

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
KYLE GROUNDWATER, INC.**

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 KYLE Groundwater, Inc., a California corporation (Contractor). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate on August 31, 2025.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is 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, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Water & Sewer Utilities Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at gwelling@santaclaraca.gov

And to Contractor addressed as follows:

KYLE Groundwater, Inc.
309 E. Jefferson Avenue
Pomona, CA 91767
and by e-mail at russell.kyle@kylegroundwater.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. AMENDMENTS

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

25. COUNTERPARTS

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

CONTINUED ON PAGE 8

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

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

“CITY”

KYLE GROUNDWATER, INC.
a California corporation

Dated: 29-Jul-22

By (Signature):



Name: Russell Kyle

Title: President

Principal Place of Business Address: 309 E. Jefferson Avenue
Pomona, CA 91767

Email Address: russell.kyle@kylegroundwater.com

Telephone: (626) 379-7569

Fax: ()

“CONTRACTOR”

EXHIBIT A
SCOPE OF SERVICES

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

1. INTRODUCTION

- 1.1. Contractor shall provide hydrogeological and engineering services in support of rehabilitation of six (6) well stations: Well 5-02, Well 16-02, Well 21, Well 26, Well 32, and Well 34, as set forth herein.
- 1.2. To the extent not inconsistent with this Agreement, the City's RFP 21-22-07B (including subsequent updates), Contractor's proposal response dated March 7, 2022., are incorporated herein by this reference, subject to the terms and conditions of the Agreement.

2. PHASE 1 - SCOPE OF SERVICES

2.1. Task 1 – General Project Management Services and Coordination

- 2.1.1. Contractor shall provide project management services up to the production of the Well Rehabilitation Technical Recommendation. This includes the management of any subconsultants, if any, to gather any further information required to produce the Well Rehabilitation Technical Recommendation. Contractor shall:
 - 2.1.1.1. Prepare for and attend kick off meeting
 - 2.1.1.2. Manage subconsultants, if required, for the following subtasks:
 - 2.1.1.2.1. Well Video
 - 2.1.1.2.2. Sanding
 - 2.1.1.2.3. Capacity Test
 - 2.1.1.3. Provide general administration
 - 2.1.1.4. Provide up to two (2) progress update meetings per well site.
 - 2.1.1.4.1. Meetings can be combined as necessary.
 - 2.1.1.4.2. One (1) meeting shall occur at the conclusion of data analytics and prior to the recommendation for Focused Intake Pumping.
 - 2.1.1.4.3. One (1) meeting shall occur at the conclusion of Task 2, prior to making a final recommendation for Task 3.
 - 2.1.1.4.4. The meetings shall be accompanied by a presentation and brief technical memo.

2.2. Task 2 – Data Analytics and Acquisition

- 2.2.1.** Contractor shall analyze the following well data provided by the City:
 - 2.2.1.1.** Schaff and Wheeler 2014 Well Assessment Report
 - 2.2.1.2.** Pump Testing Data (YR)
 - 2.2.1.3.** Pump Curves
 - 2.2.1.4.** Driller's Log
 - 2.2.1.5.** Most Recent Well Videos
 - 2.2.1.6.** Well Completion Reports (YR)
 - 2.2.1.7.** Well Design Drawing and Specs
 - 2.2.1.8.** DDW Well Data Sheet
 - 2.2.1.9.** Efficiency Test
 - 2.2.1.10.** Water Quality Data
 - 2.2.1.11.** Rossum sand tests – Contractor may consider rerunning this test during the investigation of the data
 - 2.2.1.12.** Rehabilitation Records
- 2.2.2.** The City provided to Contractor a summary of available data for each well. Contractor shall be responsible for the acquisition of any missing critical well data that is not currently available, including administering all on site testing. If on site testing is required, then Contractor shall provide all tools, equipment, and materials to complete the work.
- 2.2.3.** If additional testing and data acquisition is required before the Contractor can reach a conclusion on candidates and process for reactivation, and the proposed work requires a third party, then Contractor shall obtain quotes for the proposed work, make recommendations to the City on the selection of additional subconsultants, and act as the City's representative during the work.
- 2.2.4.** Contractor shall provide services to manage EMT-24 Survey, Well Video Survey, Title 22 Water Quality Analysis, and any other testing required as a result of ongoing research.
- 2.2.5.** The preliminary data presented by Contractor will determine if Focused Intake Pumping is a beneficial step to remediate the issues at each well. Contractor shall not proceed with Focused Intake Pumping unless the City has provided prior approval.
- 2.2.6.** Contractor shall provide services to conduct zone specific water quality sampling and flow profiling for well 32 only. This task shall include well redevelopment, time series sampling, flowmeter survey, depth specific sampling, water quality analysis and reporting.

