

Meeting Date: 4-9-13

AGENDA REPORT

Agenda Item # 6B.1

City of Santa Clara, California



Date: April 2, 2013
To: City Manager for Council Action
From: John C. Roukema, Director of Electric Utility
Subject: Approval of a Legal Services Agreement with the Law Offices of Susie Berlin to Provide Energy Regulatory Services to the Electric Department

EXECUTIVE SUMMARY:

The law firm of McCarthy & Berlin provided legal services for the City of Santa Clara related to Electric Department issues for many years. Now that partner Barry McCarthy has retired, Susie Berlin has opened her own law firm, Law Offices of Susie Berlin. The firm continues to have special expertise in many types of energy regulatory issues, with an emphasis in California state regulations and legislation, and has effectively represented the City in such matters over the years. We are pleased with the representation Ms. Berlin has afforded the City and wish to continue our beneficial relationship with her law firm and enter into a Legal Services Agreement. A copy of the Legal Services Agreement is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Law Offices of Susie Berlin will continue to provide legal services to assist the City, directed by the City Attorney, in a legal advisory and support capacity. The continued legal services provided by the firm will provide the City with the necessary specialized legal support at competitive rates.

ECONOMIC/FISCAL IMPACT:

This Legal Services Agreement will not exceed \$120,000.00, subject to budget appropriations. Funds are available in the Electric Department Operating Contractual Services/Not Classified account, 091-1358-87870-[F]92300.

RECOMMENDATION:

That the Council approve, and authorize the City Manager to execute, the Legal Services Agreement with the Law Offices of Susie Berlin, in an amount not to exceed \$120,000.00, to provide energy regulatory services to the Electric Department.

for Paul Ost

 John C. Roukema
 Director of Electric Utility

Certified as to Availability of Funds:
 Account No. 091-1358-87870 \$120,000.00 *OK 2/4*

 Gary Ameling
 Director of Finance

APPROVED:

 Julio J. Fuentes
 City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
 1) *Legal Services Agreement with the Law Offices of Susie Berlin*

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
LAW OFFICES OF SUSIE BERLIN**

PREAMBLE

This legal services agreement ("Agreement") is made and entered into on this ____ day of April, 2013, (the "Effective Date") by and between Law Offices of Susie Berlin, a sole proprietorship, comprised of attorneys licensed to practice law in the State of California with its primary place of business located at 1346 The Alameda, Suite 7, #141, San Jose, CA 95126, ("Firm") and the City of Santa Clara, California, a chartered California municipal corporation ("City"), with its primary place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050. City and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement;
- B. Firm represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide legal 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 PROVISIONS

1. RETENTION OF FIRM.

- A. City hereby confirms, retains and authorizes Firm to represent City and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of City on an as-needed basis. By this Agreement, City is retaining Firm and not individual members of the Firm. Firm's client is the City, as a public entity, and not any of its individual members, groups of individuals or any other entity. Firm shall report to and receive direction from the City Council, City Attorney and/or City Manager.
- B. Firm shall perform such legal services for and on behalf of City under the primary direction of the City Attorney. Firm shall undertake, subject to approval of Firm, such additional duties as may be authorized by City from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF SERVICES TO BE PROVIDED.

Firm shall advise City regarding electric issues, including, but not limited to, providing advice and counsel on legal matters affecting City, performing legal research, representing City in judicial proceedings in state and/or federal court or other dispute resolution tribunals or before administrative agencies, negotiating contracts and drafting contracts, correspondence, resolutions and other legal documents as may become necessary. Such services shall also include the preparation and delivery of status reports to City as specified in paragraph 8 of this Agreement.

3. COMMENCEMENT OF WORK.

Firm shall begin performing legal services under this Agreement when directed to do so by the City Attorney and shall complete said services within the time limits mutually determined to be acceptable by Firm and City.

