



City of Santa Clara

Call and Notice of Special Meeting

City Council

Tuesday, November 12, 2019

5:00 PM

**City Hall Council Chambers
1500 Warburton Avenue
Santa Clara, CA 95050**

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor calls for a Special Meeting of the City Council of the City of Santa Clara to commence and convene on November 12, 2019 at 5:00 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

5:00 PM CLOSED SESSION

Call to Order in the Council Chambers

Confirmation of a Quorum

Public Comment

The public may provide comments regarding the Closed Session item(s) just prior to the Council beginning the Closed Session. Closed Sessions are not open to the public.

19-1333 [Conference with Legal Counsel-Anticipated Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(4\) - Initiation of litigation](#)
[Number of potential cases: 1](#)

Convene to Closed Session (Council Conference Room)

6:00 PM SPECIAL MEETING

Call to Order

Pledge of Allegiance and Statement of Values

Roll Call

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

CONTINUANCES/EXCEPTIONS

SPECIAL ORDER OF BUSINESS

- 1.A 19-1276 [Recognition of Parade of Champions Committee](#)
- 1.B 19-1280 [Presentation on the 2019 USA BMX Summer Nationals](#)
- 1.C 19-1287 [Presentation by Santa Clara Sister Cities Association on Student-Exchange Visit to Izumo, Japan](#)

CONSENT CALENDAR

[Items listed on the CONSENT CALENDAR are considered routine and will be adopted by one motion. There will be no separate discussion of the items on the CONSENT CALENDAR unless discussion is requested by a member of the Council, staff, or public. If so requested, that item will be removed from the CONSENT CALENDAR and considered under CONSENT ITEMS PULLED FOR DISCUSSION.]

- 2.A 19-1165 [Action on Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street \[APN: 230-08-078\]](#)

Recommendation: Approve and Authorize the City Manager to Execute the Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC incorporating terms as requested by VTA for the site located at 500 Benton Street [APN: 230-08-061].

- 2.B 19-1298 [Healthier Kids Foundation FY2019/20 First Quarter Report](#)

Recommendation: Note and file the Healthier Kids Foundation First Quarter Report FY2019/20.

- 2.C 19-450 [Action on the Santa Clara Convention Center 4th Quarter Financial Status Report](#)

Recommendation: Note and file the Santa Clara Convention Center Financial Status Report for the fourth quarter ended June 30, 2019, as submitted by Spectra.

2.D 19-1009 [Action to Award Master Agreements to Various Consultants to Provide Plan Check Review and Field Inspection Consulting Services for the Related Santa Clara Project and other City Projects As-Needed](#)

Recommendation: 1. Adopt a Resolution authorizing the City Manager to execute Master Agreements with the 12 consultants listed below to provide plan check review and field inspection services, in support of the Related Santa Clara Development Project for an initial five-year term ending November 30, 2024, for a maximum aggregate compensation not to exceed \$5,000,000 for all 12 Master Agreements.

Consultant Name

- 1) 4Leaf, Inc.
- 2) APC International, Inc.
- 3) Bureau Veritas North America
- 4) CSG Consultants, Inc.
- 5) David L. Gates & Associates, Inc.
- 6) Interwest Consulting Group, Inc.
- 7) Jason Addison Smith Consulting Services, Inc.
- 8) Metropolitan Planning Group, Inc.
- 9) NV5, Inc.
- 10) Shums Coda Associates, Inc.
- 11) TRB and Associates, Inc.
- 12) West Coast Code Consultants, Inc.

2. Authorize the City Manager to execute a five-year option to extend the term of the Agreements after the initial term through November 30, 2029.

3. Authorize the City Manager to negotiate and execute separate agreements with the 12 consultants to provide plan check review and field inspection services for other City projects, for an initial five-year term ending November 30, 2024, for a maximum compensation not to exceed \$300,000 per agreement, subject to the annual appropriation of funds.

2.E 19-1113 [Action on Priority Project Permit Processing Cost Agreement with Related Santa Clara, Establishment of Eight New Staff Positions, Establishment of a Related Santa Clara Developer Fund, Establishment of Related General Administration and Related Permit Work Projects in the Related Santa Clara Developer Fund, and Approve the Related Budget Amendments](#)

- Recommendation:**
1. Approve and authorize the City Manager to execute the Priority Project Permit Processing Cost Agreement with Related Santa Clara, LLC;
 2. Approve the addition of one Senior Civil Engineer, one Associate Civil Engineer, one Public Works Inspector, one Senior Plans Examiner, one Senior Inspector, one Fire Protection Engineer, and one Deputy Fire Marshal II;
 3. Approve the addition of one Deputy City Manager, fully funded by the original Development Agreement approved by the City Council in June 2016;
 4. Establish the new Related Santa Clara Developer Fund;
 5. Establish the Related General Administration project and the Related Permit Work project in the Related Santa Clara Developer Fund; and
 6. Approve the Related Budget Amendments decreasing the General Fund cost in the amount of \$298,584 in FY 2019/20 and the amount of \$316,788 in FY 2020/21 to reflect the shift of costs to the Related Santa Clara Developer Fund; approve the Budget Amendment in the Related Santa Clara Developer Fund in the amount of \$1,522,833 for FY 2019/20 and in the amount of \$2,281,214 for FY 2020/21 to fund eight (seven new) permit staff positions to support the permit review process and one position for general administration for the Related Santa Clara project.(Requires 5 Council Affirmative Votes).

PUBLIC PRESENTATIONS

[This item is reserved for persons to address the Council or authorities on any matter not on the agenda that is within the subject matter jurisdiction of the City or Authorities. The law does not permit action on, or extended discussion of, any item not on the agenda except under special circumstances. The governing body, or staff, may briefly respond to statements made or questions posed, and appropriate body may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on the speaker card available in the Council Chambers.]

CONSENT ITEMS PULLED FOR DISCUSSION**PUBLIC HEARING/GENERAL BUSINESS**

3. 19-920 [Discussion and Direction on the Conversion of the Santa Clara Tourism Improvement District \(TID\) Established Under the Parking and Business Improvement Area Law of 1989 to a TID Established under the Property and Business Improvement District Law of 1994](#)

Recommendation: 1. Alternative 1: Provide direction to proceed with the conversion of the Santa Clara Tourism Improvement District (TID) established under the Parking and Business Improvement Area Law of 1989 to a TID established under the Property and Business Improvement District Law of 1994; and
2. Alternative 3: Provide direction regarding the District assessment formula.

4. 19-1257 [Update on the Formation of the New Destination Marketing Organization \(DMO\) Entity](#)

Recommendation: Note and file the November 2019 report on the update on the formation of the Santa Clara Destination Marketing Organization.

5. 19-1318 [Presentation, Discussion and Direction on the TAP International Financial Audit Titled "Contract Close Out Review: Convention and Visitor's Bureau"](#)

Recommendation: It is recommended that Council receive and file the TAP International Financial Audit Titled "Contract Close Out Review: Convention and Visitor's Bureau" and refer any Council direction to Closed Session under Anticipated Litigation.

REPORTS OF MEMBERS AND SPECIAL COMMITTEES**CITY MANAGER/EXECUTIVE DIRECTOR REPORT**

- 19-1047 [Informational Memo on the Beta Website Launch Update](#)

Recommendation: Note and file the Beta Website Launch Update.

19-1332 [Verbal Report on the International Association of Science Parks and Areas of Innovation Conference in France](#)

19-1301 [Update on City Council and Stadium Authority Staff Referrals](#)

19-1228 [Tentative Meeting Agenda Calendar \(TMAC\)](#)

ADJOURNMENT

The next regular scheduled meeting is on Tuesday evening, November 19, 2019 in the City Hall Council Chambers.

MEETING DISCLOSURES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

AB23 ANNOUNCEMENT: Members of the Santa Clara Stadium Authority, Sports and Open Space Authority and Housing Authority are entitled to receive \$30 for each attended meeting.

Note: The City Council and its associated Authorities meet as separate agencies but in a concurrent manner. Actions taken should be considered actions of only the identified policy body.

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA)

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

If a member of the public submits a speaker card for any agenda items, their name will appear in the Minutes. If no speaker card is submitted, the Minutes will reflect "Public Speaker."



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
[@SantaClaraCity](https://twitter.com/SantaClaraCity)

Agenda Report

19-1333

Agenda Date: 11/12/2019

SUBJECT

Conference with Legal Counsel-Anticipated Litigation (CC)
Pursuant to Gov. Code § 54956.9(d)(4) - Initiation of litigation
Number of potential cases: 1



Agenda Report

19-1276

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Recognition of Parade of Champions Committee

BACKGROUND

The Santa Clara Parade of Champions was established in 1945 by former Mayor and Councilmember Larry Marsalli and the Young Men's Institute Council, to celebrate and honor veterans returning from World War II. Traditionally, the Parade of Champions brought Santa Clarans together to celebrate their heritage, community spirit, and pride, while showcasing the "champions" among veterans, nonprofits, business, education, arts, cultural, sports, and civic groups. The last Parade of Champions was held 24 years ago in 1995.

DISCUSSION

The Santa Clara Parade of Champions returned to Santa Clara on September 29, 2019 and had an estimated 8,000 attendees. The 2019 Santa Clara Parade of Champions grand marshals included two-time FIFA Women's World Cup champion and Olympic gold-medalist, Brandi Chastain; longtime Santa Clara University Women's Soccer Head Coach, Jerry Smith; former Oakland A's star and World Series champion, Carney Lansford; and Wilcox High School Athletic Director and Football Coach, Paul Rosa. The parade featured floats, car clubs, equestrians, cultural dancers, robotics demonstrations, as well as performances from numerous local high school marching bands. In honor of their dedicated work in organizing and hosting the 2019 Santa Clara Parade of Champions, the City Council has invited the Parade of Champions Committee to give a recap of the parade highlights and to accept a Certificate of Special Mayoral Recognition.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time.

PUBLIC CONTACT

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Reviewed by: Genevieve Yip, Staff Analyst I

Approved by: Deanna J. Santana, City Manager



City of Santa Clara

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Santa Clara, CA 95050
santaclaraca.gov
[@SantaClaraCity](https://twitter.com/SantaClaraCity)

Agenda Report

19-1280

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Presentation on the 2019 USA BMX Summer Nationals

BACKGROUND

The USA BMX (Bicycle Motocross) Summer Nationals was held August 16 - 18, 2019 at the Santa Clara PAL (Police Activities League) BMX Track.

DISCUSSION

The Police Activities League (PAL) has requested the opportunity to recognize the City Council's assistance in coordinating local support in PAL's initiative to host the USA BMX Summer Nationals 2019 at the Santa Clara PAL BMX track.

Track Director Nick Valencia will give an informational report on the event.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

FISCAL IMPACT

There is no fiscal impact to the City except for staff time.

PUBLIC CONTACT

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Reviewed by: Julie Minot, Executive Assistant to the Mayor and City Council

Approved by: Deanna J. Santana, City Manager



Agenda Report

19-1287

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Presentation by Santa Clara Sister Cities Association on Student-Exchange Visit to Izumo, Japan

BACKGROUND

The Santa Clara Sister Cities Association (SCSCA) offers student-exchange program scholarships for Santa Clara students to visit Santa Clara's sister cities of Izumo, Japan; Coimbra, Portugal; or Limerick, Ireland. The SCSCA student-exchange program gives young individuals an opportunity to travel the world to explore new cultures, visit local governments, and to be more enriched through global exchanges around the world. The SCSCA student-exchange program also offers students an opportunity to work with the Santa Clara community, get involved in international exchange efforts, and visit and meet people in our sister cities.

DISCUSSION

In June 2019, the SCSCA organized a student exchange trip to Izumo, Japan for four students serving on the SCSCA Youth Commission. SCSCA Board Director Margaret Horoszko travelled with the students as the trip chaperone.

SCSCA Board Director Margaret Horoszko and the students will report on their recent student-exchange visit to Izumo, Japan, share their experience, and encourage members of our community to become involved with SCSCA.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time.

PUBLIC CONTACT

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Reviewed by: Genevieve Yip, Staff Analyst I

Approved by: Deanna J. Santana, City Manager



Agenda Report

19-1165

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Action on Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street [APN: 230-08-078]

BACKGROUND

On July 16, 2019, Council approved the Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC ("Developer") for the site located at 500 Benton Street [APN: 230-08-078 and -061]. The ENA is a three -party agreement with the Developer, City, and by the Santa Clara Valley Transportation Authority ("VTA"). The City owns 1.73 acres of the development site and VTA owns 0.7 acres of the development site.

The Second Amendment as presented by staff extended the term of the Exclusive Negotiations Agreement (ENA). The action authorized the City Manager to execute the ENA pending approval by VTA.

On August 1, 2019, the VTA Board approved the ENA extension; however, the Board's approval also requested that staff incorporate milestones to the extension to ensure that the Developer demonstrates progress on two key issues: a term sheet within 90 days and progress towards either a ground lease option or development agreement within 180 days.

DISCUSSION

The requested VTA Board modifications were sufficiently significant to require additional Council consideration on the revised/updated Second Amendment to the Exclusive Negotiations Agreement. The Second Amendment includes the following changes:

- **Negotiating Period.** The negotiating period under this Agreement shall terminate at 11:59 p.m. on August 5, 2020.
- **Negotiation Deposit:** The Developer must pay an additional Twenty-Five Thousand Dollars (\$25,000) to pay for legal expenses and third-party consultants.
- **Revised Term Sheet:** The Developer must submit a new term sheet to VTA and City within 90 days after the execution of the Second Amendment, which will: (i) present all economic terms of any proposed LOA or DDA between the parties; and (ii) respond to all written requests for information presented to Developer by VTA and/or the City.
- **DDA or LOA:** The City, VTA, and Developer have determined to pursue either a Development Agreement ("DDA"), or a Lease Option Agreement ("LOA") setting the terms and

conditions whereby Developer may enters into an agreement with VTA and City for a long term ground lease on the Property to construct a project consisting of an affordable housing component and a market rate co-living housing component.

Parties will work in good faith and use best efforts to develop mutually acceptable terms and conditions of a DDA or LOA by March 1, 2020.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact associated with this item other than administrative time and expense.

COORDINATION

This report was coordinated with VTA and the City Attorney's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve and Authorize the City Manager to Execute the Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC incorporating terms as requested by VTA for the site located at 500 Benton Street [APN: 230-08-061].

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC (Updated)

**AMENDMENT NO. 2
TO THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
CITY OF SANTA CLARA,
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
REPUBLIC METROPOLITAN, LLC**

PREAMBLE

This Amendment No. 2 ("Second Amendment") to the Exclusive Negotiation Agreement is made and entered into on this _____ day of _____, 2019, ("Effective Date") by and between the City of Santa Clara, a municipal corporation ("**City**"), the Santa Clara Valley Transportation Authority ("**VTA**") and Republic Metropolitan LLC, a Delaware limited liability company ("**Developer**") herein individually as a "**Party**" or collectively as the "**Parties**" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Exclusive Negotiation Agreement" dated February 6, 2018 ("**Agreement**");
- B. The Agreement provided for a negotiating period of twelve (12) months with a possible extension of an additional six (6) months, subject to the execution of an amendment. The Parties entered into "Amendment No. 1" to the Agreement, dated February 8, 2019 to extend the negotiating period through August 5, 2019;
- C. In February 2019, Developer submitted a development application to the City of Santa Clara ("**Development Application**");
- D. The Parties have determined to pursue a Leasehold Disposition & and Development Agreement and Ground Lease ("**DDA**"), or a Lease Option Agreement and Ground Lease ("**LOA**") whereby Developer enters into an agreement with VTA and City for a ground lease on the Property under which Developer would construct a project consisting of an affordable housing component and a co-living component.
- E. The Parties desire to amend the Agreement to retroactively extend the negotiating period by twelve additional months, through August 5, 2020.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. EXTENSION OF NEGOTIATING PERIOD.