2.3. Task 3 - Well Rehabilitation Technical Recommendation

- 2.3.1.** At the conclusion of the Data Analysis and Acquisition phase, Contractor shall prepare a Well Rehabilitation Technical Recommendation for the group of wells. The recommendation shall include:
 - 2.3.1.1.** the steps to remediate the sanding while maximizing the capacity of the selected wells;
 - 2.3.1.2.** an estimate of the proposed work;
 - 2.3.1.3.** a schedule of the proposed work;
 - 2.3.1.4.** the details of what is outsourced; and
 - 2.3.1.5.** an engineer's estimate for the rehabilitation efforts.
- 2.3.2.** For wells that are not considered candidate for rehabilitation, Contractor shall provide a justification for the recommendation.
- 2.3.3.** The deliverable shall be provided in a technical memo or report in a PDF format.
- 2.3.4.** Upon the review of Task 3, the City may elect to move forward to Phase 2 for one or all the identified candidates.

2.4. Task 4 – Development Plan for Reactivation of Granular Activated Carbon Treatment System for Iron and Manganese Removal at Well Station 32

- 2.4.1.**
- 2.4.2.** Contractor shall conduct a minimum of two site visits to investigate the available data and determine the steps to reactivate the treatment facility. Contractor shall prepare a basis of reactivation memo highlighting the identified steps to remediate any operational issues that include but not limited to media exchange, instrumentation set point reconfigurations, chemical treatment, run to waste cycles, and instrumentation upgrades to restore the treatment unit to operation.
- 2.4.3.** Contractor shall also provide an estimate of the proposed work, a schedule of the proposed work, and the details of what is outsourced.

2.5. Task 5 – Develop Rehabilitation Technical Specifications

- 2.5.1.** Contractor shall prepare a set of technical specifications and associated construction details for each proposed well rehabilitation identified in Task 3. These methods may include:
 - 2.5.1.1.** mechanical rehabilitation such as airlifting, swabbing, jetting, or brushing via mechanical means with the aided use of NSF 61 approved well cleaning additives;
 - 2.5.1.2.** physical permanent modification to the well casing such as swedging or lining the well;
 - 2.5.1.3.** temporary modification to the well casing such as installing a packer system; and
 - 2.5.1.4.** other modification measures not mentioned here.

- 2.5.2. The specifications shall also include cleaning, test pumping, pre and post well video inspections, pre and post sand testing, and other recommendations to validate the effectiveness of the rehabilitation improvements.
- 2.5.3. Contractor shall provide digital copies of the Draft Specifications at the 70% and 90% completion phases for City's review and comment.
- 2.5.4. Contractor shall conduct two virtual workshop meetings at the 70% and 90% submittal phase to review the Draft Specifications and obtain City's comments.
- 2.5.5. Contractor shall submit three (3) hard copies of the Final Specifications along with the electronic files (both Microsoft Word and PDF format).