4. ASSIGNMENT OF DUTIES.

It is contemplated that Susie Berlin will be assigned from Firm. She may be assisted as she deems appropriate by the persons listed in Exhibit A, provided that multiple representation at meetings, depositions, hearings and court appearances shall require authorization from the City Attorney. In addition, should it be desirable for any other attorney not listed in Exhibit A to work under this Agreement, such attorney may only be added with the consent of the City Attorney. While City expects the attorneys listed above to perform the tasks that require substantial experience, Firm shall attempt to minimize legal expenses by relying on junior attorneys, paralegals and law clerks for less demanding tasks.

5. PAYMENT FOR SERVICE.

In consideration for Firm's performance of legal services on behalf of City under the terms of this Agreement, and upon review and approval of Firm's bill by the City Attorney, Firm shall be compensated at the preapproved hourly rates and for authorized expenses as set forth in Exhibit A entitled "Schedule of Fees and Charges" attached and incorporated by this reference. Fees for services performed by retained consultants, subcontractors, experts or other personnel may be billed to City only if approved in writing by the City Attorney.

6. BILLING INVOICES.

Firm shall, within fifteen (15) days after the end of each calendar month in which services are performed under this Agreement, submit to the City an itemized invoice, describing the specific services performed as set forth in this Agreement. Firm shall adhere to the billing standards set forth in Exhibit B entitled "Billing Standards" attached and incorporated by this reference. The invoice shall be submitted to:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

7. BILLING STANDARDS.

Firm shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the City Attorney and/or required under the terms of this Agreement. Firm agrees it will not bill for time which is not specifically devoted to said task(s). Firm shall not bill for secretarial or clerical tasks. The billing format utilized to provide bills shall be set forth in detailed format which readily permits review by City retained auditors.

8. STATUS REPORTS.

Firm shall, within fifteen (15) days of each calendar quarter, submit to City a written report setting forth a summary of activities performed on behalf of City during the preceding calendar quarter, the current status of each pending matter or proceeding, results obtained or expected to be obtained, a summary of invoices for the preceding quarter and such other information relating to the services rendered as City may reasonably request. See Exhibit B for additional reporting requirements.

9. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective upon receipt of written notice of termination; provided, however, that Firm may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of Firm under the Rules of Professional Conduct of the State Bar of California; and provided, further, that in the event of termination, the amount due Firm for services rendered and costs and expenses incurred prior to termination shall remain due and payable. The City Attorney may exercise the power of City to terminate this Agreement without prior City Council approval. Upon written request of the City Attorney, Firm agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) calendar days of any such termination.

10. CONFLICTS OF INTEREST.

Periodically during the term of the Agreement, Firm shall make a good faith effort to identify and shall apprise City of those possible conflicts of interest which could affect Firm's duties to City or to the City Attorney under the California Rules of Professional Responsibility, or Firm's performance of the responsibilities reposed in Firm under this Agreement, or which Firm reasonably believes are likely to affect future transactions by and between City and third parties. City retains those rights with respect to future conflicts as are vested in a client under the California Rules of Professional Responsibility, and may terminate Firm's services and withhold consent to such conflicts of interest under the California Rules of Professional Responsibility which City deems in good faith not to be in the City's best interest.

11. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

City and Firm bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City Attorney.

12. INDEPENDENT CONTRACTOR.

In performing work required under this Agreement, Firm is not an agent nor employee of City but an independent contractor. Firm shall at all times act as an independent contractor with respect to the performance of this Agreement, with full rights to manage its employees subject to the requirements of the law. Neither Firm nor any employees or agents of Firm shall be considered an employee of City for any purpose.

13. RECORDS AND DOCUMENTATION.

Firm shall maintain complete and accurate records of the services provided to City and expenses incurred on behalf of City. Firm agrees to assist City in meeting City's reporting requirements to other agencies with respect to Firm's work under this Agreement. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement, and for a period of six (6) years after termination of the Agreement.

14. FAIR EMPLOYMENT.

Firm shall not discriminate against any employee or applicant for employment in hiring, promotion or unlawfully discharge, on the basis of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law. In the State of California this requirement is an ethical obligation of attorneys in the management of their Firms. [Rules of Professional Conduct Section 2-400 (B).]

15. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Firm shall indemnify, protect, defend and hold harmless City, its City Council, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from Firm's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the work by Firm, its agents, subcontractors and/or assigns under to this Agreement.