Section 2 of the Agreement, entitled "Negotiation Period" is hereby deleted and replaced in its entirety with the following:

"2. Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall commence on February 6, 2018 and terminate at 11:59 p.m. on August 5, 2020.

Any further extensions or modification of the Negotiating Period will require formal amendment of this Agreement approved by the City Council, the VTA Board of Directors in their complete discretion and executed by the City, VTA, and the Developer.

If a DDA or LOA has not been executed by the City, VTA, and the Developer (or its affiliate) by the expiration of the Negotiating Period, then this Agreement shall terminate and no party will have any further rights or obligations under this Agreement, except those that explicitly survive termination herein. If a DDA or LOA is executed by the City, VTA, and the Developer (or its affiliate), then, upon such execution, this Agreement shall terminate and all rights and obligations of the Parties shall be as set forth in the executed DDA or LOA.

2. NEGOTIATION DEPOSIT

The third paragraph of Section 4 of the Agreement, entitled "Negotiation Deposits" is hereby deleted and replaced in its entirety to read as follows:

"The City and VTA acknowledge the prior receipt of First and Second Negotiation Deposits remitted by Developer totaling \$50,000.00. Notwithstanding the foregoing, upon presentation, at any time, of accounting of Negotiation Deposits expended by City or VTA for third party costs associated with the Project showing that there is less than \$10,000 remaining from the Developer's most recent deposit and upon receipt of a schedule of proposed consultant costs and an outline budget showing proposed uses provided to the Developer by the City/VTA, and upon reasonable approval of such budget within seven (7) days following receipt by Developer, Developer must tender to the City an additional Twenty-Five Thousand Dollars (\$25,000), in the form of a cashier's check made payable to the City. Developer's failure to approve or disapprove such budget within seven (7) days shall be considered approval thereof."

3. RESUBMITTAL OF DEVELOPMENT APPLICATION.

The Agreement is hereby amended to add a new Section 10.A, which section will read as follows:

10.A Prior to a formal resubmittal to the City, Developer will work cooperatively with VTA and City staff on revisions to the Development Plan, including at least one community outreach meeting prior to a formal resubmittal to the City.

4. REVISED TERM SHEET

The Agreement is hereby amended to add a new Section 20.A, which section will read as follows:

20.A Revised Term Sheet. Developer must submit a revised term sheet to VTA and City within 90 days after the execution of the Second Amendment which term sheet will: (i) present all economic terms of any proposed LOA or DDA between the parties; and (ii) respond to all written requests for information presented to Developer by VTA and/or the City. Developer must use good faith efforts to propose business terms that provide fair market ground lease payments to VTA and City as well as a pre-operations period lease payment that will be paid to VTA and City after the execution of the Ground Lease but prior to the Rent Commencement Date. If Developer has not submitted an initial draft of this revised term sheet to VTA and City prior to that date which is 90 days after the execution of this Second Amendment, either VTA or City will have the option to terminate this agreement by sending written notice to the other two Parties.

5. DEVELOPMENT OF LOA OR DDA

The Agreement is hereby amended to add a new Section 20.B, which section will read as follows:

20.B DDA or LOA. The Parties will work in good faith and use best efforts to develop mutually acceptable terms and conditions of a DDA or LOA (the "Final Term Sheet") within one hundred-twenty (120) days following the submittal of the Revised Term Sheet. The Final Term Sheet will provide all economic terms and conditions (including any development milestones) pursuant to which Developer will have the right to lease the Property and construct the Project. If applicable, the LOA or DDA will also take into consideration the time required for satisfactory completion of the CEQA documentation and receipt of all other pertinent project entitlements and approvals. Nothing in this Agreement, however, will require additional extension of this ENA if CEQA documentation cannot be finished prior to August 5, 2020.

6. DEFAULT AND REMEDIES

Section 25(a) of the Agreement is hereby deleted and replaced in its entirety with the following:

In the event that any party hereto fails to negotiate diligently and in good faith during the Exclusive Negotiating Period ("**Defaulting Party**"), any other party hereto ("**Noticing Party**") may give written notice thereof to the Defaulting Party, specifying the one or more material reason(s) that the Noticing Party reasonably believes Defaulting Party has failed to negotiate diligently and in good faith and specifying a particular course of action being requested to cure such default. Thereafter, the

Defaulting Party will have fifteen (15) working days ("**Cure Period**") to commence negotiating in good faith during the Exclusive Negotiating Period. Following the receipt of such notice and the failure of the Defaulting Party to thereafter commence negotiating in good faith within the Cure Period, either of the other parties may, at their option, exercise the remedies set forth in Section 25(b).. For purposes of this Agreement, a lack of diligent, good faith negotiations will include, but not be limited to, the Developer's failure to meet the revised term sheet submittal date as set forth in Section 20.A.

7. TERMS

All other terms of the Agreement (as modified by the First Amendment) and which are not in conflict with the provisions of this Second Amendment shall remain unchanged in full force and effect. In case of a conflict in the terms of the Agreement (as amended) and this Second Amendment, the provisions of this Second Amendment shall control. Capitalized terms used herein will have the same meaning as set forth in the Agreement and First Amendment, unless otherwise indicated herein.

8. 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 Second Amendment 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:

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
a special district

By: _____

NURIA FERNANDEZ

General Manager

APPROVED AS TO FORM:

By: _____

VICTOR PAPPALARDO

Senior Assistant Counsel

“VTA”

REPUBLIC METROPOLITAN LLC
a Delaware limited liability company

By: _____
Robert Mendelsohn
Authorized Agency

“DEVELOPER”



Agenda Report

19-1298

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Healthier Kids Foundation FY2019/20 First Quarter Report

BACKGROUND

On April 23, 2019, City Council approved Amendment No. 1 with the Healthier Kids Foundation (HKF) to extend the service agreement through December 31, 2019. On June 25, 2019 Council approved additional funding in the amount of \$35,000 for services focused on health and dental screenings, as well as health education programs for Santa Clara residents. The purpose of this report is to transmit the organization's performance report for the first quarter of FY2019/20.

DISCUSSION

The services delineated in the HKF Amendment No. 1 include providing two (2) quarterly reports on quantitative measures of progress toward service goals to:

- a) screen 550 children for vision issues;
- b) screen 250 children for dental issues;
- c) screen 250 children for hearing issues; and,
- d) have 75 parents attend a least one "10 Steps to a Healthier You" workshop.

The HKF FY2019/20 First Quarter Report (Attachment 1) indicates HKF: screened 347 children for vision issues (63% of goal); screened 248 children for dental issues (99% of goal); screened 27 children for hearing issues (11% of goal); and, had 19 parents attend a least one "10 Steps to a Healthier You" workshop (25% of goal). Additional screening dates and locations are scheduled to continue attainment of the remainder of the goals for 2019.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact except for administrative time to convey the First Quarter FY2019/20 report. Approved funding in the amount of \$35,000 is budgeted in the FY 2019/20 Annual Operating Budget for HKF Amendment No. 1 services.

COORDINATION

This report has been coordinated with the City Attorney's Office and the Finance Department.

PUBLIC CONTACT

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RECOMMENDATION

Note and file the Healthier Kids Foundation First Quarter Report FY2019/20.

Reviewed by: James Teixeira, Director, Parks & Recreation

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Healthier Kids Foundation First Quarter Report FY2019/20



Healthier Kids Foundation
4040 Moorpark Avenue, Suite 100
San Jose, CA 95117
Phone: 408.564.5114
Fax: 408.326.2711
www.hkidsf.org

FY 19-20 Q1 Report to City of Santa Clara MOU FY 2017 - FY 2019, 6 Month Extension

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Report Date: 10.31.2019

Healthier Kids Foundation's three-year MOU with the City of Santa Clara came to a close on June 30, 2019. Over the three year partnership, Healthier Kids Foundation has exceeded the cumulative goal of services provided to City of Santa Clara residents. In June 2019, the City of Santa Clara and Healthier Kids Foundation agreed to a six month extension of said MOU.

Healthier Kids Foundation's mission is to remove health barriers impacting the learning and life success of Silicon Valley youth. We have been honored to work with the City of Santa Clara in an effort to improve health care access and utilization, change health behavior through education, and advocate for health policy and systems change. Together, we can ensure all City of Santa Clara youth achieve good health, educational equity, and success in life as productive community members.

Healthier Kids Foundation has been funded by the City of Santa Clara to provide the following services during the first six months fiscal year 2019-2020:

- 75 parents attending at least one 10 Steps to a Health You! (10 Steps) class
- 250 children ages 2-18 dental screened through DentalFirst program
- 250 children ages 2-18 hearing screened through HearingFirst program
- 550 children ages 2-18 vision screened through VisionFirst program

This document serves as an update for quarter one of fiscal year 2018-2019.

Activities and Progress

Program	6 Month Goal	Q1 Results	% of Goal
10 Steps Parents and caregivers	75	19	25%
10 Steps Children Served (ages 0-18)		10	
DentalFirst Screened (ages 2-18)	250	248	99%
DentalFirst Referred and Followed-up on (ages 2-18)		46	
HearingFirst screened (ages 2-18)	250	27	11%
HearingFirst Referred and Followed-up on (ages 2-18)		1	
VisionFirst Screened (ages 2-18)	550	347	63%
VisionFirst Referred and Followed-up on (ages 2-18)		29	

"Healthier Kids Foundation changed my daughter's life. Now that she has glasses, she wants to explore everything around her. She can see the world and learn."

– Sandra, mother helped by Healthier Kids Foundation

In the City of Santa Clara, Healthier Kids Foundation screens children for untreated vision, dental, and hearing issues; case managers follow-up with the parents of all children who receive a screening result that identifies an issue. This ensures that each child gets the care they need so that they are able to learn in the classroom. Healthier Kids Foundation also delivers 10 Steps to a Healthier You! workshops to parents and caregivers in the City of Santa Clara, providing strategies to implement healthy habits in the home.

Of those who attended a 10 Steps workshop:

- 97% felt that they had learned new things that they would go home and try
- 90% felt that the class was very or extremely valuable

At the end of quarter one, Healthier Kids Foundation has identified the following in the City of Santa Clara:

- 29 children with untreated vision problems (8% referral rate)
- 46 children with urgent or emergency dental needs (19% referral rate)
- 1 child with an untreated hearing problem (4% referral rate)

Healthier Kids Foundation case managers are currently working with these families to ensure that the children receive appropriate treatment through their insurance. If uninsured, the case manager assists the family in enrolling into subsidized health insurance.

Without our partnership with the city, these kids' needs could have remained unidentified, unaddressed and might have been barriers to learning.

In addition to providing direct services to Santa Clara residents, Healthier Kids Foundation provided resources and screenings at the annual Santa Clara Art and Wine Festival. At the event, 493 screenings were provided.

Q1 Schedule FY 2019-2020

City of Santa Clara Q1 Screening Schedule

Screening Date	Screening Type	Site	Contact Name
7/1/2019	DentalFirst	Mission College CDC	Karin Navarro
7/1/2019	VisionFirst	Mission College CDC	Karin Navarro
7/2/2019	DentalFirst	Mission College CDC	Karin Navarro
7/2/2019	VisionFirst	Mission College CDC	Karin Navarro
8/4/2019	DentalFirst	Santa Clara First Baptist Church	Trudy Kroll
8/4/2019	VisionFirst	Santa Clara First Baptist Church	Trudy Kroll
8/13/2019	HearingFirst	Care-a-Lot Family Day Care	Michelle Melendez
8/13/2019	VisionFirst	Care-a-Lot Family Day Care	Michelle Melendez
9/14/2019	DentalFirst	City of Santa Clara Art and Wine Festival	Susan Diatte
9/14/2019	VisionFirst	City of Santa Clara Art and Wine Festival	Susan Diatte
9/15/2019	DentalFirst	City of Santa Clara Art and Wine Festival	Susan Diatte
9/15/2019	VisionFirst	City of Santa Clara Art and Wine Festival	Susan Diatte

City of Santa Clara Q1 10 Steps Schedule

Healthier Kids Foundation was unable to host any 10 Steps workshops in the City of Santa Clara during quarter one. Attendees listed in the above results are Santa Clara residents who attended a workshop in another city. The program looks forward to hosting the 10 Steps series during quarter two.

Next Steps

Healthier Kids Foundation looks forward to providing services to families in the City of Santa Clara over the next quarter and will report results based on quarter two in the coming months.

City of Santa Clara Q2 Screening Schedule

Screening Date	Screening Type	Site	Contact Name
10/10/2019	VisionFirst	Central YMCA Briarwood Elementary After School Program	Nick Delte
10/31/2019	VisionFirst	Santa Clara Youth Activity Center – Halloween Party	Gayle Ichido
12/6/2019	VisionFirst	Annual City of Santa Clara Holiday Tree Lighting Ceremony	Darrick Oba
TBD	HearingFirst	SCUSD Preschools	Nancy Morin-Roman
TBD	VisionFirst	SCUSD Preschools	Nancy Morin-Roman
TBD	DentalFirst	SCUSD Preschools	Nancy Morin-Roman

City of Santa Clara Q2 10 Steps Schedule

Start Date & Time	Site	Language	Contact
10/29/2019 17:20	Pomeroy Elementary School	Spanish	Alejandra Flores
11/6/2019 18:00	SCUSD Parent Resource Center	English	Johanna Gonzalez
11/20/2019 18:00	SCUSD Parent Resource Center	English	Johanna Gonzalez
12/4/2019 18:00	SCUSD Parent Resource Center	English	Johanna Gonzalez



Agenda Report

19-450

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Action on the Santa Clara Convention Center 4th Quarter Financial Status Report

BACKGROUND

On February 5, 2019 the City approved an agreement with Global Spectrum L.P. dba Spectra Venue Management (Spectra), to operate the Santa Clara Convention Center (SCCC), replacing the Chamber of Commerce (Chamber). Spectra began management of the SCCC on March 18, 2019.

This is the first quarterly financial report brought forward by Spectra. A third quarter financial status report was not prepared this year due to the transition of the convention center manager. This 4th quarter report reflects results under the management of Spectra for the period of March 18, 2019 through June 30, 2019 and provides information on the various business activities of the SCCC.

Staff is transmitting Spectra's SCCC status report to Council for compliance with agreement terms. This report has not been separately audited.

DISCUSSION

Submitted for Council information is a Financial Status Report for the 4th quarter ended June 30, 2019, as submitted by Spectra. This report is unaudited and therefore, subject to change. The delay in submitting this 4th quarter report is due to the change in the convention center manager, closing out the previous manager's accounting, and transitioning to Spectra's accounting and reporting.

As part of that transition, there are several reporting additions and changes that are aligned with Spectra's accounting system. Some revenue and expenditure reporting groups are combined differently, and a new revenue recognition policy related to food and beverage activities has been implemented. For this reason, line items in this report are not comparable to the methodology used during the rest of the fiscal year. Net operating income in the 4th quarter totaled \$831,803. Total FY 2018/19 full year operating income for the SCCC totaled \$1.6 million. This compares to net income in FY 2017/18 of \$2.2 million. Given the significant transition initiated by the City Council to use a new operator and establish a new convention visitors bureau, this outcome was anticipated. The full year end convention center results at the financial statement reporting level will be presented to the Council during the annual financial statement audit report in December 2019.

