

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA, AND
ORCHARD COMMERCIAL, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Orchard Commercial, 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 services more fully described in this Agreement, as 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

Exhibit D – Notice of Exercise of Option to Extend Agreement

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

- A. 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 August 1, 2022 and terminate on July 31, 2027.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to five (5) additional one-year terms through July 31, 2032 ("Option Periods"), subject to the appropriation of funds. See Exhibit D for Notice of Exercise to Option to Extend Agreement Form.

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 **Three Hundred Ninety-Four Thousand Two Hundred Dollars (\$394,200)**, 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: Facility Maintenance
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at: kwinland@santaclaraca.gov

And to Contractor addressed as follows:

Orchard Commercial, Inc.
2055 Laurelwood Road, Suite 250
Santa Clara, CA 95054
and by e-mail at: tballas@orchardcommercial.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.

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”

ORCHARD COMMERCIAL, INC
a California corporation

Dated: _____

By (Signature): _____

Name: Byron Renfro

Title: President & COO

Principal Place of Business Address: 2055 Laurelwood Road, #250
Santa Clara, CA 95054

Email Address: brenfro@orchardcommercial.com

Telephone: (408) 922-0400

Fax: (408) 922-0608

“CONTRACTOR”

EXHIBIT A SCOPE OF SERVICES

1. Introduction

- 1.1. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's RFP 21-22-1 (including subsequent updates) and Contractor's proposal response dated May 27, 2022 are hereby incorporate by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.
- 1.2. Contractor will provide property management services necessary to operate, repair, and maintain the Santa Clara Convention Center Complex District ("District") common area property and facilities in a first-class condition consistent with the needs and operations of the Convention Center, Hotel, and Techmart office building uses of these common areas, and coordinate with the City for contract approvals and payments, and annual budget preparation.
- 1.3. The common area improvements generally consist of, but are not limited to, surface and structural (parking garage) parking, landscaping, trees, paving, pedestrian bridges, space frames, lighting, fountains, elevators, banners, reader boards, and appurtenances.
- 1.4. The District is located at 5001, 5101, and 5201 Great America Parkway, Santa Clara, CA (at the corner of Great America Parkway and Tasman Drive).

2. Professional Property Management Standards

- 2.1. Contractor represents and warrants to City that Contractor has the skill and professional competence, experience, and expertise to provide property management services as specified herein.
- 2.2. Contractor will exert its best efforts, to provide property management services for the operation and management of the property, and to exercise the highest degree of professional competence in managing the property so as to provide the City with first class services, conducted in a timely manner within operational limits requested by District entities.

3. Base Property Management Services

- 3.1. Contractor will manage, coordinate, and inspect the exterior operation, maintenance and repair activities at the site. Duties include, but may not be limited to, oversight of the existing vendor base, and taking actions necessary to assure vendors are providing services as agreed upon by contracts for:
 - 3.1.1. Parking Control Management

- 3.1.2. Landscape and tree maintenance services (which includes exterior janitorial work) (onsite 5 days a week), including significant number of high cost palm trees
- 3.1.3. Parking lot sweeping services (5 days/week in most areas)
- 3.1.4. Security services (7 nights and weekend service)
- 3.1.5. Space frame cleaning at Hotel and Techmart entries and crosswalk
- 3.1.6. Garage elevator contract maintenance
- 3.1.7. Onsite fountain minor repair and maintenance for three fountains
- 3.1.8. Exterior electrical maintenance/lighting, including two reader boards
- 3.1.9. Janitorial and pressuring washing services
- 3.1.10. Occasional ordering of additional services for large events in coordination with the City
- 3.1.11. Securing other service providers on an as-needed/when-needed basis in coordination with the City
- 3.1.12. Site cleaning and painting of all surfaces, and graffiti removal
- 3.1.13. Painting, Waterproofing
- 3.1.14. Other repairs as needed
- 3.2. Contractor will conduct informal bidding of services to ensure competitive pricing and shall be conducted in coordination with the City.
 - 3.2.1. One time repairs and other incidental services are bid on an ongoing basis. Periodic review to determine if greater efficiencies may be achievable within the current contracts while still maintaining common areas in first-class condition.
- 3.3. Contractor will respond with appropriate actions at any time of day or night to deal with requests needing immediate actions by site contractors.
- 3.4. Contractor will review and recommend to City approval for payment of Contractor invoices for services in a timely manner. City shall pay all bills, which are related to the property.
 - 3.4.1. Contractor shall forward any bills/invoices Contractor receives to the City for payment.
- 3.5. Contractor will not have any bank accounts on behalf of the City. All security deposits, rents, monies regarding the property shall be forwarded to City and shall be maintained by City in City's bank account.
- 3.6. City will be responsible to handle all monies of the property. City is responsible to pay all invoices/bills of the property.
- 3.7. Contractor will conduct as-needed regular meetings with site contractors, the City, and the District to keep them informed of operations in the common areas. Contractor will prepare and distribute meeting minutes.