16. INSURANCE REQUIREMENTS.

Firm shall maintain in full force and effect the following insurance policies:

- A. Commercial general liability policy (bodily injury and property damage);
- B. Worker's compensation/employer's liability policy;
- C. Business automobile liability insurance policy; and,
- D. Professional liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as set forth in Exhibit C entitled "Insurance Requirements" attached and incorporated by this reference.

17. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by Firm in connection with matters upon which the City has retained Firm shall not be shown or distributed to any other public or private person or entity except as authorized by the City Attorney and in no event prior to having been first disclosed to the City Attorney. All information, documents, records, reports, data or other materials furnished by City to Firm or other such information, documents, records, data or other materials to which the Firm has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of City. Firm shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the City Attorney.

18. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.

19. NO THIRD PARTY BENEFICIARY.

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

20. NOTICES.

All notices, invoices, reports or other communication to the Parties shall be properly given if delivered in person or sent by First Class mail, facsimile or overnight delivery and addressed as follows:

Santa Clara City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050
Fax Number: (408) 249-7846

And to Firm addressed as follows:

Law Offices of Susie Berlin
1346 The Alameda, Suite 7, #141
San Jose, CA 95126

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

21. LAW GOVERNING AGREEMENT.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

22. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

23. LICENSE REQUIREMENTS.

Firm shall demonstrate that the attorney(s) who provide legal services to City under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the City Attorney why such license is not required to perform the services required.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 249-7846

“CITY”

LAW OFFICES OF SUSIE BERLIN

A Sole Proprietorship

By: _____

(Signature of Person executing the Agreement on behalf of Firm)

Name: SUSIE BERLIN

Title: Owner

Local Address: 1346 The Alameda, Suite 7, #141

San Jose, CA 95126

Telephone (408) 778-8478

Email: berlin@susieberlinlaw.com

“FIRM”

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**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
LAW OFFICES OF SUSIE BERLIN**

EXHIBIT A

SCHEDULE OF FEES AND CHARGES

A. Billable Rates

Firm shall bill its time by the hour at the hourly billable rate assigned to each attorney. Firm shall bill City for its services at its current hourly rates, which is three hundred thirty-five dollars (\$335.00) per hour for attorney time and one hundred fifty dollars (\$150.00) per hour for paralegal time. A review of hourly rates may be conducted annually and adjustments may be made so long as the rates fall within the range set forth in this Agreement.

Notice of any proposed increase in the approved hourly rates for services rendered under this Agreement will be given to City in writing no later than thirty (30) days prior to the effective date of subject increase. No proposed increase will become effective if, prior to its effective date, City notifies Firm in writing of objections thereto. In the event a timely notice of objection to any proposed increase is given, Firm and City shall attempt to reach agreement concerning future hourly rates. If agreement is reached, the rates agreed upon shall be applicable as of the date agreed upon. In the event that after a reasonable period the parties are unable to reach agreement, either party may advise the other in writing that this Agreement is terminated.

Firm will be reimbursed for all out-of-pocket costs and expenses actually incurred by Firm in the above-described representation of City. Reimbursable out-of-pocket expenses include, but are not limited to, all travel expenses, (i.e., local travel including taxis), lodging, long distance telephone calls, reproduction and printing costs, postage, filing fees, word processing costs paid to third parties after prior City approval, transcript costs, staff (non-attorney) overtime after prior City approval and notary fees, to the extent that any such costs are incurred on behalf of City.

B. Maximum Not to Exceed Contract Amount

In no event shall the total amount paid to the Firm for services, including all fees, costs and/or expenses, under this Agreement exceed one hundred twenty thousand dollars (\$120,000.00), subject to budgetary appropriations.