Lastly, SCCC activities indirectly impact the City's Transient Occupancy Tax received through hotel bookings that result from events booked at the SCCC. For FY 2018/19, TOT revenues increased 5% from \$21.4 million in FY 2017/18 to \$22.5 million in FY 2018/19. The upward trend of the fourth quarter, along with TOT trend, provides a good signal for this work going forward. However, until the transition is complete for both the operator, and convention visitor's bureau is operational, the numbers presented must be viewed as transitional and subject to swings.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

The financial operations of the Convention Center as reflected in the attached 4th quarter report show total revenues of \$6,643,036 and total expenses of \$5,811,233 for net income of \$831,803. Full year -end operating income results totaled \$1.6 million will be presented to the Council in December 2019.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the Santa Clara Convention Center Financial Status Report for the fourth quarter ended June 30, 2019, as submitted by Spectra.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. SCCC Activity Report for Fourth Quarter 2018/19



March 18, 2019-June 30, 2019

Quarterly Report



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EXECUTIVE SUMMARY

Spectra assumed operations of the Santa Clara Convention Center on March 18, 2019. In its first 3-months of management Spectra has transitioned the staff, performed a full building assessment, created a 5-year Capital Plan and annual budget; filled vacant positions, met with local industry and hospitality leaders, negotiated a new Collective Bargaining Agreement with Local 39 (Operating Engineers); issued RFP's and awarded services for Audio Visual and IT partners; transitioned the Food & Beverage Department all while continuing to provide exceptional customer service of all events utilizing the Center. Under Spectra's management the Center exceeded its budget within the period of March 18, 2019 to June 30, 2019 by over \$180,000.

The Santa Clara Convention Center (SCCC) is strategically located in the heart of Silicon Valley, a prime location for conventions, trade shows, and exhibitions. The SCCC is minutes from hotels, restaurants, Levi's Stadium, Great America Theme Park, and many of the largest and most influential technology companies in the world, with easy access to freeways and Norman Y. Mineta San Jose International Airport and only 45 miles south of San Francisco. The Convention Center features 100,000 square feet of exhibit space, a 22,400 square foot ballroom, 31 breakout rooms and a 607-seat theater and attracts over 350,000 visitors annually. The facility is an integral economic component to Santa Clara, generating economic benefits through attendee direct and indirect spending and sustaining over 500 local jobs.

Spectra is the expert in hosting events and entertainment, partnering with over 300 clients at 400 global properties to create memorable experiences for millions of visitors every year.

Market Segment Definitions

Tradeshows-An exhibition of products and/or services held for members of a common or related industry. Not open to the general public.

Conventions-An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize or attend other organized events of which the attendees are primarily from out of town. Sometimes there is a secondary exhibit component.

Consumer Shows-An exhibition that is open to the public, usually requiring an entrance fee. Common examples of consumer shows include auto shows, bridal shows, boat shows, flower and gardens shows, craft shows and festivals.

Banquets-Formal, often ceremonial, dinner for a select group of people, often in honor of a particular person. The meal is the primary component of the event, consisting of a sit-down breakfast, lunch or dinner.

Meetings & Seminars- An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize, or attend other organized events. There is no exhibit component to this event.

Sporting Events-An event where athletes compete and spectators view the athletic activities and ceremonies. Events that include sporting-related activities, but do not involve a competition, are classified as miscellaneous events.

Special Events-Any event that does not meet the criteria for the other categories. This includes: church services, dance events that do not include a competition component, concerts, dances/balls, examinations, fashion shows, graduations, job fairs, proms, reunions and weddings.



Financial Overview

*Totals may not match due to rounding

Event Statistics

Event Types	Percentage	Number of Events	Days	Attendance
Banquets	5%	6	6	4,270
Consumer Shows	3%	4	11	11,200
Conventions	11%	14	49	22,925
Meetings	46%	57	91	21,971
Special Events	22%	28	46	20,660
Sporting Events	1%	1	5	1,200
Trade Shows	12%	15	48	21,400
Total:	100%	125	256	103,626

Actual Revenue

*Totals may not match due to rounding

Event Types	Gross Revenue	Cost of Sales	Net Revenue
Banquets	\$319,026	\$233,330	\$85,696
Consumer Shows	\$169,135	\$66,997	\$102,138
Conventions	\$3,387,757	\$2,048,928	\$1,338,829
Meetings	\$543,269	\$269,954	\$273,315
Special Events	\$281,176	\$99,185	\$181,991
Sporting Events	\$50,123	\$14,158	\$35,965
Trade Shows	\$1,823,876	\$960,786	\$863,090
Total:	\$6,574,362	\$3,693,338	\$2,881,024

SANTA CLARA CONVENTION CENTER
GROSS INCOME STATEMENT
For the Period Ended June 30, 2019

	YEAR TO DATE		
	Actual	Current Budget	Budget Variance
Event Revenue			
Rental	1,192,580	903,688	288,892
Services	544,921	405,309	139,611
IT/Telecom	921,078	420,586	500,492
Food & Beverage	3,010,487	4,022,639	(1,012,151)
Audio Visual	905,297	815,015	90,282
Total Event Revenue	6,574,362	6,567,237	7,125
Event Expenses			
Services	363,020	284,055	78,965
IT/Telecom	668,381	311,234	357,147
Food & Beverage	2,044,454	3,057,205	(1,012,751)
Audio Visual	617,483	63,111	554,372
Total Event Expenses	3,693,338	3,715,605	(22,267)
Net Event Income (Loss)	2,881,024	2,851,632	29,392
Other Revenue	68,673	21,714	46,959
Total Revenue	2,949,697	2,873,346	76,352
Indirect Expenses ⁽¹⁾	2,117,895	2,231,006	(113,111)
Net Operating Income	831,803	642,340	189,463

⁽¹⁾ For detail of indirect expenses, see table on page 10.

Partner Introductions

Aramark: Aramark was the exclusive provider of Food & Beverage at the Santa Clara Convention Center. Aramark prides itself on using the freshest of ingredients to create a full culinary experience to compliment every event.

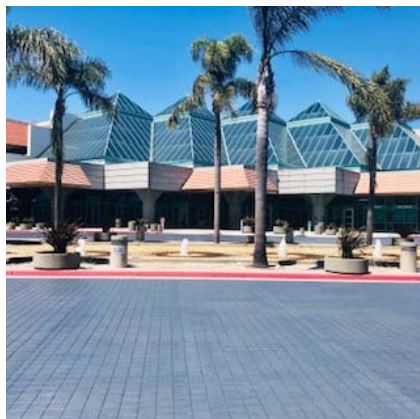
Smart City: Smart City is the exclusive provider of IT services at the Santa Clara Convention Center. Smart City aims to provide customers the highest level of connectivity. Offering high-bandwidth data circuit; high-speed internet access; point-to-point networking; wireless buyouts and hotspots; custom security solutions; dedicated network performance monitoring; network design and engineering solutions; complete voice services and cable TV.

Electrical: Multiple Providers of temporary electrical services for trade shows, convention and special event industry.

Spot Focus: Spot Focus has digital display systems inside and outside the Convention Center available for show promoters, exhibitors and businesses. Spot Focus offers messaging capabilities on display systems consisting of outdoor LED panels on the perimeter of the Center and on Highway 101, and over 25 displays within the Center and Hyatt including interactive touch screens.

PSAV: PSAV is the preferred provider of Audio Visual services at the Santa Clara Convention Center. PSAV provides innovative services that enhance events, minimize time while reducing our clients' budgets. PSAV is a full-service audio/visual, computer and labor management resource.

UPS: In addition to UPS Air and Ground, the Santa Clara Convention Center store provides full-service copying, notary services, office supplies, computer services, passport services, and other business related services.





Partner's Revenue

*Totals may not match due to rounding

Partner	Gross	Cost of Sales	Net Revenue
Aramark	\$3,010,490	\$2,044,450	\$966,030
Smart City-IT	\$921,080	\$668,380	\$252,700
PSAV-AV	\$905,300	\$617,480	\$287,810
Electrical	\$406,540	\$277,980	\$128,570
Spot Focus	\$42,650	\$31,010	\$11,630
UPS	\$4,340	-	\$4,340
Total	\$5,290,400	\$3,639,300	\$1,651,100



Operating Expenses: Department Definitions

Executive: All expenses for Senior Personnel

Marketing: All expenses for Sales and Marketing

Finance: All expenses for Finance and Human Resources

Event Services: All expenses for staffing to manage events

Operations: All expenses for Engineering, Building Services, Security and all expenses to operate the building

Overhead: All expenses that are non-departmental

Transition Costs: All expenses for the transition to Spectra

Operating Expenses

*Totals may not match due to rounding

Departments	Indirects
Executive	\$264,688
Marketing	\$80,074
Finance	\$151,857
Events	\$124,478
Operations	\$1,005,791
Overhead	\$402,576
Transition Costs	\$88,431

Highlighted Events

Top 3 Revenue Grossing Events

Opus Agency/Amazon Summit:

- Convention
- Gross Revenue: \$1,104,893
- Days:1
- Attendees: 3,000
 - Provided nearly 5,000 lunches
 - Utilized entire facility
 - Large food and beverage and IT purchase
 - Event typically held in San Francisco but due to construction Santa Clara won the business.



Knect 365 IOT world Conference:

- Trade Show
- Gross Revenue: \$582,094
- Days: 6
- Attendees: 6,000
 - Utilized entire facility
 - 5th year returning to Santa Clara
 - Last year here due to the size of the center, they are moving to a larger facility.



Synopsys

- Convention
- Gross Revenue: \$565,383
- Days: 4
- Attendees: 2,000
 - One of the largest food and beverage purchases
 - Utilized the entire facility
 - Over ten years holding their event with Santa Clara



Key Performance Indicators

Stated below are the KPI's contractually agreed upon by Spectra and the City of Santa Clara. In the future we will be reporting based upon these seven indicators.

Adoption of Goals. The performance goals with respect to the KPI included in Section 6.2 for a Fiscal Year shall be developed by Spectra annually and approved by the City.

1. **Gross Revenue** – Meet or exceed \$18,484,540 in Gross Revenues for FY 19/20
2. **Net Income** – Meet or exceed \$2,283,697 in Net Income for FY 19/20
3. **Room Nights Consumed** – In FY 19/20 Spectra will provide the City with a list of current events in which room nights have historically been tracked. In addition, Spectra will also work with our clients to create a new model for total room nights consumed based on all events that utilize the Center to create a future baseline.
4. **Economic Impact** – Refers to direct sales, jobs, tax revenues, and income in Santa Clara causing impact to lodging, restaurants, retail, recreation, transportation and other businesses, using the Destinations International Economic Impact Calculator.
5. **Customer Service Survey Results Scores** – Create an on-line customer survey by end of 2Q and implement start of the survey in the 3Q. The survey will measure all areas of the business including: Sales, Event Services, Food & Beverage, AV, IT, Building Cleanliness, Security, etc. The goal will be to obtain/maintain a rating of Four (4) or higher based on the following scoring system:
 - Very Satisfied – 5 points
 - Satisfied – 4 points
 - Neither Satisfied nor Not Satisfied – 3 points
 - Dissatisfied – 1 point
 - Very Dissatisfied – 0 points
6. **Event Mix** – Events are categorized under the following headings: Consumer Shows, Conventions, Banquets, Meetings/Conferences, Special Events, Sporting Events and Trade Shows. The focus is on booking or hosting more Conventions, particularly of the City-Wide variety and multi-day events, i.e. Meetings/Conferences, Sporting Events or Trade Shows. In FY 19-20 Spectra will book or host the following:
 - City-Wide Convention-1
 - Multi-Day Meeting/Conference-2
 - Sporting Events (including E-Sports)-2
 - Trade Shows
7. **Community Benefit** – Create and implement a Not-for-Profit Rate/Program to assist local Not-for-Profit groups to utilize the Convention Center. In addition, Spectra will be involved in the community through volunteer or donation programs that benefit the residents, businesses and organizations of Santa Clara. Spectra will also endeavor to hire local individuals and companies when possible under Spectra SOP's.

Forecast

In future quarters this will be a part of a monthly packet that will summarize previous and future business compared to budget. It will also provide us and the City of Santa Clara with a snapshot of the Santa Clara Convention Center's financial standing.



Capital Improvement Project

As a part of the management agreement, Spectra has completed and provided a five-year capital plan with a budget for operations. Some of the larger projects slated for FY 19/20 are listed below:

Building Envelope: Roof membrane-repairs to roof part 2-glass pyramids. Convention center terrace and building front: both areas need a permanent solution to chipping and broken tiles. Both are for aesthetic and long-term safety reasons.

Security System: Cameras- replacement of all cameras inside and outside the building. Avigilon Camera System- Purchase/ Install new camera security system.

Flooring: Floor treatment/ carpets etc.-upgrade of carpet in all spaces except Mission City Ballroom. Upgrade to main lobby tile.

Message Boards/ Video Boards/ Ad Panels: Upgrade to the three outdoor marquees and its operating system. Potentially upgrading indoor video boards and signage for meeting rooms, ballrooms and exhibit halls.

Other: Walls and Ceilings- refresh paint of indoor public spaces, preferably to be painted to white to brighten up areas and give the illusion of larger space. Removal of aluminum railings. Wall repairs to take place prior to painting.



Other Operating Projects

Within this quarter the Santa Clara Convention Center began the RFP process for Audio Visual Services (AV) and Information Technology (IT). Since June 30th, the end of the quarter, the convention center has decided on its AV and IT vendors selecting PSAV and Smart City.

Other projects during the transition quarter include the replacement of the Up Escalator chain and mechanics in the main lobby. This escalator had been shutting off or malfunctioning for months prior to the repair being completed.

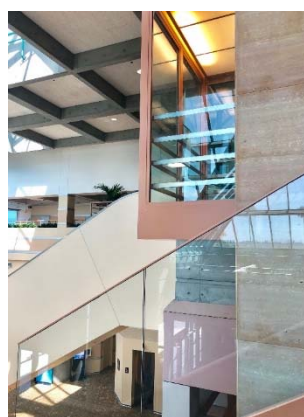
Spectra also created a new “interim” logo for the Center,



A permanent logo will be completed once the new DMO/CVB (Destination Marketing Organization/Convention & Visitor's Bureau) comes online.

Spectra worked in conjunction with Levi's Stadium, Great America, the Hyatt and the Hilton's Sales departments to create a group called "Team Tasman". The group meets monthly to discuss business and how all parties can work together to keep groups and events in Santa Clara by providing leads to the other partners if your space is full.

Spectra also provided other upgrades to the Center including resurfacing the loading docks and installing new frosted doors to the Administrative corridor.



Community Involvement

Mission College EOPS program Scholarship

One of our main goals at the Santa Clara Convention Center was to start a community involvement initiative to positively impact our local community. Within this quarter we began speaking with the Extended Opportunities Programs and Services department at Mission College about starting a scholarship program for their students in need. The EOPS program serves students who are typically first-generation college students and facing financial hardships. We will be working with the EOPS department over the next few months to award one student with a \$1,000 scholarship.

**Santa Clara Convention Center**
Published by Audrey Marshall (?) · September 18 at 2:07 PM · 


Today we had the honor of attending the EOPS 50th anniversary luncheon at Mission College. EOPS positively impacts students lives everyday by showing them their potential and supporting them through their education. This was a very special occasion for us as we were there to present a scholarship for the Santa Clara Convention Center and Spectra. We chose a student that wrote passionately about her education in Business and future in hospitality and we were beyond impressed by her work. Congratulations, Bhumi! You will do great things and we cannot wait to see you at graduation!