2.6. Task 6 – Bid Advertisement and Contractor Selection Services

- 2.6.1. Contractor shall assist the City in producing a scope of work and bid package for advertisement of the Well Rehabilitation to include:
 - 2.6.1.1. prepare technical specifications package;
 - 2.6.1.2. prepare the project drawings and construction details;
 - 2.6.1.3. prepare itemized bid;
 - 2.6.1.4. assemble the bid package;
 - 2.6.1.5. if necessary, respond to request for clarifications during the bid process;
 - 2.6.1.6. provide guidance on contractor selection and provide a bid summary;
- 2.6.2. The City will advertise the bid package through the City's e-procurement system and will review and tabulate all bids for the project team to review.

2.7. Task 7 – Engineering Services During Rehabilitation

- 2.7.1. Contractor shall assist the City during the rehabilitation process and act as the owner's representative during this phase of the work. Contractor shall provide technical support and engineering services throughout the duration of the well rehabilitation project on a time and materials basis with a not-to-exceed amount established prior to commencement of work.
- 2.7.2. The scope of services for this task shall include the following:
 - 2.7.2.1. attend preconstruction meetings;
 - 2.7.2.2. review contractor submittals, work plans, and schedules;
 - 2.7.2.3. respond to contractor generated RFIs and RFQs;
 - 2.7.2.4. assist with invoice review and change orders;
 - 2.7.2.5. provide on-site inspection services; and
 - 2.7.2.6. document all rehabilitation activities and provide as-builts and records drawings for the City.

- 2.7.3.** It is anticipated the during the actual rehabilitation work, Contractor will be present as needed to enforce the specification and provide routine updates to the City's Project Manager.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

The total maximum compensation the City will pay the Contractor under this Agreement shall not exceed **One Million Seven Thousand Eight Hundred Eighty Dollars (\$1,007,880)** during the term of the Agreement. Any additional 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. FEE SCHEDULE

2.1. Contractor shall pay Contractor the amount for each of the tasks described in Exhibit A as follows:

Description	Tasks 1-3	Task 4	Task 5	Task 6	Task 7	Total
Well 5-02	\$78,946.25		\$5,880.00	\$1,792.00	\$62,227.00	\$148,845.25
Well 16-02	\$78,946.25		\$5,880.00	\$1,792.00	\$62,227.00	\$148,845.25
Well 21	\$105,170.25		\$5,880.00	\$1,792.00	\$62,227.00	\$175,069.25
Well 26	\$78,946.25		\$5,880.00	\$1,792.00	\$62,227.00	\$148,845.25
Well 34	\$105,170.25		\$5,880.00	\$1,792.00	\$62,227.00	\$175,069.25
Well 32	\$140,101.00	\$71,104.60				\$211,205.60
TOTAL	\$587,280.25	\$71,104.60	\$29,400.00	\$8,960.00	\$311,135.00	\$1,007,879.85

2.2. Contractor shall be paid on a fixed fee basis for Tasks 1 – 6. The fees include all labor, materials, equipment, overhead, general administrative costs, and profit.

2.3. Contractor shall be paid on a time and material basis for Task 7 in accordance with the following rates:

Labor Classification	HourlyRate
Principal Hydrogeologist	\$195
Project Hydrogeologist	\$145
Staff Hydrogeologist	\$135
GIS Technician	\$120
Project Coordinator	\$105
Clerical	\$80
Non-Labor Charges	
Mileage = \$0.585 per mile (i.e., the allowable IRS rate); Field visit (day) = \$50; Field visit (overnight) = \$160; Transducer rental = \$25 per day	

2.4. The assumptions made in calculating the amounts in Section 2.1 above are described in Contractor’s Cost Proposal dated July 1, 2022. The amounts may

change during the project if the assumptions factored in during the cost process change. Any changes in the amounts shall be agreed to by both parties in writing.

3. PAYMENT SCHEDULE

- 3.1.** With respect to progress payments for Tasks 1 – 6. Contractor shall base its invoice on the percentage of services completed during the previous month.
- 3.2.** With respect to payments for Task 7, Contractor shall base its invoice on the hours, professional fees, costs, and charges associated with the services completed during the invoice period in accordance with the fee schedule in Table x.
- 3.3.** City will pay Contractor 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 – Water & Sewer Utilities 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.