3.8. Annual Budget

- 3.8.1. Contractor will draft an annual budget with sufficient detail and in a timely manner on or before March 1. Capital or one-time expense budget shall include recommendations for future years.
 - 3.8.2. Contractor will revise annual budget as directed by the City and District entities.
 - 3.8.3. Contractor will not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the approved budget or with respect to the performance of the property, and City acknowledges that the approved budget and any other projections previously or hereafter prepared by Contractor are intended only to be reasonable estimates and that, notwithstanding Contractor's best efforts to operate the property in accordance with the approved budget, actual results may vary due to unanticipated events and circumstances occurring after the preparation of the approved budget or other projection.
- 3.9. Any Other duties typical for professional management of exterior common areas.
- 3.10. Monthly reconciliations of operating expenses.
- 3.11. Contractor will provide, at a minimum, monthly financial reports on District expenses – exact format to be developed by Contractor and approved by the City and District.
- 3.12. Contractor will prepare scopes of work for District approved capital repairs, replacements, and restoration work within annual budgeted amounts in coordination with the City. Upon approval to proceed contract, coordinate, inspect work, and correct any deficiencies. Obtain and assemble any warranties and operation/maintenance manuals.
- 3.13. Contractor will assist in coordination of property activities and be in frequent contact with the District to ensure smooth operations of business activities.
- 3.14. Contractor is a property manager who shall manage City contracts for vendors of the City. The contracts for the vendors, including but not limited to landscapers, tree trimmers, janitors, etc., shall be contracts entered into directly by the City with the vendor. The Contractor is not executing contracts directly with these vendors and these vendors are not the subcontractors of Contractor.
- 3.15. Contractor will actively manage the parking control operations by reviewing event calendars of the three entities and working with the parking vendor to plan and schedule accordingly. Parking plans are generally done 1 month in advance.
- 3.16. Prior to the expiration of any vendor agreement, or when directed by the City, Contractor will work in coordination with the City to develop solicitations for

routine maintenance and repair services. The City will be responsible for managing the solicitation and execution of contract.

4. Assessment of Vendor Contracts

4.1. Upon commencement of this agreement, Contractor will:

- 4.1.1. Review all existing contracts and services to obtain an understanding of the terms and conditions and scope of services of each existing contract.
- 4.1.2. Identify appropriate scope of work and frequency of services.
- 4.1.3. Meet with each vendor to walk site and discuss specific duties and contractual expectations.
- 4.1.4. Set clear goals with vendor and prepare written documentation for review of measurable results.
- 4.1.5. Supervise, manage, inspect, and coordinate all maintenance and repair activities at the project on a routine and periodic basis.

4.2. Vendor Performance

- 4.2.1. Contractor shall document vendor performance and any deficiencies.
- 4.2.2. Contractor shall work with vendor to immediately take steps to correct any deficiencies, and contact City representative immediately if vendor fails to correct deficiencies in a timely manner.

5. Periodic Vendor Proposal Process

- 5.1. Contractor will coordinate with City to identify scope of work for required services or utilize scope of work from services already in place.
- 5.2. Contractor shall, if necessary, meet with City, and/or potential vendors to review scope of work and to perform a site inspection of the area of work.
- 5.3. Provide to City a written scope of work, propose deadline and request references or other additional information as needed.
- 5.4. Contractor will review each proposal package for accuracy and completeness.
- 5.5. Create a detailed analysis indicating price, vendor and any proposal variances or optional items.
- 5.6. Recommend to City vendor best suited to perform work.

6. Direction and Communication

- 6.1. Contractor will not be deemed an employee of the City, but shall at all times be an independent contractor performing property management services at the direction of the City.

- 6.2. Designated contacts from the District (Convention Center, Hotel, Techmart) may from time to time contact Contractor concerning needs, repairs, and vendor deficiencies. Contractor is authorized to take action to implement any repairs or corrections needed to:
 - 6.2.1. Protect the property from imminent danger or damage
 - 6.2.2. Prevent injury to persons
 - 6.2.3. Avoid suspension of any necessary service to the property
 - 6.2.4. Avoid penalties or fines
 - 6.2.5. Direct vendors to correct contractual deficiencies
- 6.3. As soon as possible, Contractor will notify the City of any unbudgeted repairs or corrections made, or requested, as soon as possible. City and Contractor will coordinate presentation of unbudgeted requests to District entities for consideration.

**EXHIBIT B
SCHEDULE OF FEES**

1. MAXIMUM COMPENSATION

1.1. The maximum amount payable for property management services provided under this Agreement and as set forth below shall not exceed **Three Hundred Ninety-Four Thousand Two Hundred Dollars (\$394,200)**, during the Initial Term of the Agreement. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement. No additional services will be performed unless both Parties execute an Amendment outlining the services requested and the compensation agreed for such services.

2. FEES

2.1. In consideration of the property management services rendered to City by Contractor under this Agreement the City shall pay the following fees:

Property Management Services Fee		
Description	Monthly Rate	Annual Cost
Cost for Initial Term Year 1 of 5	\$6,450	\$77,400
Cost for Initial Term Year 2 of 5	\$6,450	\$77,400
Cost for Initial Term Year 3 of 5	\$6,650	\$79,800
Cost for Initial Term Year 4 of 5	\$6,650	\$79,800
Cost for Initial Term Year 5 of 5	\$6,650	\$79,800
TOTAL NOT-TO-EXCEED MAXIMUM COMPENSATION FOR INITIAL 5-YEAR TERM		\$394,200

3. PRICING AND OPTION RENEWALS

3.1. Pricing is firm fixed for the Initial Term of the Agreement.

3.2. Price Adjustments: Contractor may request adjustments to rates prior to any one-year option to renew the Agreement after the Initial Term. Price increase requests must be tied to CPI, PPI, or relevant industry specific index. Requests for increase must be fully documented by Contractor. Price adjustments are subject to City's approval.

4. INVOICING

4.1. Contractor shall invoice the City on a monthly basis for Services provided by the Contractor during the preceding month on an invoice and in the format approved by the City and is subject to verification and approval by the City.

4.2. 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, 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.

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 emailed to:

ctsantaclara@ebix.com

or mailed to:

EBIX Inc.
City of Santa Clara Department of Public Works
P.O. Box 100085 – S2
Duluth, GA 30096

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.

**EXHIBIT D
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

Pursuant to Section ___ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

OPTION NO.	# of #
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NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ___ of the Agreement the rates of compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

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