378
People Reached

26
Engagements

Boost Post

 4

1 Share

Adopt a Spot

Within this quarter the Adopt a Spot Project was approved and will be taking place on September 6, 2019. The adopted spot that will be beautified is the San Tomas Aquinas Creek, running from Tasman Drive to west of Great America Parkway (the creek directly behind the convention center)



Proof of Performance/Survey

Within this quarter we developed a new survey system, online, that will allow for more visibility and increase our return response rate. In partnership with Spectra we are developing a corporate and venue specific survey to improve clarity and add reporting capabilities. In the future we will be reporting from the collected information from the new system.

Guest Satisfaction Survey

Santa Clara Convention Center Guest Survey



1. Overall Appearance of Public Areas and Exterior

- ☐ Very satisfied
- ☐ Satisfied
- ☐ Neither satisfied nor dissatisfied
- ☐ Dissatisfied
- ☐ Very dissatisfied
- ☐ N/A
- ☐ Additional Comments:

0 of 10 answered



Agenda Report

19-1009

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Action to Award Master Agreements to Various Consultants to Provide Plan Check Review and Field Inspection Consulting Services for the Related Santa Clara Project and other City Projects As-Needed

BACKGROUND

On June 28, 2016, Council approved project entitlements, a Development Agreement (DA) and a Disposition and Development Agreement (DDA) with Related Santa Clara LLC, now known as Related Santa Clara (Related), for the CityPlace Project located at 5155 Stars and Stripes Drive (Development). The Development is a multi-phase, mixed-use project of up to 9.16 million square feet spanning over 240 acres. Related is currently in the process of constructing permanent City infrastructure to facilitate the start of construction for Phase 1 of the Development. Phase 1 includes an underground parking garage, office, retail, food and beverage, hotel, and residential uses.

The proposed development area encompasses all of the current Santa Clara Golf and Tennis Club, the vacant parcels across from Levi's Stadium along Tasman Drive that flank Stars and Stripes Drive and Centennial Boulevard (the "Tasman Lots") and the retention basin site on Lafayette Street abutting State Highway 237.

The Development Agreement with Related contemplates expedited processing of submitted plans for the Development. Before plans can be processed by the City, plan check reviews and field inspections are required. Due to the size, scale and scope of the Development and the requested processing time, third-party consultants are required to provide plan check reviews and field inspection services to support the expeditious processing of development plans. The executed Development Agreement provides that the City may elect to hire third party reviewers, at Related's cost.

DISCUSSION

On January 18, 2019 the City issued a Request for Qualifications (RFQ) to select qualified firms to provide plan check review and field inspection services. The City published the RFQ using the City's e-procurement tool. In addition, the City reached out directly to firms that are known to provide the required services. A total of 109 firms reviewed the RFQ and the City received proposals from 15 companies.

- 1) 4Leaf, Inc. (Pleasanton, CA)
- 2) APC International, Inc. (Campbell, CA)
- 3) Bay Area Geotechnical Group (San Jose, CA)
- 4) Bureau Veritas North America (Sacramento, CA)

- 5) CSG Consultants, Inc. (Foster City, CA)
- 6) David L. Gates & Associates, Inc. (San Ramon, CA)
- 7) Independent Code Consultants, Inc. (Pleasanton, CA)
- 8) Interwest Consulting Group, Inc. (Pleasanton, CA)
- 9) Jason Addison Smith Consulting Services, Inc. (Upland, CA)
- 10) Metropolitan Planning Group, Inc. (Campbell, CA)
- 11) NV5, Inc. (San Jose, CA)
- 12) Shums Coda Associates, Inc. (Pleasanton, CA)
- 13) The Code Group, Inc. (Orange, CA)
- 14) TRB and Associates, Inc. (Santa Clara, CA)
- 15) West Coast Code Consultants, Inc. (San Ramon, CA)

The selected firms are expected to assist the City with planning and development efforts across ten service areas: 1) Building; 2) Public Works; 3) Parks and Recreation; 4) Planning; 5) Fire; 6) Electrical Distribution; 7) Electrical Transmission; 8) Landfill; 9) Water & Recycled Water; and 10) Water Operations & Maintenance. To optimize resources and overall efficiency, staff consolidated the service areas into one RFQ instead of conducting separate procurements to create a pool of consultants for each discipline to provide services on an as-needed basis.

Evaluation Process: The proposals were evaluated by teams of three to five members for each service area, with representatives from the Building, Electric, Fire, Parks and Recreation, Planning, Public Works, and Water and Sewer departments. Each team member independently evaluated and scored the proposals.

The finalists in the respective service areas are listed in the table below.

	Building (8)*	Public Works (5)*	Parks and Recreation (3)*	Planning (3)*	Fire (3)*	Electrical (1)*v	Landfill (1)*	Water (1)**
4Leaf, Inc.	X	X						
APC International, Inc.		X	X					
Bureau Veritas	X	X						
CSG Consultants, Inc.	X	X		X	X			
Gates Associates			X					
Interwest Consulting Group, Inc.	X				X			
Jason Addison Smith	X							
Metropolitan Planning Group				X				
NV5		X	X	X		X	x	X
Shums Coda Associates	X				X			
TRB & Associates, Inc.	X							
West Coast Code Consultants, Inc	X							

*Total number of consultants selected for the specified service area

vConsultant selected for both Electrical service areas.

**Consultant selected for both Water service areas

Notice of Intended Award: A Notice of Intended Award (NOIA) announcing the City's 12 shortlisted consultants was issued on July 3, 2019. The RFQ process included a ten-day protest period which ended on July 13, 2019. No protests were received.

Summary of Agreements: Master Agreements shall be executed with the 12 shortlisted consultants ("CityPlace Master Agreements") to provide plan check review and field inspection consultant services in support of the Related Santa Clara Development project. Several of the shortlisted consultants shall provide services across multiple service areas, which will give the City the flexibility to hire the firm or consultant team with the experience and expertise that best meets the needs of a given project within the Development. The initial term of each CityPlace Master Agreement shall be for five years, ending November 30, 2024, with an option to renew each agreement for an additional five-year term, at the sole discretion of the City, subject to the same terms and conditions.

Additionally, as appropriate, the shortlisted consultants could potentially be engaged to provide plan check review and field services for other City projects through various Departments. Separate agreements would be executed if the City determines these services are needed, and each such agreement would be subject to the annual appropriation of funds.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378 (b)(4) in that it is a fiscal activity that does not involve commitment to a specific project which may result in potential significant impact on the environment.

COORDINATION

This report has been coordinated with the Public Works Department, the City Manager's Office, and the City Attorney's Office.

FISCAL IMPACT

Funding for the 12 CityPlace Master Agreements will come from a funding agreement with Related. The funding agreement will include full compensation for the third-party plan check review and field inspection services. The funding agreement will be considered for approval by Council on November 12, 2019 under a separate action.

Compensation to the shortlisted consultants for completed plan check review and field inspection services shall be tracked through detailed approved task orders, and total compensation shall not exceed an aggregate maximum of \$5,000,000 across the 12 CityPlace Master Agreements.

Funding for any separately executed agreements shall be subject to the annual appropriation of funds, and total compensation shall not exceed \$300,000 per agreement.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Adopt a Resolution authorizing the City Manager to execute Master Agreements with the 12 consultants listed below to provide plan check review and field inspection services, in support of the Related Santa Clara Development Project for an initial five-year term ending November 30, 2024, for a maximum aggregate compensation not to exceed \$5,000,000 for all 12 Master Agreements.

Consultant Name

- 1) 4Leaf, Inc.
- 2) APC International, Inc.
- 3) Bureau Veritas North America
- 4) CSG Consultants, Inc.
- 5) David L. Gates & Associates, Inc.
- 6) Interwest Consulting Group, Inc.
- 7) Jason Addison Smith Consulting Services, Inc.
- 8) Metropolitan Planning Group, Inc.
- 9) NV5, Inc.
- 10) Shums Coda Associates, Inc.
- 11) TRB and Associates, Inc.
- 12) West Coast Code Consultants, Inc.

2. Authorize the City Manager to execute a five-year option to extend the term of the Agreements after the initial term through November 30, 2029.

3. Authorize the City Manager to negotiate and execute separate agreements with the 12 consultants to provide plan check review and field inspection services for other City projects, for an initial five-year term ending November 30, 2024, for a maximum compensation not to exceed \$300,000 per agreement, subject to the annual appropriation of funds.

Reviewed by: Kenn Lee, Director of Finance

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Resolution
2. 4Leaf Master Agreement
3. APC International Master Agreement
4. Bureau Veritas North America Master Agreement
5. CSG Consultants Master Agreement
6. David L. Gates & Associates Master Agreement
7. Interwest Consulting Group Master Agreement
8. Jason Addison Smith Master Agreement
9. Metropolitan Planning Group Master Agreement
10. NV5 Master Agreement
11. Shums Coda Associates Master Agreement
12. TRB and Associates Master Agreement
13. West Coast Code Consultants Master Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
AUTHORIZING THE EXECUTION OF AGREEMENTS TO
PROVIDE PLAN CHECK REVIEW AND FIELD INSPECTION
CONSULTING SERVICES**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on June 28, 2016, Council approved project entitlements, a Development Agreement (DA) and a Disposition and Development Agreement (DDA) with Related Santa Clara LLC, now known as Related Santa Clara (Related), for the CityPlace Project located at 5155 Stars and Stripes Drive (Development);

WHEREAS, the DA with Related contemplates expedited processing of submitted plans for the Development which is a multi-phase, mixed-use project of up to 9.16 million square feet spanning over 240 acres;

WHEREAS, due to the size, scale and scope of the Development and the requested processing time, third-party consultants are required to provide plan check reviews and field inspection services to support the expeditious processing of development plans;

WHEREAS, on January 18, 2019 the City issued a Request for Qualifications (RFQ) to select qualified firms to provide plan check review and field inspection services and on July 3, 2019, issued a Notice of Intended Award to 12 consulting companies for various plan check and field services; and,

WHEREAS, these 12 shortlisted consultants could potentially be engaged to provide plan check review and field services for other City projects through various Departments.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Manager is authorized to execute Agreements for Services for plan check review and field inspection services with the following firms for the Related Santa Clara project:

a. 4Leaf, Inc.

- b. APC International, Inc.
- c. Bureau Veritas North America
- d. CSG Consultants, Inc.
- e. David L. Gates & Associates, Inc.
- f. Interwest Consulting Group, Inc.
- g. Jason Addison Smith Consulting Services, Inc.
- h. Metropolitan Planning Group, Inc.
- i. NV5, Inc.
- j. Shums Coda Associates, Inc.
- k. TRB and Associates, Inc.
- l. West Coast Code Consultants, Inc.

2. That total aggregate compensation amount of all contracts executed may not exceed \$5,000,000 without further Council authority.

3. That the initial term of each contract shall be for five years and ending on November 30, 2024 and may be extended by the City Manager for an additional five-year term to November 30, 2029.

4. That the City Manager is authorized to negotiate and execute separate Service Agreements with the same firms above in a form similar to the Related Santa Clara agreements to provide plan check review and field inspection services for other development projects on as-needed basis with a maximum initial term ending November 20, 2024 and a maximum compensation not to exceed \$300,000 per agreement.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2019, BY THE FOLLOWING VOTE:

AYES:

COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Related Santa Clara Agreements with
 - a. 4Leaf, Inc.
 - b. APC International, Inc.
 - c. Bureau Veritas North America
 - d. CSG Consultants, Inc.
 - e. David L. Gates & Associates, Inc.
 - f. Interwest Consulting Group, Inc.
 - g. Jason Addison Smith Consulting Services, Inc.
 - h. Metropolitan Planning Group, Inc.
 - i. NV5, Inc.
 - j. Shums Coda Associates, Inc.
 - k. TRB and Associates, Inc.
 - l. West Coast Code Consultants, Inc.

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
4LEAF, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and 4Leaf, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

4Leaf, Inc.
2126 Rheem Drive
Pleasanton, CA 94588
Attention: Craig Tole
and by e-mail at ctole@4leafinc.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

Consultant 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, Consultant'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, Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

4LEAF, INC.
a California corporation

Dated: _____
By (Signature): _____
Name: _____
Title: _____
Principal Place of
Business Address: _____
Email Address: _____
Telephone: (925) 462-5959
Fax: (925) 462-5958
"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Building; and B) Public Works.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Transmission Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

2.2 Public Works Consultant Services

- 2.2.1** Consultant shall review developers' public improvement plans by utilizing efficient uses of the public right-of-way and utility easements and constructability.
- 2.2.2** Consultant shall provide plan check review comments, recommendations and action items summaries.
- 2.2.3** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction.
- 2.2.4** Consultant shall plan and profile underground storm drain and sanitary sewer systems, including positions of manholes, laterals, catch basins, cleanouts, and related facilities.
- 2.2.5** Consultant shall review plans for conflicts and inclusion of underground joint trench and other public utilities (gas, telecom, etc.) and inspection.
- 2.2.6** Consultant shall review developers' on-site drainage plans and calculations as they relate to the off-site storm drain system, including verification by model.
- 2.2.7** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, including geotechnical reports etc., and any necessary quality insurance on special inspection(s).
- 2.2.8** Consultant shall provide traffic signal design review (new and/or modifications), including interconnect system, pre-emption, detection cameras, traffic monitoring cameras, signing/stripping, and construction phase traffic control plans.
- 2.2.9** Consultant shall provide Public Works field inspection services for developer projects including, but not limited to:
 - 2.2.9.1** Verification of the Consultant's compliance with the City approved plans, City standard details and specifications;
 - 2.2.9.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.2.9.3** Coordination with City departments, other public agencies, and various utilities;
 - 2.2.9.4** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and

- 2.2.9.5** Monitoring of construction impacts and safety of construction operations in the City right-of-way, develop punch list items when the work is substantially complete, and interact with the public.
- 2.2.10** Consultant shall provide construction management services as required including, but not limited to processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.2.11** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.2.12** Consultant shall review and provide recommendations on subdivision maps and plat and legal documents.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
APC INTERNATIONAL, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and APC International, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

APC International, Inc.
396 Industrial Avenue
Campbell, CA 95008
Attention: Allan Butler
and by e-mail at apcintl@aol.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

APC INTERNATIONAL, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Allan Butler

Title: President

Principal Place of 396 Industrial Avenue

Business Address: Campbell, CA 95008

Email Address: apcintl@aol.com

Telephone: (408) 583-0510

Fax: (408) 583-0515

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Parks and Recreation; and B) Public Works.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Parks and Recreation Consultant Services

- 2.1.1** Consultant shall review developers' public park improvement plans (North Park, East Park, West Park), park amenities proposed, and any active recreational private amenities to be proposed to receive fee credit (see Santa Clara City Code, Chapter 17.35).
- 2.1.2** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction and provide plan check review comments, recommendations, and action items summaries.
- 2.1.3** Consultant shall review and comment on access, connectivity and accessibility design; provide comments on pedestrian and vehicle access, along with necessary park amenities, utilities and support structures; and provide plan check review and comments.
- 2.1.4** Consultant shall review and comment on developers' on-site drainage plans, calculations, and utility connections as they relate to off-site systems, and provide analysis and comments for developer response and inclusion in revised plans and or specifications.

