

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
PLAY-WELL TEKNOLOGIES**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, a chartered California municipal corporation (hereinafter "City") and Play-Well Teknologies, a California Corporation (hereinafter "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 services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. 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,
- 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 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

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 July 1, 2019 and terminate on June 30, 2024.

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.

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 One Hundred Forty Thousand Dollars (\$140,000), 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

- A. 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, 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 Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or

persons contracting with Contractor 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. Contractor'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 Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor 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, Contractor 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 Contractor's responsibilities under the Act.

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 & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
e-mail: kcastro@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Play-Well Teknologies
Andrew Merovich, Area Manager
224 Greenfield Avenue, Suite B
San Anselmo, CA 94960
415-578-2746
andrew@play-well.org

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

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. 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.

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: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

PLAY-WELL TEKNOLOGIES
a California Corporation

Dated: _____

By (Signature): _____

Name: Andrew Merovich

Title: Area Manager

Principal Place of Business Address: 224 Greenfield Avenue, Suite B
San Anselmo, CA 94960

Email Address: Andrew@play-well.org

Telephone: 415-578-2746

Fax: N/A

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

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

1. GENERAL

- 1.1.** Contractor shall perform the recreational programming services at City community centers, parks, and buildings (collectively “facilities”).
- 1.2.** Contractor may be required to share City facilities with other City vendors and staff.
- 1.3.** Contractor shall prepare reports, schedules and lesson plans in a timely fashion.
- 1.4.** Contractor may, with City approval, provide some recreational programming at their facility.
- 1.5.** Contractor shall develop and submit a pricing model for its offered programming to the City for review and approval.
- 1.6.** All program registration will be handled through the City's registration software portal.
- 1.7.** Programs shall be advertised in the City-produced activity guide, which is published three times per year. The City may require Contractor to assist in marketing the offered programs.

2. CONTRACTOR RESPONSIBILITIES

- 2.1.** Manager – Contractor shall assign a Manager to serve as the primary contact, and take the lead role in overseeing and providing the required recreational programming services.
- 2.2.** Contractor shall provide all staffing required to host and conduct each program.
- 2.3.** Contractor shall provide all necessary supplies and equipment required for each program.
- 2.4.** Contractor shall record and file attendance for each class/program, and shall submit all attendance records to the City at the end of the class/course, or as requested by the City.
- 2.5.** Contractor shall conduct participant surveys as provided by the City designed to measure participant satisfaction.
- 2.6.** Contractor shall contact designated City staff in the event that a scheduled class/program needs to be rescheduled, cancelled or changed.
- 2.7.** Contractor's employees shall be fingerprinted, at Contractor's sole cost, prior to performing the services described in this Exhibit A. Results of the check

are processed by the Department of Justice through the City and the City in its sole discretion shall review and determine the results of the background check.

- 2.8.** Contractor shall contact the City at least one week prior to the commencement of a class/program to obtain the class/program size and general enrollment information.
- 2.9.** Contractor shall make reasonable accommodations for all enrollees with special needs and/or disabilities.
- 2.10.** Contractor shall contact the City's designated program supervisor and obtain prior written approval if Contractor wishes to advertise its programming in addition to the City's advertising methods.
- 2.11.** Contractor shall conduct all programming in a safe and professional manner.

3. CITY RESPONSIBILITIES

3.1. City Resources

- 3.1.1.** City will appoint a Recreation staff member, whom the Contractor's staff will report to.
- 3.1.2.** City shall provide the facilities where the Contractor's recreational programming shall be conducted.
- 3.1.3.** City shall conduct advertising and registration for the Contractor's scheduled recreational programming. City shall provide the registration portal to enroll class/program participants and collect all registration fees from the enrollee.

3.2. Payment of Invoices

- 3.2.1.** Payment will be made 30 days from receipt of invoices and in accordance with City's standard business practices.

3.3. Customer Participation Survey

- 3.3.1.** City shall develop the customer participation survey to be distributed by the Contractor.

4. RECREATIONAL PROGRAMMING SERVICES

- 4.1.** Contractor shall develop and provide recreational programming in the following category.
 - 4.1.1.** Enrichment and academic courses.
- 4.2.** Contractor may add course sections based on interest, facility and instructor availability.
- 4.3.** Contractor may develop and provide recreational program at the beginner, intermediate, and advanced levels.