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
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AND
LAW OFFICES OF SUSIE BERLIN**

EXHIBIT B

BILLING STANDARDS

- A. All cases shall be billed monthly pursuant to paragraph 7 of this Agreement.
- B. The fee portion of each invoice shall include the attorney's name (or initials, if full name is noted elsewhere on invoice), amount, date work was performed, the amount of time expended, rate per hour, and a brief description of the services rendered as a basis for fee calculation, or other method of determining the fees. All tasks set forth in Firm's billing documentation shall be specific and detailed. Examples of unacceptable billing entries include but are not limited to: overly generalized listings of task descriptions (e.g., "review contract" or "prepare for negotiations"); double staff or attorney time on any task, unless expressly authorized by the City Attorney; block billing; time billed for additional newly assigned attorney(s) to learn case file; assigned work by law clerks; administrative costs; word processing charges; secretarial or clerical charges; time spent on researching and/or drafting work that Firm has done and billed another client for in the past.
- C. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed.
- D. The cost and expense portion of the invoice shall clearly identify the nature and amount and any other cost(s) billed to City must be separately itemized with prior written approval of the City Attorney. Any experts or contractors hired by Firm on behalf of City whose charges are billed through the Firm must also provide such billing itemization and such billing shall be attached to the billing provided to City by Firm. Professional fees and expenses invoiced to City shall be due and payable within thirty (30) days after receipt of Firm's statement.
- E. In support of payment for such bill, Firm shall furnish payroll records, bills, invoices, receipts or other evidence of reimbursable expenses incurred as reasonably requested by the City Attorney. City reserves the right to require additional substantiation of any item of claimed expense.
- F. Firms representing City in active litigation shall prepare a brief summary of activity on each case on a monthly basis.
- G. Each month's bill should include the total billable hours and expenses to date for each matter.

- H. City encourages the use of paralegals for any task that can be delegated. However, similar to attorneys, no more than two paralegals (but preferably one) should work on each case.
- I. The maximum charge for photocopying is twenty-five cents (\$.25) per page.
- J. Fax charges should be one dollar (\$1.00) or less per fax. City encourages the use of email correspondence where appropriate.
- K. Messenger and other charges in excess of actual costs are not permitted.
- L. Telephone, cellular telephone and postage charges are billable at actual cost.
- M. Meals are not billable to City without prior authorization.
- N. Expert witness fees are not automatically authorized. Firm shall obtain approval for each expert witness from the City Attorney.
- O. Firm shall maintain at least the insurance coverage set forth in Exhibit C at all times.
- P. Work performed on a not-to-exceed basis may not be increased without prior approval by the City Attorney and/or City Council, depending upon the amount in question.
- Q. If Firm is provided with a new case directly from City staff or if a matter arises that requires Firm to open a new file, the City Attorney should be informed immediately.
- R. City expects that Firm will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the City Attorney immediately.
- S. City's Finance Department will send a request for an auditor response letter annually. Firm will respond to these requests timely and will provide a copy of Firm's response letter to the City Attorney.
- T. Firm will provide copies of all motions or briefs which are filed related to City's matter. Unless previously requested, Firm does not need to send drafts or miscellaneous correspondence. Copies of significant pieces of correspondence should be provided to the City Attorney.
- U. City expects early and frequent evaluation of its cases. If the likelihood of success on a particular case is low, City needs to know up front in order to minimize litigation costs and make reasonable attempts to settle the case.

**LEGAL SERVICES AGREEMENT
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LAW OFFICES OF SUSIE BERLIN**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Firm's indemnification of the City, and prior to commencing any of the services required under this Agreement, Firm shall purchase 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

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Firm; 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 Firm 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;

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 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 Firm 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 Firm 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 acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/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 Firm'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 Firm 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 Firm'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 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

Firm and City agree as follows:

1. Firm agrees to ensure that subcontractors, and any other party involved with the performance of Services, who is brought into or involved in the performance of the Services by Firm, provide the same minimum insurance coverage required of Firm, except as with respect to limits Firm 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. Firm 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. Firm agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge City or Firm 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. City reserves the right to withhold payments from the Firm 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, Firm and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase 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. Firm shall file with City, or its designated representative as set forth below, all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Firm 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, Firm 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:

City of Santa Clara City Attorney's Office
c/o EBIX Inc.

P.O. 12010-S2

Hemet, CA 92546-8010

or

151 North Lyon Avenue

Hemet, CA 92543

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Firm 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.