- 2.1.5** Consultant shall develop and recommend best practice design changes in support of City and the community. Potential changes shall include, but not be limited to, recreation building and amenity design (concession, restrooms, shade structures, roadway design, including public trails, civil structures, pavement, surface drainage, parking compliant with the Americans with Disabilities Act (ADA), pedestrian and bicyclist pathway), landscaping plans, irrigation, sanitary sewer (restroom/recreation buildings), planting materials palette, sports facilities, and playgrounds (elements of play; Consumer Product Safety Commission (CPSC); ADA). Consultant shall also review and provide comments on suggested changes received.
- 2.1.6** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, utilities, etc., including any necessary quality insurance on special inspections.
- 2.1.7** Consultant shall attend meetings as necessary with Parks & Recreation staff and other departments.
- 2.1.8** Consultant shall provide geo-technical reviews related to soils, adjacent water ways, stability, differential settlement, deed restrictions, and regulatory agency compliance.
- 2.1.9** Consultant shall provide inspection services for developer projects including, but not limited to:
- 2.1.9.1** Park Building Systems
- Plumbing;
 - Electric;
 - Energy efficiency;
 - Energy management capabilities;
 - Electronic surveillance;
 - Access control (key cards, etc.);
 - Lighting;
 - HVAC;
 - Care & shelter facility inspection (for emergencies, warming and cooling centers, etc.);
 - Emergency electrical functionality (seamless generator integration and activation);
 - Building pressure check and inspection based on design and function; and
 - Special event accommodation and functionality review.

2.1.9.2 Park and Landscape

- ADA Accessibility;
- Arboricultural (for tree selection, quality and installation);
- Landscape plan check (during plan check, construction, and punch list);
- Irrigation (for connectivity to smart irrigation system, automation, efficiency, master valve shut off capabilities, etc.);
- Lighting (pathway lighting, sport court and athletic facility);
- Wayfinding efficacy according to City branding standards and plans;
- Inclusivity of the facilities to accommodate persons with various disabilities; and
- Special event accommodation and functionality review.

2.1.9.3 Pools

- Energy and mechanical efficiency and efficacy;
- ADA accessibility, and safety standard compliance;
- Automated chemical injection system; and
- Efficient chemical delivery design (accommodate rapid delivery and exit of pool chemical delivery trucks).

2.1.9.4 Pests, Toxic & Hazardous Substances

- Design and construction of all facilities for practical compliance with integrated pest management (IPM);
- Termite treatment pre-treatment if required and according to current regulations; and
- Toxic substance inspection and check for the park and park facilities.

2.1.9.5 Parking

- Parking to facilitate access for park patrons and staff;
- Parking accommodations to complement staff functions, and maintenance functions; and
- Maintenance vehicle access check, to facilitate maintenance and minimize conflict with park patrons.

2.2 Public Works Consultant Services

- 2.2.1** Consultant shall review developers' public improvement plans by utilizing efficient uses of the public right-of-way and utility easements and constructability.
- 2.2.2** Consultant shall provide plan check review comments, recommendations and action items summaries.
- 2.2.3** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction.
- 2.2.4** Consultant shall plan and profile underground storm drain and sanitary sewer systems, including positions of manholes, laterals, catch basins, cleanouts, and related facilities.
- 2.2.5** Consultant shall review plans for conflicts and inclusion of underground joint trench and other public utilities (gas, telecom, etc.) and inspection.
- 2.2.6** Consultant shall review developers' on-site drainage plans and calculations as they relate to the off-site storm drain system, including verification by model.
- 2.2.7** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, including geotechnical reports etc., and any necessary quality insurance on special inspection(s).
- 2.2.8** Consultant shall provide traffic signal design review (new and/or modifications), including interconnect system, pre-emption, detection cameras, traffic monitoring cameras, signing/stripping, and construction phase traffic control plans.
- 2.2.9** Consultant shall provide Public Works field inspection services for developer projects including, but not limited to:
 - 2.2.9.1** Verification of the Consultant's compliance with the City approved plans, City standard details and specifications;
 - 2.2.9.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.2.9.3** Coordination with City departments, other public agencies, and various utilities;
 - 2.2.9.4** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and
 - 2.2.9.5** Monitoring of construction impacts and safety of construction operations in the City right-of-way, develop punch list items when the work is substantially complete, and interact with the public.

- 2.2.10** Consultant shall provide construction management services as required including, but not limited to processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.2.11** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.2.12** Consultant shall review and provide recommendations on subdivision maps and plat and legal documents.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BUREAU VERITAS NORTH AMERICA, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Bureau Veritas North America, Inc. a Delaware corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Bureau Veritas North America, Inc.
180 Promenade Circle, Suite 150
Sacramento, CA 95834
Attention: Craig Baptista
and by e-mail at craig.baptista@us.bureauveritas.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

BUREAU VERTIAS NORTH AMERICA, INC.
a Delaware corporation

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of Business Address: 180 Promenade Circle, Suite 150
Sacramento, CA 95834

Email Address: _____

Telephone: (916) 725-4200

Fax: (916) 725-8242

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Building; and B) Public Works.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Transmission Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

2.2 Public Works Consultant Services

- 2.2.1** Consultant shall review developers' public improvement plans by utilizing efficient uses of the public right-of-way and utility easements and constructability.
- 2.2.2** Consultant shall provide plan check review comments, recommendations and action items summaries.
- 2.2.3** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction.
- 2.2.4** Consultant shall plan and profile underground storm drain and sanitary sewer systems, including positions of manholes, laterals, catch basins, cleanouts, and related facilities.
- 2.2.5** Consultant shall review plans for conflicts and inclusion of underground joint trench and other public utilities (gas, telecom, etc.) and inspection.
- 2.2.6** Consultant shall review developers' on-site drainage plans and calculations as they relate to the off-site storm drain system, including verification by model.
- 2.2.7** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, including geotechnical reports etc., and any necessary quality insurance on special inspection(s).
- 2.2.8** Consultant shall provide traffic signal design review (new and/or modifications), including interconnect system, pre-emption, detection cameras, traffic monitoring cameras, signing/stripping, and construction phase traffic control plans.
- 2.2.9** Consultant shall provide Public Works field inspection services for developer projects including, but not limited to:
 - 2.2.9.1** Verification of the Consultant's compliance with the City approved plans, City standard details and specifications;
 - 2.2.9.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.2.9.3** Coordination with City departments, other public agencies, and various utilities;
 - 2.2.9.4** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and

- 2.2.9.5** Monitoring of construction impacts and safety of construction operations in the City right-of-way, develop punch list items when the work is substantially complete, and interact with the public.
- 2.2.10** Consultant shall provide construction management services as required including, but not limited to processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.2.11** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.2.12** Consultant shall review and provide recommendations on subdivision maps and plat and legal documents.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
8.	Consultant Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
9.	Department Director Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
CSG CONSULTANTS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and CSG Consultants, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

CSG Consultants, Inc.
550 Pilgrim Drive
Foster City, CA 94404
Attention: Cyrus Kianpour
and by e-mail at cyrus@cngengr.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

CSG CONSULTANTS, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Cyrus Kianpour

Title: President

Principal Place of Business Address: 550 Pilgrim Drive
Foster City, CA 94404

Email Address: cyrus@csgengr.com

Telephone: (650) 522-2500

Fax: (650) 522-2599

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Building; B) Fire; C) Planning and D) Public Works.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

2.2 Fire Consultant Services

- 2.2.1** Consultant shall ensure compliance with projects Community Development, Planning Division conditions of approval.
- 2.2.2** Consultant shall conduct Building and Fire Code plan reviews utilizing the current adopted Title 19 and 24 regulations.
- 2.2.3** Consultant shall conduct plan review of fire protection and hazardous materials systems, including smoke control systems.
- 2.2.4** Consultant shall apply any and all local amendments and policies to the California Fire and Building Codes.
- 2.2.5** Consultant shall apply nationally recognized standards (e.g., NFPA, ASHRAE, ASTM, SFM, CSG, ASME, ANSI, UL, etc.).
- 2.2.6** Consultant shall attend meetings requested by the City to answer code or project related questions.
- 2.2.7** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.2.8** Consultant shall provide the Fire Prevention & Hazardous Materials Division Field Inspection services for developer projects including, but not limited to, verification of contractors' compliance with the City approved plans, City ordinances, City standard details and specifications (via field inspections and field testing); consultant shall be responsible for the development of corrective action lists, and provide data to fire department QA/QC representative; coordination with City departments, fire departments, certified unified program agency, and outside regulatory agencies; preparation and maintenance of daily reports of work done, contractor's staff, etc.

2.3 Planning Consultant Services

- 2.3.1** Consultant shall review project plans for consistency with approved master plan(s), design guidelines and program environmental impact reports (EIR).
- 2.3.2** Consultant shall provide architecture and urban design comments.
- 2.3.3** Consultant shall coordinate project with City departments through the project completeness committee.

- 2.3.4** Consultant shall attend and/or coordinate meetings with City departments and applicant on project topics.
- 2.3.5** Consultant shall receive public communication on the project, retain communication with project file, and elevate public concerns to Planning Manager.
- 2.3.6** Consultant shall assist applicant to hold community outreach meetings in accordance with City's public outreach policy.
- 2.3.7** Consultant shall prepare staff report and coordinate conditions of approval with various departments.
- 2.3.8** Consultant may present project(s) at architectural committee meetings or on appeal to Planning Commission of City Council.
- 2.3.9** Consultant shall prepare incompleteness/completeness letter pursuant to the Permit Streamlining Act.
- 2.3.10** Consultant shall manage CEQA process and ensure consistency with the program EIR (or if needed creation of a CEQA document that tiers off the EIR through the appropriate CEQA process). If additional documentation is needed, Consultant shall work with an environmental consultant on the preparation of environmental documents or technical reports. Consultant shall coordinate review of CEQA documents with the City departments including the City Attorney's Office.
- 2.3.11** Consultant shall maintain regular office hours at Santa Clara City Hall based on the project's schedule, and in coordination with and approval from the Development Review Officer or Planning Manager; and be present at the Project Completeness Committee, other meetings to coordinate resolution on interdepartmental project topics, and community meeting(s) and public hearing(s).

2.4 Public Works Consultant Services

- 2.4.1** Consultant shall review developers' public improvement plans by utilizing efficient uses of the public right-of-way and utility easements and constructability.
- 2.4.2** Consultant shall provide plan check review comments, recommendations and action items summaries.
- 2.4.3** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction.
- 2.4.4** Consultant shall plan and profile underground storm drain and sanitary sewer systems, including positions of manholes, laterals, catch basins, cleanouts, and related facilities.
- 2.4.5** Consultant shall review plans for conflicts and inclusion of underground joint trench and other public utilities (gas, telecom, etc.) and inspection.

- 2.4.6** Consultant shall review developers' on-site drainage plans and calculations as they relate to the off-site storm drain system, including verification by model.
- 2.4.7** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, including geotechnical reports etc., and any necessary quality insurance on special inspection(s).
- 2.4.8** Consultant shall provide traffic signal design review (new and/or modifications), including interconnect system, pre-emption, detection cameras, traffic monitoring cameras, signing/stripping, and construction phase traffic control plans.
- 2.4.9** Consultant shall provide Public Works field inspection services for developer projects including, but not limited to:
 - 2.4.9.1** Verification of the Consultant's compliance with the City approved plans, City standard details and specifications;
 - 2.4.9.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.4.9.3** Coordination with City departments, other public agencies, and various utilities;
 - 2.4.9.4** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and
 - 2.4.9.5** Monitoring of construction impacts and safety of construction operations in the City right-of-way, develop punch list items when the work is substantially complete, and interact with the public.
- 2.4.10** Consultant shall provide construction management services as required including, but not limited to processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.4.11** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.4.12** Consultant shall review and provide recommendations on subdivision maps and plat and legal documents.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
DAVID L. GATES & ASSOCIATES, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and David L. Gates & Associates, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

David L. Gates & Associates, Inc.
2671 Crow Canyon Road
San Ramon, CA 94583
Attention: Linda Gates
and by e-mail at linda@dgates.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

DAVID L. GATES & ASSOCIATES, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Casey Case

Title: Partner

Principal Place of Business Address: 2671 Crow Canyon Road
San Ramon, CA 94583

Email Address: casey@dgates.com

Telephone: (925) 736-8176

Fax: (925) 838-8891

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service area: A) Parks and Recreation.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Parks and Recreation Consultant Services

- 2.1.1** Consultant shall review developers' public park improvement plans (North Park, East Park, West Park), park amenities proposed, and any active recreational private amenities to be proposed to receive fee credit (see Santa Clara City Code, Chapter 17.35).
- 2.1.2** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction and provide plan check review comments, recommendations, and action items summaries.
- 2.1.3** Consultant shall review and comment on access, connectivity and accessibility design; provide comments on pedestrian and vehicle access, along with necessary park amenities, utilities and support structures; and provide plan check review and comments.
- 2.1.4** Consultant shall review and comment on developers' on-site drainage plans, calculations, and utility connections as they relate to off-site systems, and provide analysis and comments for developer response and inclusion in revised plans and or specifications.

- 2.1.5** Consultant shall develop and recommend best practice design changes in support of City and the community. Potential changes shall include, but not be limited to, recreation building and amenity design (concession, restrooms, shade structures, roadway design, including public trails, civil structures, pavement, surface drainage, parking compliant with the Americans with Disabilities Act (ADA), pedestrian and bicyclist pathway), landscaping plans, irrigation, sanitary sewer (restroom/recreation buildings), planting materials palette, sports facilities, and playgrounds (elements of play; Consumer Product Safety Commission (CPSC); ADA). Consultant shall also review and provide comments on suggested changes received.
- 2.1.6** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, utilities, etc., including any necessary quality insurance on special inspections.
- 2.1.7** Consultant shall attend meetings as necessary with Parks & Recreation staff and other departments.
- 2.1.8** Consultant shall provide geo-technical reviews related to soils, adjacent water ways, stability, differential settlement, deed restrictions, and regulatory agency compliance.
- 2.1.9** Consultant shall provide inspection services for developer projects including, but not limited to:
- 2.1.9.1** Park Building Systems
- Plumbing;
 - Electric;
 - Energy efficiency;
 - Energy management capabilities;
 - Electronic surveillance;
 - Access control (key cards, etc.);
 - Lighting;
 - HVAC;
 - Care & shelter facility inspection (for emergencies, warming and cooling centers, etc.);
 - Emergency electrical functionality (seamless generator integration and activation);
 - Building pressure check and inspection based on design and function; and
 - Special event accommodation and functionality review.

2.1.9.2 Park and Landscape

- ADA Accessibility;
- Arboricultural (for tree selection, quality and installation);
- Landscape plan check (during plan check, construction, and punch list);
- Irrigation (for connectivity to smart irrigation system, automation, efficiency, master valve shut off capabilities, etc.);
- Lighting (pathway lighting, sport court and athletic facility);
- Wayfinding efficacy according to City branding standards and plans;
- Inclusivity of the facilities to accommodate persons with various disabilities; and
- Special event accommodation and functionality review.

2.1.9.3 Pools

- Energy and mechanical efficiency and efficacy;
- ADA accessibility, and safety standard compliance;
- Automated chemical injection system; and
- Efficient chemical delivery design (accommodate rapid delivery and exit of pool chemical delivery trucks).

2.1.9.4 Pests, Toxic & Hazardous Substances

- Design and construction of all facilities for practical compliance with integrated pest management (IPM);
- Termite treatment pre-treatment if required and according to current regulations; and
- Toxic substance inspection and check for the park and park facilities.