4.4. Contractor shall provide the required recreational programming services in one or more of the following formats.

4.4.1. Classes;

4.4.2. Camps;

4.4.3. Lessons;

4.4.4. Clinics;

4.4.5. Meetings;

4.4.6. Parent/child programs;

4.4.7. Pre-competitive programs;

4.4.8. Performance programs;

4.4.9. Seminars;

4.4.10. Skill development courses;

4.4.11. Special programming such as birthday parties and kids events;

4.4.12. Trainings; and

4.4.13. Workshops.

5. PROGRAMMING SCHEDULING

5.1. Contractor shall develop a schedule of recreational programs for each of the City's programming sessions.

5.2. The programming sessions are as follows.

5.2.1. Winter Session;

5.2.2. Spring/Summer Session; and

5.2.3. Fall Session.

5.3. Contractor shall coordinate with City staff to determine the length of each programming session.

5.4. Programming may be offered between the hours of 8:00 a.m. and 8:00 p.m., Monday through Saturday. In some facilities programming may be offered on Sunday.

5.5. Contractor shall work closely with assigned City recreation staff in scheduling classes/programs.

5.6. Contractor shall submit to the City a draft of its scheduled session programming six months prior to the start of the respective session for City review and approval.

5.7. City shall advertise the finalized schedule in the City-produced activity guide.

6. PRICE SCHEDULE

- 6.1.** Contractor shall submit its schedule of registration fees and charges ("price schedule") to the City for review and approval.
- 6.2.** The draft price schedule shall be submitted to the City six months prior to the start of each programming session, and shall accompany the Contractor's draft programming schedule.
- 6.3.** The City reserves the right to mandate changes in the Contractor's pricing.

7. CONTRACTOR STAFFING

- 7.1.** Contractor shall provide qualified staff/instructors that will provide instruction during each program. Contractor's staff/instructors shall:
 - 7.1.1.** Be at least 18 years old;
 - 7.1.2.** Be certified in CPR/First Aid, where applicable;
 - 7.1.3.** Have completed and cleared a fingerprint check as set forth in Section 2.7 of this Exhibit A; and
 - 7.1.4.** Meet or exceed City's standards for child protection and supervision.
- 7.2.** It is the City's preference that teachers/coaches instruct during the entire session that a program is offered, with as little substitution or cancellation as possible.

8. PROFESSIONAL BEHAVIOR

- 8.1.** Contractor shall be responsible for the conduct, demeanor, and appearance of its employees while in or around the City facilities, or while acting in the course and scope of employment.
- 8.2.** Contractor's employees shall be neat and clean, and shall act in a courteous and professional manner. No employee shall use improper language or act in a loud, offensive, or otherwise improper manner.
- 8.3.** Contractor's employees shall be all times polite and courteous in their dealings with customers, treating them with patience and respect.
- 8.4.** Contractor's employees shall be attentive, alert and responsive to all customer interactions, needs and comments. Based on customer feedback the Contractor or its employees may be asked to change program approach or style to adjust to City of Santa Clara customer service standards.

9. TERMINATION

- 9.1.** At the termination of the Agreement, all facility space, storage, and work space provided by the City shall be restored to its original state.
- 9.2.** Contractor shall return all badges, keys, access permits, and security permissions granted by the City.

EXHIBIT B

SCHEDULE OF FEES

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

1. Maximum Compensation

The maximum amount of compensation to be paid to Contractor shall not exceed One Hundred Forty Thousand Dollars (\$140,000).

2. Revenue Split with the City

- 2.1.** Contractor's compensation shall be based on a percentage of the registration base fees collected per enrollee for its offered recreational programming.
- 2.2.** Contractor shall receive seventy percent (70%) of registration base fees collected per enrollee for its offered recreational programming. The City shall retain thirty percent (30%) of registration base fees collected per enrollee.
- 2.3.** Additional Programming Fees: The City may charge program participants a "non-resident fee" or other administrative fees separate or on top of the Contractor's proposed registration base fee(s). These additional City fees shall not be included in the revenue split.

3. Invoicing

- 3.1.** For sessions eleven (11) weeks in length or shorter, Contractor shall invoice the City within five (5) days after the last session meeting date.
- 3.2.** For sessions 12 weeks or longer, Contractor shall invoice the City at the mid-session point, and within five (5) days at the mid-session meeting date. Each invoice shall be for fifty percent (50%) of the session registration fees due to the Contractor. Second payment may be less or more than first payment, based on registration changes.
- 3.3.** Invoices shall be detailed and include the title of the course, course number, amount due, and the invoiced session date range for each activity.

4. Payment to Contractor

- 4.1.** The City shall review the invoice submitted by Contractor and within ten (10) working days of receipt of the invoice, the City shall notify Contractor of any discrepancies or deficiencies in said invoice.
- 4.2.** If there are no discrepancies or deficiencies in the submitted invoice, City shall submit payment to Contractor within thirty (30) days.
- 4.3.** Contractor shall not be paid more than twice per session.

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, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

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, 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 two million dollars (\$2,000,000) 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. 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 D of this Exhibit C, above.

E. 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.

F. 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.

G. 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 mailed to:

EBIX Inc.

City of Santa Clara Parks and Recreation Department

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

H. 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.