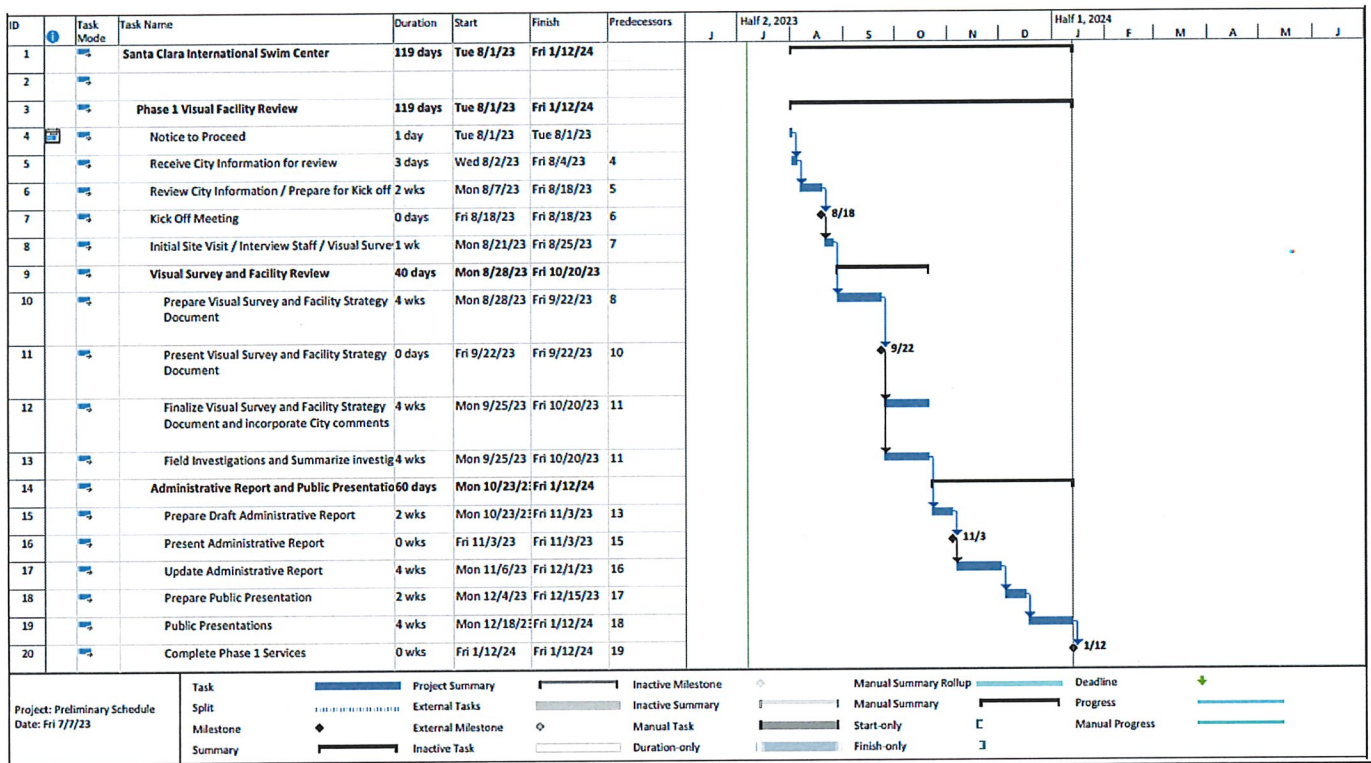
17. PROJECT ASSUMPTIONS

17.1. Assessment Limitations: Due to the inherent limitations of facility condition assessment services, the age of the facility and the limited scope, the, assessment and studies may not identify all items, concerns, issues or life safety items. Consultant shall document any unidentifiable items to enable the City to understand and weigh the risks associated with the Project. They are preliminary and intended to assist the City in an overall evaluation of the facility and whether additional forensic investigation is needed and/or if the facility should be closed. The City may use the information to determine if it should proceed to Phase 2 and explore facility renovation or replacement. Due to the current volatility of the construction industry and cost escalation, any cost-related work is preliminary and is not intended to be a prediction of actual bid amounts.

17.2. Project Size: Scope of services is limited to the International Swim Center pool facility only. Review, analysis, design, and coordination of any kind for areas outside the direct limits of the pool area is excluded. Exclusions include Central Park, areas outside the pool fence, city streets, or any other area.

- 17.3. Record Drawings:** Information is to be provided by the City.
- 17.4. Meetings:** Where the maximum number of meetings to be included in Consultant's services is specified herein, Consultant agrees to attend, and participate in, as many meetings as specified as part of the base scope of services. Meetings in excess of those specified will be billed at additional cost.
- 17.5. Consultation and Coordination:** All consultations and coordination not associated with specific meetings shall be conducted at the sole discretion of the Consultant, and only as necessary for the Consultant to complete the professional services of this Agreement.

APPENDIX A1 TO EXHIBIT A DRAFT PROJECT SCHEDULE



**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The total maximum compensation the City will pay the Consultant under this Agreement shall not exceed **Two Hundred Thirty-Eight Thousand Nine Hundred Twenty Dollars (\$238,920)** during the term of the Agreement. Any additional fees, costs and expenses requested by the City that would exceed the preceding maximum amount will need to be addressed through an amendment to the Agreement that is subject to City Council approval and budget allocation.

2. FEE SCHEDULE

Consultant's compensation for Phase 1 Services, as described in Exhibit A, shall be a fixed fee of \$223,920. This fixed fee includes all labor, materials, equipment, overhead, general administrative costs, and profit. Consultant shall invoice the City for the percentage of services completed during the previous month.

3. ADDITIONAL SERVICES

Services that are not part of Phase 1 Services, as described in Exhibit A, shall be at additional cost. The City has a set aside the amount of \$15,000 for additional services. Consultant shall provide a written quote to the City, which may be based on a fixed fee as listed in Table B1, or as listed in Table B2 on time and materials basis.

Cost of services and expenses charged to Consultant by outside consultants and professional or technical firms shall be at actual cost plus 10%. Reimbursable expenses will be billed at actual cost plus 10%.

Table B1: Additional Services

Description	Amount
Utility Locating	\$108,013
Topographic Survey	\$76,368
Pool Structure Leak Detection	\$12,157

Table B2: Hourly Rates

Classification	Regular Hourly Rate*
Principal	\$285.00
Director	\$240.00
Discipline Director	\$260.00
Project Director	\$250.00
Project Leader	\$200.00
Manager	\$165.00

Classification	Regular Hourly Rate*
Design Coordinator II	\$170.00
Design Coordinator I	\$145.00
Designer III	\$135.00
Designer II	\$120.00
Designer I	\$110.00
Senior Specialist	\$140.00
Specialist III	\$110.00
Specialist II	\$95.00
Specialist I	\$85.00
Intern	\$75.00

*The hourly rates are subject to change annually, subject to the City's approval.

4. PAYMENT SCHEDULE

City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

EXHIBIT C INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

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, Contractor 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 Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

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

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to

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

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required 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 Contractor 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, Contractor, 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. Contractor 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

Contractor 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, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be e-mailed to ctsantaclara@ebix.com:

Or by mail to:
EBIX Inc.
City of Santa Clara – Parks and Recreation Department
P.O. Box 100085 – S2

Duluth, GA 30096
Telephone number: 951-766-2280
Fax number: 770-325-0409

I. QUALIFYING INSURERS

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

EXHIBIT D LABOR COMPLIANCE ADDENDUM

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

A. Prevailing Wage Requirements

1. 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.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified

payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

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

B. Audit Rights

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

practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

C. Enforcement

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

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