2.1.9.5 Parking

- Parking to facilitate access for park patrons and staff;
- Parking accommodations to complement staff functions, and maintenance functions; and
- Maintenance vehicle access check, to facilitate maintenance and minimize conflict with park patrons.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
INTERWEST CONSULTING GROUP, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Interwest Consulting Group, Inc. a Colorado corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Interwest Consulting Group, Inc.
6280 Las Positas Blvd., Suite 220
Pleasanton, CA 94588
Attention: Ron Beehler
and by e-mail at rbeehler@interwestgrp.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

INTERWEST CONSULTING GROUP, INC.
a Colorado corporation

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of Business Address: 6280 Las Positas Blvd., Suite 220
Pleasanton, CA 94588

Email Address: _____

Telephone: 925-462-1114

Fax: _____

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Building; and B) Fire.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

2.2 Fire Consultant Services

- 2.2.1** Consultant shall ensure compliance with projects Community Development, Planning Division conditions of approval.
- 2.2.2** Consultant shall conduct Building and Fire Code plan reviews utilizing the current adopted Title 19 and 24 regulations.
- 2.2.3** Consultant shall conduct plan review of fire protection and hazardous materials systems, including smoke control systems.
- 2.2.4** Consultant shall apply any and all local amendments and policies to the California Fire and Building Codes.
- 2.2.5** Consultant shall apply nationally recognized standards (e.g., NFPA, ASHRAE, ASTM, SFM, CSG, ASME, ANSI, UL, etc.).
- 2.2.6** Consultant shall attend meetings requested by the City to answer code or project related questions.
- 2.2.7** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.2.8** Consultant shall provide the Fire Prevention & Hazardous Materials Division Field Inspection services for developer projects including, but not limited to, verification of contractors' compliance with the City approved plans, City ordinances, City standard details and specifications (via field inspections and field testing); consultant shall be responsible for the development of corrective action lists, and provide data to fire department QA/QC representative; coordination with City departments, fire departments, certified unified program agency, and outside regulatory agencies; preparation and maintenance of daily reports of work done, contractor's staff, etc.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
JASON ADDISON SMITH CONSULTING SERVICES, INC.
DBA JAS PACIFIC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Jason Addison Smith Consulting Services, Inc., a California corporation doing business as JAS Pacific (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may

make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Jason Addison Smith Consulting Services, Inc.
dba JAS Pacific
201 North Euclid Avenue, Suite A
Upland, CA 91785
Attention: Christine Champany
and by e-mail at christine@jaspacific.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

JASON ADDISON SMITH CONSULTING SERVICES, INC.
DBA JAS PACIFIC
a California corporation

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of Business Address: 201 North Euclid Avenue, Suite A
Upland, CA 91785

Email Address: christine@jaspacific.com

Telephone: (800) 818-3677

Fax: (909) 605-0319

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service area: A) Building.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from
_____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
METROPOLITAN PLANNING GROUP, INC**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Metropolitan Planning Group, Inc., a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Metropolitan Planning Group, Inc.
307 Orchard City Drive, Suite 100
Campbell, CA 95008
Attention: Geoff Bradley
and by e-mail at gbradley@m-group.us

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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

METROPOLITAN PLANNING GROUP, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Geoff Bradley

Title: President

Principal Place of Business Address: 307 Orchard City Drive, Suite 100
Campbell, CA 95008

Email Address: gbradley@m-group.us

Telephone: (408) 340-5642

Fax: _____

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service area: A) Planning.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Planning Consultant Services

- 2.1.1** Consultant shall review project plans for consistency with approved master plan(s), design guidelines and program environmental impact reports (EIR).
- 2.1.2** Consultant shall provide architecture and urban design comments.
- 2.1.3** Consultant shall coordinate project with City departments through the project completeness committee.
- 2.1.4** Consultant shall attend and/or coordinate meetings with City departments and applicant on project topics.
- 2.1.5** Consultant shall receive public communication on the project, retain communication with project file, and elevate public concerns to Planning Manager.
- 2.1.6** Consultant shall assist applicant to hold community outreach meetings in accordance with City's public outreach policy.
- 2.1.7** Consultant shall prepare staff report and coordinate conditions of approval with various departments.
- 2.1.8** Consultant may present project(s) at architectural committee meetings or on appeal to Planning Commission of City Council.

- 2.1.9** Consultant shall prepare incompleteness/completeness letter pursuant to the Permit Streamlining Act.
- 2.1.10** Consultant shall manage CEQA process and ensure consistency with the program EIR (or if needed creation of a CEQA document that tiers off the EIR through the appropriate CEQA process). If additional documentation is needed, Consultant shall work with an environmental consultant on the preparation of environmental documents or technical reports. Consultant shall coordinate review of CEQA documents with the City departments including the City Attorney's Office.
- 2.1.11** Consultant shall maintain regular office hours at Santa Clara City Hall based on the project's schedule, and in coordination with and approval from the Development Review Officer or Planning Manager; and be present at the Project Completeness Committee, other meetings to coordinate resolution on interdepartmental project topics, and community meeting(s) and public hearing(s).

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
8.	Consultant Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
9.	Department Director Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
NV5, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and NV5, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

NV5, Inc.
2025 Gateway Place, Suite 238
San Jose, CA 95110
Attention: Bradley Waldrop
and by e-mail at bradley.waldrop@nv5.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

NV5, INC.
a California corporation

Dated: _____
By (Signature): _____
Name: _____
Title: _____
Principal Place of
Business Address: _____
Email Address: bradley.waldrop@nv5.com
Telephone: (916) 641-9108
Fax: (916) 641-9222
"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Electrical Distribution; B) Electrical Transmission; C) Landfill; D) Parks and Recreation; E) Planning; F) Public Works; G) Water & Recycled Water; and H) Water Operations & Maintenance.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Electrical Transmission Consultant Services (60 KV and above)

2.1.1 Public/Private Improvement Plan Review

- 2.1.1.1** Consultant shall review developers' public/private improvement plans by utilizing efficient use of the public right-of-way and utility easements and constructability.
- 2.1.1.2** Consultant shall provide plan check review comments, recommendations, and action items summary.
- 2.1.1.3** Consultant shall review plan revisions as they are submitted to the City for approval during construction.

2.1.2 Consultant shall evaluate existing design(s) of underground system and identify construction impacts.

2.1.3 Consultant shall assess thermal limit capacity of transmission lines, equipment and soil/corrosion study.

- 2.2.1.3 Consultant shall review plan revisions as they are submitted to the City for approval during construction.
 - 2.2.2 Consultant shall conduct an engineering study, which shall include analyses of thermal limit capacity studies for electric equipment; grounding; and soil/corrosion.
 - 2.2.3 Consultant shall provide field inspection services for developer projects including, but not limited to, the following:
 - 2.2.3.1 Verification of the Consultant's compliance with SVP-approved plans and SVP standard details and specifications;
 - 2.2.3.2 Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.2.3.3 Coordinating with City departments, other public agencies, and various utilities;
 - 2.2.3.4 Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.;
 - 2.2.3.5 Monitoring construction impacts and construction operations safety in the City right-of-way; and
 - 2.2.3.6 Developing punch list items when the work is substantially complete and interact with the public.
 - 2.2.4 Consultant shall provide construction management services as required including, but not limited to, processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
 - 2.2.5 Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.

2.3 Parks and Recreation Consultant Services

- 2.3.1** Consultant shall review developers' public park improvement plans (North Park, East Park, West Park), park amenities proposed, and any active recreational private amenities to be proposed to receive fee credit (see Santa Clara City Code, Chapter 17.35).
- 2.3.2** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction and provide plan check review comments, recommendations, and action items summaries.
- 2.3.3** Consultant shall review and comment on access, connectivity and accessibility design; provide comments on pedestrian and vehicle access, along with necessary park amenities, utilities and support structures; and provide plan check review and comments.

- 2.3.4** Consultant shall review and comment on developers' on-site drainage plans, calculations, and utility connections as they relate to off-site systems, and provide analysis and comments for developer response and inclusion in revised plans and or specifications.
- 2.3.5** Consultant shall develop and recommend best practice design changes in support of City and the community. Potential changes shall include, but not be limited to, recreation building and amenity design (concession, restrooms, shade structures, roadway design, including public trails, civil structures, pavement, surface drainage, parking compliant with the Americans with Disabilities Act (ADA), pedestrian and bicyclist pathway), landscaping plans, irrigation, sanitary sewer (restroom/recreation buildings), planting materials palette, sports facilities, and playgrounds (elements of play; Consumer Product Safety Commission (CPSC); ADA). Consultant shall also review and provide comments on suggested changes received.
- 2.3.6** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, utilities, etc., including any necessary quality insurance on special inspections.
- 2.3.7** Consultant shall attend meetings as necessary with Parks & Recreation staff and other departments.
- 2.3.8** Consultant shall provide geo-technical reviews related to soils, adjacent water ways, stability, differential settlement, deed restrictions, and regulatory agency compliance.
- 2.3.9** Consultant shall provide inspection services for developer projects including, but not limited to:
- 2.3.9.1** Park Building Systems
- Plumbing;
 - Electric;
 - Energy efficiency;
 - Energy management capabilities;
 - Electronic surveillance;
 - Access control (key cards, etc.);
 - Lighting;
 - HVAC;
 - Care & shelter facility inspection (for emergencies, warming and cooling centers, etc.);

- Emergency electrical functionality (seamless generator integration and activation);
- Building pressure check and inspection based on design and function; and
- Special event accommodation and functionality review.

2.3.9.2 Park and Landscape

- ADA Accessibility;
- Arboricultural (for tree selection, quality and installation);
- Landscape plan check (during plan check, construction, and punch list);
- Irrigation (for connectivity to smart irrigation system, automation, efficiency, master valve shut off capabilities, etc.);
- Lighting (pathway lighting, sport court and athletic facility);
- Wayfinding efficacy according to City branding standards and plans;
- Inclusivity of the facilities to accommodate persons with various disabilities; and
- Special event accommodation and functionality review.

2.3.9.3 Pools

- Energy and mechanical efficiency and efficacy;
- ADA accessibility, and safety standard compliance;
- Automated chemical injection system; and
- Efficient chemical delivery design (accommodate rapid delivery and exit of pool chemical delivery trucks).

2.3.9.4 Pests, Toxic & Hazardous Substances

- Design and construction of all facilities for practical compliance with integrated pest management (IPM);
- Termite treatment pre-treatment if required and according to current regulations; and
- Toxic substance inspection and check for the park and park facilities.

2.3.9.5 Parking

- Parking to facilitate access for park patrons and staff;
- Parking accommodations to complement staff functions, and maintenance functions; and
- Maintenance vehicle access check, to facilitate maintenance and minimize conflict with park patrons.

2.4 Planning Consultant Services

- 2.4.1** Consultant shall review project plans for consistency with approved master plan(s), design guidelines and program environmental impact reports (EIR).
- 2.4.2** Consultant shall provide architecture and urban design comments.
- 2.4.3** Consultant shall coordinate project with City departments through the project completeness committee.
- 2.4.4** Consultant shall attend and/or coordinate meetings with City departments and applicant on project topics.
- 2.4.5** Consultant shall receive public communication on the project, retain communication with project file, and elevate public concerns to Planning Manager.
- 2.4.6** Consultant shall assist applicant to hold community outreach meetings in accordance with City's public outreach policy.
- 2.4.7** Consultant shall prepare staff report and coordinate conditions of approval with various departments.
- 2.4.8** Consultant may present project(s) at architectural committee meetings or on appeal to Planning Commission of City Council.
- 2.4.9** Consultant shall prepare incompleteness/completeness letter pursuant to the Permit Streamlining Act.
- 2.4.10** Consultant shall manage CEQA process and ensure consistency with the program EIR (or if needed creation of a CEQA document that tiers off the EIR through the appropriate CEQA process). If additional documentation is needed, Consultant shall work with an environmental consultant on the preparation of environmental documents or technical reports. Consultant shall coordinate review of CEQA documents with the City departments including the City Attorney's Office.
- 2.4.11** Consultant shall maintain regular office hours at Santa Clara City Hall based on the project's schedule, and in coordination with and approval from the Development Review Officer or Planning Manager; and be present at the Project Completeness Committee, other meetings to coordinate resolution on interdepartmental project topics, and community meeting(s) and public hearing(s).

2.5 Landfill Consultant Services

- 2.5.1** Consultant shall review construction drawings, regulations, and plans from the perspective of the City.
- 2.5.2** Consultant shall coordinate project design and permitting with regulatory agencies (i.e.: Bay Area Air Quality Management Districts, Regional Water Quality Control Boards, Department of Drinking Water, and Local Enforcement Agencies).
- 2.5.3** Consultant shall provide landfill post closure maintenance, monitoring, review, and related services.
- 2.5.4** Consultant shall provide landfill inspection services for developer projects including, but not limited to:
 - 2.5.4.1** Verification of the Consultant's compliance with the City-approved plans, City standard details and specifications;
 - 2.5.4.2** Ensuring Consultant's construction methods are in accordance with applicable Title 27 requirements in the California Code of Regulations and the City's waste discharge requirements issued by the Regional Water Quality Control Board;
 - 2.5.4.3** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.5.4.4** Coordination with City departments, other public agencies, and various utilities;
 - 2.5.4.5** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and
 - 2.5.4.6** Monitoring of construction impacts and safety of construction operations, and developing punch list items when the work is substantially complete.

2.6 Public Works Consultant Services

- 2.6.1** Consultant shall review developers' public improvement plans by utilizing efficient uses of the public right-of-way and utility easements and constructability.
- 2.6.2** Consultant shall provide plan check review comments, recommendations and action items summaries.
- 2.6.3** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction.
- 2.6.4** Consultant shall plan and profile underground storm drain and sanitary sewer systems, including positions of manholes, laterals, catch basins, cleanouts, and related facilities.

- 2.6.5** Consultant shall review plans for conflicts and inclusion of underground joint trench and other public utilities (gas, telecom, etc.) and inspection.
- 2.6.6** Consultant shall review developers' on-site drainage plans and calculations as they relate to the off-site storm drain system, including verification by model.
- 2.6.7** Consultant shall provide structural review of bridges, foundations, footings, retaining walls, including geotechnical reports etc., and any necessary quality insurance on special inspection(s).
- 2.6.8** Consultant shall provide traffic signal design review (new and/or modifications), including interconnect system, pre-emption, detection cameras, traffic monitoring cameras, signing/stripping, and construction phase traffic control plans.
- 2.6.9** Consultant shall provide Public Works field inspection services for developer projects including, but not limited to:
 - 2.6.9.1** Verification of the Consultant's compliance with the City approved plans, City standard details and specifications;
 - 2.6.9.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.6.9.3** Coordination with City departments, other public agencies, and various utilities;
 - 2.6.9.4** Preparing and maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.; and
 - 2.6.9.5** Monitoring of construction impacts and safety of construction operations in the City right-of-way, develop punch list items when the work is substantially complete, and interact with the public.
- 2.6.10** Consultant shall provide construction management services as required including, but not limited to processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.6.11** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.6.12** Consultant shall review and provide recommendations on subdivision maps and plat and legal documents.

2.7 Water and Recycled Water Consultant Services

- 2.7.1** Consultant shall review developers' public improvement plans by utilizing efficient use of the public right-of-way and utility easements and constructability; provide plan check review comments,

recommendations, and action items summary, this also includes reviewing plan revisions as they are submitted to the City for approval during construction.

- 2.7.2** Consultant shall review and recommend underground water distribution systems (plan and profile) including location of valves, fire hydrants, air release valves, water and fire services and other related facilities per Water Department standards.
- 2.7.3** Consultant shall review and provide comments and recommendations for Onsite Recycled Water plans using South Bay Water Recycling (SBWR) and Division of Drinking Water (DDW) standards.
- 2.7.4** Consultant shall provide construction management services as required including, but not limited to, processing requests for information and submittals, and signing-off on encroachment permits (indicating all the work has been completed in compliance with City requirements).
- 2.7.5** Consultant shall review and approve developers' record drawings that show what was actually constructed for City records.
- 2.7.6** Consultant shall provide Water (offsite –within public right of way and easement) and Recycled Water (off site and onsite) field inspection construction management services as required including, but not limited to:
 - 2.7.6.1** Verification of the Contractor's compliance with the City Water/Recycled Water approved plans and standard details and specifications;
 - 2.7.6.2** Ensuring the quality of work (via materials testing or other means as necessary);
 - 2.7.6.3** Coordinating with City departments, other public agencies, and various utilities;
 - 2.7.6.4** Maintaining daily reports of work done, Consultant's staff, equipment, weather, etc.;
 - 2.7.6.5** Monitoring construction impacts and construction operations safety in the City right-of-way/easements; and
 - 2.7.6.6** Developing punch list items when the work is substantially complete and interact with the public.

2.8 Water Operations and Maintenance Consultant Services

- 2.8.1** Consultant shall prepare and submit Water Operations and Maintenance plans to the Division of Drinking Water (DDW) for approval.

- 2.8.2** Consultant shall develop robust, operations and maintenance manual, standard operating procedures, including on-going multi-parameter surveillance program and engineering controls to ensure no contaminant entry from the landfill enters the potable water distribution system.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
8.	Consultant Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
9.	Department Director Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
SHUMS CODA ASSOCIATES, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Shums Coda Associates, Inc. a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Shums Coda Associates, Inc.
5776 Stoneridge Mall Road
Pleasanton, CA 94588
Attention: Christine Godinez
and by e-mail at christine.godinez@shumscoda.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

SHUMS CODA ASSOCIATES, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Christine Godinez

Title: CEO

Principal Place of Business Address: 5776 Stoneridge Mall Road
Pleasanton, CA 94588

Email Address: Christine.godinez@shumscoda.com

Telephone: 925-463-0651

Fax: 925-463-0691

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service areas: A) Building; and B) Fire.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

2.2 Fire Consultant Services

- 2.2.1** Consultant shall ensure compliance with projects Community Development, Planning Division conditions of approval.
- 2.2.2** Consultant shall conduct Building and Fire Code plan reviews utilizing the current adopted Title 19 and 24 regulations.
- 2.2.3** Consultant shall conduct plan review of fire protection and hazardous materials systems, including smoke control systems.
- 2.2.4** Consultant shall apply any and all local amendments and policies to the California Fire and Building Codes.
- 2.2.5** Consultant shall apply nationally recognized standards (e.g., NFPA, ASHRAE, ASTM, SFM, CSG, ASME, ANSI, UL, etc.).
- 2.2.6** Consultant shall attend meetings requested by the City to answer code or project related questions.
- 2.2.7** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.2.8** Consultant shall provide the Fire Prevention & Hazardous Materials Division Field Inspection services for developer projects including, but not limited to, verification of contractors' compliance with the City approved plans, City ordinances, City standard details and specifications (via field inspections and field testing); consultant shall be responsible for the development of corrective action lists, and provide data to fire department QA/QC representative; coordination with City departments, fire departments, certified unified program agency, and outside regulatory agencies; preparation and maintenance of daily reports of work done, contractor's staff, etc.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:			
2.	Consultant's Name:			
3.	Project Name:			
4.	Project Location:			
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.			
6.	Budget/Fiscal:			
	a. Previously Approved Compensation for Task Orders XX-XX:	\$		
	b. Maximum Task Order Compensation for this Approved Task Order:	\$		
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$		
7.	Department/Analyst Approval:	<hr/>	Date:	<hr/>
8.	Consultant Approval:	<hr/>	Date:	<hr/>
9.	Department Director Approval:	<hr/>	Date:	<hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. Subconsultants: Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
TRB AND ASSOCIATES, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and TRB and Associates, Inc., a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

TRB and Associates, Inc.
3180 Crow Canyon Place, Suite 216
San Ramon, CA 94583
Attention: Todd Bailey
and by e-mail at tbailey@trbplus.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

TRB AND ASSOCIATES, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Todd Bailey

Title: Principal

Principal Place of Business Address: 3180 Crow Canyon Place, Suite 216
San Ramon, CA 94583

Email Address: tbailey@trbplus.com

Telephone: (408) 462-1068

Fax: (925) 790-0011

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service area: A) Building.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr/>	Date: <hr/>
8.	Consultant Approval:	<hr/>	Date: <hr/>
9.	Department Director Approval:	<hr/>	Date: <hr/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☒ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
WEST COAST CODE CONSULTANTS, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and West Coast Code Consultants, Inc., a California corporation, (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";
- B. Consultant represents that it, and its subconsultants, 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 Consultant 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 – Compensation

Exhibit C – Insurance Requirements

Exhibit D – Task Order Form

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 November 1, 2019 and terminate on October 31, 2024.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for an additional five-year period ending October 31, 2029 ("Option Period"). City shall provide Consultant with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

- A. **General:** The Consultant will provide services to the City as set forth in Exhibit A and as further described pursuant to individual task orders (Exhibit D). Each Task Order will describe the services and deliverables (collectively "Work") the Consultant must provide, the time limit within which the Consultant must complete the Work and the compensation for the Work.
- B. **Approved Task Order:** The City will not compensate the Consultant for any Work until the City has executed the task order for such Work ("Approved Task Order").
- C. **Obligation to Issue:** The City has no obligation to issue any Approved Task Orders under this Agreement.
- D. Each Approved Task Order shall be subject to the terms and conditions of this Agreement.

4. WARRANTY

Consultant 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. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Consultant for the cost incurred by City.

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant 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

Consultant shall be paid in accordance with Exhibit B, Compensation.

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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent Consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant

agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Consultant 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 Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant 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. Consultant'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, Consultants, subconsultants or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Consultant 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, Consultant 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 Consultant's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant 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: Public Works Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ajackman@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

West Coast Code Consultants, Inc.
2400 Camino Ramon, Suite 240
San Ramon, CA 94538
Attention: Giyan Senaratne
and by e-mail at giyan@wc-3.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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Consultant 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

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

WEST COAST CODE CONSULTANTS, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Giyan Senaratne

Title: CEO

Principal Place of Business Address: 2400 Camino Ramon, Suite 240
San Ramon, CA 94538

Email Address: giyan@wc-3.com

Telephone: (925) 275-1700

Fax: (925) 275-0600

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide plan check review and field inspection consultant services for the following service area: A) Building.

1 GENERAL

- 1.1** Consultant shall communicate and coordinate with the City review team and report to the designated City representative(s).
- 1.2** Consultant shall meet with City, other third-party consultant(s), developers, and their design consultants.
- 1.3** Consultant shall review developers' plans specific to the service areas in Section 2 below.
- 1.4** Consultant shall review plan revisions as they are submitted to the City for approval during design and/or construction, and provide plan check review comments, recommendations, and action items summaries.
- 1.5** Consultant shall inspect developers' public and private improvements.
- 1.6** Consultant shall provide construction management as required.

2 SERVICE AREAS

2.1 Building Consultant Services

- 2.1.1** Consultant shall provide a list of the professional(s)-in-charge and plan reviewers affiliated with the third-party consultant, who certify, supervise and/or perform third party plan review.
- 2.1.2** Consultant shall create and maintain a quality assurance plan, describing method or plan that the third-party consultant uses to maintain the quality of all plan review services it provides.
- 2.1.3** Consultant shall meet with City staff or developer as required by City to answer code or project related questions.
- 2.1.4** Any high-rise building or unconventional structural system, such as base isolator, will require an additional independent structural peer review. Consultant shall coordinate with the selected structural peer reviewer and the City.
- 2.1.5** Consultant shall provide construction administration service as required, including, but not limited to, processing requests for information, reviewing deferred submittals and field revisions.
- 2.1.6** Consultant shall provide Building Field Inspection services for developer projects including, but not limited to, verification of compliance with State of California construction codes; verification

of the Contractor's compliance with the City approved plans, City standard details and specifications; ensuring the quality of work; coordination with City departments, other public agencies, and various utilities; maintaining daily reports of items inspected and any other significant items, in the City's Accela permitting software.

EXHIBIT B COMPENSATION

1 GENERAL

- 1.1** The Consultant shall not be compensated for any Work until a task order form for such work has been executed by the City ("Approved Task Order").
- 1.2** The cover page of each task order form will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work under the task order ("Maximum Task Order Compensation").
- 1.3** Attachment C of each task order form is a compensation table setting forth the manner in which the City will pay the Maximum Task Order Compensation. The compensation table shall be completed in accordance with Section 2 below.

2 COMPENSATION TABLE

- 2.1** Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the task(s) to be performed under the task order and shall be completed as follows.
 - 2.1.1** Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number shall correspond to the same task number in Attachment A of the task order form. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
 - 2.1.2** Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.
 - 2.1.3** Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the City within 20 Business Days following completion of the task(s) to the City's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the City within 20 Business Days following completion of all Work to the City's satisfaction.

2.1.4 Compensation (Column 4): Column 4 sets forth the maximum compensation the City will pay the Consultant for completing the task(s).

2.2 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following conditions will apply if the City reimburses the Consultant separately for expenses.

2.2.1 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract administrator has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract administrator, mileage and other travel-related expenses.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

2.3 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will compensate the Consultant separately for subconsultant costs, the City will do so in accordance with the following.

- 2.3.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant.
- 2.3.2 Maximum Amount:** For each Approved Task Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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, Consultant and/or its subconsultants 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 Consultant 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 Consultant or any subconsultant 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 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 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant agrees to ensure that subconsultants, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subconsultants and others engaged in the project will be submitted to City for review.
2. Consultant 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 Consultant 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 Consultant 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, Consultant, and each and every subconsultant (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. Consultant 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

Consultant 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, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara

P.O. Box 100085 – S2

Duluth, GA 30096

or

1 Ebix Way

John's Creek, GA 30097

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 Consultant 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 - TASK ORDER FORM

Cover Page

1.	Approved Task Order No.:		
2.	Consultant's Name:		
3.	Project Name:		
4.	Project Location:		
5.	The Consultant and the City will implement this Approved Task Order in accordance with the executed Agreement, this cover page and Attachments "A" (Tasks), "B" (Project Staffing), and "C" (Compensation Table), which are incorporated herein by references.		
6.	Budget/Fiscal:		
	a. Previously Approved Compensation for Task Orders XX-XX:	\$	
	b. Maximum Task Order Compensation for this Approved Task Order:	\$	
	c. Total Approved Compensation for Task Orders (XX-XX) (6.a + 6.b):	\$	
7.	Department/Analyst Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
8.	Consultant Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>
9.	Department Director Approval:	<hr style="border: none; border-top: 1px solid black;"/>	Date: <hr style="border: none; border-top: 1px solid black;"/>

ATTACHMENT A: TASKS

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract administrator.

General Description of Project for which Consultant will Provide Services:

Task No. 1:

Consultant will complete the tasks below including Consultant attendance at one meeting with City staff.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☐ On or before the following date:
☐ On or before ____ Business Days from _____.

Task No. 2:

Consultant will complete the subtasks outlined below.

A. **Services:**

B. **Deliverable:**

C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:

- ☒ On or before the following date:
☐ On or before ____ Business Days from _____.

ATTACHMENT B: STAFFING

1. **City's Contract Manager:** The City's contract manager for this Approved Task Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Task Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must submit the required Form 700 in accordance with California Political Reform Act (Government Code Section 81000 et seq.).***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:	<u>X (01/09/19)</u>		
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				

Consultant:
Task Order No.:

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Task Order:

- ☐ The Consultant cannot use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

ATTACHMENT C: COMPENSATION TABLE

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
2	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
3	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
4	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Task Order Compensation (sum of Parts 1 through 3):						\$



Agenda Report

19-1113

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Action on Priority Project Permit Processing Cost Agreement with Related Santa Clara, Establishment of Eight New Staff Positions, Establishment of a Related Santa Clara Developer Fund, Establishment of Related General Administration and Related Permit Work Projects in the Related Santa Clara Developer Fund, and Approve the Related Budget Amendments

BACKGROUND

On June 28, 2016, Council approved a Disposition and Development Agreement (DDA), a Development Agreement (DA) and project entitlements for the Related Santa Clara Project (the "Project," also known as City Place). The Project involves development in several phases on 240 acres of land principally used as Santa Clara Golf & Tennis (Property).

The DDA and DA contemplated the need for financial resources from the Developer to fund third party costs to assist City staff in pre-development and permit processing efforts. In addition, the DA provided that the City would provide prompt expedited permit processing. Specifically, Section 8.2 of the Development Agreement provides:

"The City and Developer agree that Developer must be able to proceed efficiently with the development of the Project Site and that, accordingly, an efficient City review and land development and construction inspection process is necessary. Accordingly, the City agrees that upon submission by Developer of all appropriate applications and processing fees, City shall, to the full extent allowed by law, promptly and diligently, subject to applicable law, commence and complete all steps necessary to act on Developer's currently pending applications..."

Related Santa Clara (Developer) and their design team are preparing to submit to the City a number of plans and applications for plan review and permitting of Phases 1 and 2. The City does not currently have capacity to process the anticipated volume of plans in a timely fashion without significantly delaying the Related project nor any of the other permit applications submitted in the normal course of business.

In order to meet the objectives set out in the Development Agreement and to mitigate impacts caused by the Project on other permit applications, the Developer has agreed to the terms contained in the attached Priority Project Permit Processing Cost Agreement (Cost Agreement) fund a Priority Project Permit Processing program that includes three components:

- funding of costs for third party contractors for the technical review of plans submitted and inspection services;
- funding of eight FTE positions necessary to manage the third party contractors and to oversee the work; and

- payment of administrative permit fees.

A request for Council consideration of third-party consultant agreements for plan check and inspection services is a separate item on the November 12, 2019 Council agenda.

DISCUSSION

The proposed Cost Agreement implements and expands upon the Development Agreement provisions on Developer's payment of City costs and fees. The Cost Agreement covers four key concepts:

1. Permit Expediting Staff:

On a twice-yearly basis, Developer will pay to the City the amount the City estimates will be needed to fund the following eight additional City staff positions (also identified in Exhibit B of the Funding Agreement).

- Principal Engineer
- Senior Civil Engineer
- Associate Civil Engineer
- Public Works Inspector
- Senior Plans Examiner
- Senior Inspector
- Fire Protection Engineer
- Deputy Fire Marshal

These staff positions will give first priority to working on Project Phases 1 and 2 implementation details and agreements and the array of Project permits (such as grading, building and encroachment permits). Time permitting, these staff members may work on other City projects, but when Project plans are submitted or Project-related issues arise, priority will be given to the Related Santa Clara project. The one existing position (Principal Engineer) is an unclassified position and the seven other new positions will be civil service classified positions

Related may choose at the semi-annual intervals to stop funding the amount for any of the eight positions, but if they do so, they will lose rights to the expedited processing and credited administrative fees (both discussed below) as to the Phase 1 and 2 permits. If Related decides to stop funding a position, the City will determine If Related terminates funding in whole or in part, then the Council may decide whether to continue funding with other development permit fees in which case the personnel in those eight positions could be reassigned to different work.

2. Third-Party Consultants:

The City will hire (and Developer will fully fund) third-party plan checkers, other experts needed in the permit process and inspectors to expedite the permitting and inspection processes for Phases 1 and 2. The third-party consultants will be engaged by separate agreement(s) approval of which by Council will be on the November 12, 2019 agenda as a separate action item.

The third-party consultants will be assigned work as the permit applications come in. Each third-party consultant for permit and plan review shall review and assess the complexities of the permit package identified for submittal and affirm its commitment to achieve the Review Timelines as identified in Exhibit C of the Cost Agreement.

3. Administrative Fees:

As consideration for Developer funding the Permit Expediting Staff and the third-party consultants, the City will credit by fifty percent (50%) the amount of the Administrative Fees the City charges for the permits and approvals identified in Exhibit C of the Cost Agreement.

The rationale for the credit is that the Administrative Fees are used to fund the same permitting, plan checking and inspection activities that the Additional Permit Staff and the third-party consultants will undertake. As a result, Related will pay the Phase 1 and 2 Administrative Fees listed in Exhibit C to the Agreement at fifty percent (50%) of the amounts due and receive a 50% credit for work covered by the Funding Agreement at the same time as such fees are normally paid. Under the terms of the proposed Agreement, Developer will pay for all costs associated with third party review, eight full time staff, and 50% of cost for the Administrative permits being undertaken by the third-party consultants and receive a 50% credit.

All other Administrative Fees not listed in Exhibit C shall be charged at their regular amounts per the Municipal Fee Schedule.

4. Expedited Permit Processing:

The Cost Agreement includes Permit Work Processing Procedures attached as Exhibit D to the Agreement. Exhibit D specifies the process for engaging third-party consultants on individual permits and the timeline for review of each permit, assuming three rounds of review and with somewhat different timelines for permits of varying projected complexity.

Staff is recommending approval of the Funding Agreement because it will allow the City to augment its staff working on the Related Santa Clara Permit Work and have greater certainty as to its available staff and ability to plan for future processing of the Related Santa Clara plans.

Priority Project Manager

In addition to the terms of the Cost Agreement as outlined above, 2016 Development Agreement provided that the Developer would fund a Priority Project Manager, to act as a facilitator for project approvals and as an intermediary between the City and the Developer for the processing of project approvals; to address issues and concerns during the development of the project; and, to promote consistency across City departments. Although the funding of the position is already required under the terms of the Development Agreement and therefore is not required to be a part of the Cost Agreement, the position was not included in the FY2019/20 Adopted Operating Budget.

A Priority Project Manager has been identified and hired temporarily using a vacant Deputy City Manager position in the City Manager's Office (Stadium Authority). The recommended action would add a new Deputy City Manager position for the Priority Project Manager role and allow for the recruitment of a Deputy City Manager (Stadium Authority) as originally contemplated as part of the FY2019/20 Adopted Operating Budget.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environment Quality Act (CEQA) pursuant to CEQA Guidelines section 15378 (b)(4) in that it is a fiscal activity that does not involve commitment to a specific project which may result in potential significant impact on the environment.

FISCAL IMPACT

Funding for the seven new permit staff positions and the one existing permit staff position will come from this Funding Agreement with Related Santa Clara LLC. In addition, funding for the Priority Project Manager and the reallocation of funding for an existing Principal Engineer is included in the Budget Amendments below.

The Cost Agreement also provides for compensation of third-party plan check review and field inspection services. The Master Agreements with third-party consultants will be considered for approval by Council on November 12, 2019 under separate action. It should be noted that the positions are dependent on Developer contributions for funding. In the event the project is completed or is no longer able to fund these positions, further analysis would be required to ensure vacancies exist in other positions for possible reassignment or to determine other impacts (e.g., layoffs). The FY 2019/20 and FY 2020/21 Budget Amendments below reflect the position actions recommended in this report.

**Budget Amendment
FY 2019/20**

	Current	Increase/ (Decrease)	Revised
General Fund			
<u>Expenditures</u>			
Salaries and Benefits - Department of Public Works	\$15,396,960	(\$298,584)	\$15,098,376
<u>Reserve</u>			
Budget Stabilization Reserve	\$54,944,711	\$298,584	\$55,243,295
Related Santa Clara Developer Fund			
<u>Revenue</u>			
Developer Contributions	\$0	\$1,522,833	\$1,522,833
<u>Expenditures</u>			
Related General Administration Project	\$0	\$332,850	\$332,850
Related Permit Work Project	\$0	\$1,189,983	\$1,189,983

**Budget Amendment
FY 2020/21**

	Current	Increase/ (Decrease)	Revised
General Fund			
<u>Expenditures</u>			
Salaries and Benefits - Department of Public Works	\$16,171,081	(\$316,788)	\$15,854,293
<u>Reserve</u>			
Budget Stabilization Reserve	\$53,207,363	\$316,788	\$53,524,151
Related Santa Clara Developer Fund			
<u>Revenue</u>			
Developer Contributions	\$0	\$2,281,214	\$2, 281,214
<u>Expenditures</u>			
Related General Administration Project	\$0	\$375,190	\$375,190
Related Permit Work Project	\$0	\$1,906,024	\$1,906,024

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Approve and authorize the City Manager to execute the Priority Project Permit Processing Cost Agreement with Related Santa Clara, LLC;
2. Approve the addition of one Senior Civil Engineer, one Associate Civil Engineer, one Public Works Inspector, one Senior Plans Examiner, one Senior Inspector, one Fire Protection Engineer, and one Deputy Fire Marshal II;
3. Approve the addition of one Deputy City Manager, fully funded by the original Development Agreement approved by the City Council in June 2016;
4. Establish the new Related Santa Clara Developer Fund;
5. Establish the Related General Administration project and the Related Permit Work project in the Related Santa Clara Developer Fund; and
6. Approve the Related Budget Amendments decreasing the General Fund cost in the amount of

\$298,584 in FY 2019/20 and the amount of \$316,788 in FY 2020/21 to reflect the shift of costs to the Related Santa Clara Developer Fund; approve the Budget Amendment in the Related Santa Clara Developer Fund in the amount of \$1,522,833 for FY 2019/20 and in the amount of \$2,281,214 for FY 2020/21 to fund eight (seven new) permit staff positions to support the permit review process and one position for general administration for the Related Santa Clara project. (Requires 5 Council Affirmative Votes).

Reviewed by: Ruth Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Priority Project Permit Processing Cost Agreement

**PRIORITY PROJECT PERMIT PROCESSING COST AGREEMENT
(CITY PLACE SANTA CLARA PHASES 1 AND 2)**

This Priority Project Permit Processing Cost Agreement (City Place Santa Clara Phases 1 and 2) (including all Exhibits and as amended from time to time, this “**Agreement**”) is made as of _____, 2019 (the “**Effective Date**”), by and between Related Santa Clara, LLC, a Delaware limited liability company (“**Related**” or “**Developer**”), and the City of Santa Clara, a chartered municipal corporation (“**City**”). City and Developer may also be referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City and Related entered into that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California (the “**DDA**”), by which Related was designated Developer for the City Place project (the “**Project**”) located on property owned by City and described more particularly in Exhibit A to the DDA (the “**Project Site**”). The DDA provides for Developer to acquire long-term ground leases from City for portions of the Project Site in phases as it develops the Project.

B. Concurrently with the DDA, City and Related entered into that certain Development Agreement dated as of August 12, 2016, recorded on October 7, 2016, as Document 23456797 in the Official Records of the Santa Clara County Recorder’s Office (the “**Development Agreement**”). Defined terms not otherwise set forth in this Agreement shall have the meanings set forth in the Development Agreement.

C. Related currently intends to develop the Project in two or more phases. This Agreement shall only apply to Phases 1 and 2 as shown on Related’s phasing plans for the Project as shown on **Exhibit A** attached hereto, and for the purpose of this Agreement Phases 1 and 2 of the Project shall be referred to as “**CP Center**.” Related intends to prepare and submit to City a series of development plans and applications for approval to construct CP Center, involving (1) site preparation and improvement plans for Infrastructure and (2) site preparation and building plans for Vertical Improvements (including but not limited to tenant improvements) (collectively, “**CP Center Plans**”).

D. City will process CP Center Plans submitted by Related, and after their approval will inspect the work in order to issue notices of completion and certificates of occupancy (for purposes of this Agreement, all such City work processing CP Center Plans and performing inspections and construction certifications shall be referred to herein as the “**CP Center Permit Work**”). The Development Agreement recognized that the anticipated volume of CP Center Permit Work will require City to retain third-party contractors and consultants (including but not limited to inspectors, plan checkers and structural specialists). Section 8.2 of the Development Agreement described City’s commitment to promptly and diligently process the plans and applications for the Project, and Article 5 of the Development Agreement specified certain terms for Related to fund City’s work and pay City Costs and Administrative Fees.

E. Given the scope of the CP Center Permit Work, Developer has agreed to provide funding for the City to be able to create new City staff positions, which (i) will allow City to augment its staff working on the CP Center Permit Work and have greater certainty as to its available staffing and ability to plan for future processing of CP Center Plans and (ii) will ensure Developer that adequate staff is available and ready to timely and expeditiously address the CP Center Plans and to meet the City requirements for prompt and diligent review of the CP Center Plans. In return, City has agreed to establish a permit processing program that will provide certain expedited permit timeframes and a discount on permit fees payable by Developer for CP Center. City has estimated that the permit processing costs to Developer of the funding obligations under this Agreement will exceed the discounted fees provided to Developer by this Agreement.

F. The purpose of this Agreement is to clarify, supplement and implement the procedures and requirements of the Development Agreement, and specifically Section 8.2 and Article 5 thereof regarding City Costs and Administrative Fees as they apply to CP Center Permit Work and Related's funding obligations thereto, to ensure City has timely and sufficient resources for the CP Center Permit Work and to facilitate implementation and development of CP Center.

G. Nothing in this Agreement is intended to alter City's rights and obligations with respect to permit processing and inspection under California law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. PERMIT EXPEDITING STAFF.

1. **Expedited Processing Staffing and Funding.** Developer agrees to provide funding equivalent to the amount necessary for City to create eight (8) new City employee positions as listed in **Exhibit B** attached hereto and incorporated herein by this reference (the "**Expedited Staffing Cost Summary**," which lists the "**Permit Expediting Staff**") to augment the current City staff to process the CP Center Permit Work in an expedited fashion. Developer acknowledges that the total of salaries and all-inclusive benefits shown in **Exhibit B** for each position are estimates for the initial hiring costs. The Permit Expediting Staff positions are civil services classified positions, and salaries and benefits set forth in the Expedited Staffing Cost Summary may increase as the City makes changes to other comparable positions over time. Developer agrees to pay all costs for the Permit Expediting Staff (the "**Expedited Staffing Costs**") through the process described in **Article E**, subject to Developer's right to terminate funding of some or all Permit Expediting Staff as specified in **Section A.3**.

2. Expedited Permit Processing. The Permit Expediting Staff shall be available to process the CP Center Plans and conduct and oversee the CP Center Permit Work in an expedited fashion and pursuant to the timeframes and requirements set forth in this Agreement, as CP Center Plans may be submitted. Developer acknowledges that, time permitting, the Permit Expediting Staff may perform other work for City, and Developer shall remain responsible for payment of the full Expedited Staffing Cost notwithstanding the Permit Expediting Staff working on other tasks than CP Center Permit Work; provided, however, that (i) the Permit Expediting Staff shall give priority to CP Center Permit Work, and if they are working on other City matters when a CP Center Plan is submitted, they shall immediately defer such other City tasks in favor of the CP Center Permit Work, and (ii) under no circumstances shall the Permit Expediting Staff defer the CP Center Permit Work in favor of other City work. If any CP Center Permit Work is deferred or delayed as a result of any Permit Expediting Staff working on other City work in violation of this Section 2, then Developer shall be entitled to an abatement of costs associated with such Permit Expediting Staff for so long as such deferral is ongoing.

3. Implementation and Termination of Funding Obligation.

(a) As part of paying City each Semi-Annual Deposit pursuant to **Section E.1**, Developer shall include the full amount specified by City as required to fund Permit Expediting Staff for the next six (6) months.

(b) Developer may terminate funding in amounts equal to the funding cost of one or more Permit Expediting Staff positions by giving City at least three (3) months' written notice as follows: notice on or before September 30th for December 31st termination; notice on or before December 31st for March 31st termination; notice on or before March 31st for June 30th funding termination; and notice on or before June 30th for September 30th termination (in each case, the "**Funding Termination Date**"). After the Funding Termination Date, Developer shall have no further obligation to provide funding related to the position.

(c) If the Funding Termination Date falls within the then-current Budget Period, City in its discretion may apply the portion of Developer's Semi-Annual Deposit meant to fund the position for the remainder of the Budget Period (if any) to other City Costs. If such date is in the next Budget Period, Developer shall include in its next Semi-Annual Deposit the prorated amount specified by City to fund the position being terminated until the Funding Termination Date.

B. ADMINISTRATIVE FEES

1. Administrative Fees.

(a) As consideration for Developer funding the Expedited Staffing Costs and Third Party Consulting (defined below) fees per the terms of this Agreement, so long as Developer is not in default of its obligations to pay any sums due hereunder and subject to the following provisions, the Administrative Fees the City charges for those permits and approvals (including related plan review) listed in **Exhibit C** attached hereto and incorporated herein by this reference (collectively, the "**Expedited Permits**") related to applications for CP Center

Permit Work shall be fifty percent (50%) of the amount otherwise due under the Development Agreement (for each Expedited Permit, the “**Discounted Fee**”). All other Administrative Fees shall be charged at their regular amounts.

(b) Notwithstanding subsection (a), if Developer terminates funding of any portion of Expediting Staffing Costs that is necessary for the expedited processing of any Expedited Permit in accordance with the terms of this Agreement, City may discontinue allowing the Discounted Fee for such Expedited Permit, but only to the extent that the terminated portion of the cost was necessary for the expedited processing of the specified Expedited Permit in accordance with the terms of this Agreement. City shall give Developer written notice of the same.

2. Timing for Expedited Permit Fees. Fees for each Expedited Permit shall be paid in accordance with the procedures set forth in **Article D** below.

C. PERMIT WORK GUIDELINES.

As consideration for funding the Permit Expediting Staff, City will undertake the CP Center Permit Work in accordance with the timing and procedures attached hereto as **Exhibit D** (“**Permit Work Processing Procedures**”). City will include a provision in each task order with Third-Party Review Consultants (defined below) requiring the contractor to comply with any applicable Permit Work Processing Procedures. The Permit Work Processing Procedures shall not apply to any permit that is not an Expedited Permit under this Agreement.

D. DEVELOPER PAYMENT FOR SPECIAL PROCESSING THIRD PARTY CONSULTANTS AND EXPEDITED PERMIT ADMINISTRATIVE FEES.

The following special process described in this **Article D** governs payment of fees related to (i) third party contractors retained by City to assist in the CP Center Permit Work, including but not limited to plan checkers, inspectors, and design or structural consultants (collectively, “**Third-Party Consultants**”), and (ii) the Administrative Fees for the Expedited Permits. (Third Party Consultants retained for review purposes may be referred to as “**Third Party Review Consultants**” and Third Party Consultants who may be retained for inspection purposes may be referred to as “**Third Party Inspection Consultants.**” The following process described in this **Article D** is separate from and in addition to the budgeting and funding process described in Section 5.3 of the Development Agreement, which shall continue to apply for all City Costs not covered by this Agreement.

1. Expedited Third Party Services Fees.

(a) Within ten (10) business days following Developer’s submittal of an Expedited Permit pre-application including the following materials: description of the actions proposed by the Expedited Permit, list of drawings, and plans and specifications that would accompany the application for the Expedited Permit, the City will provide Developer with a cost proposal (including requisite software licensing fees) based on the specific scope of work of the Third Party Review Consultants (other than inspectors) that will be required to assist the City in its

review of the applicable Expedited Permit in accordance with the requirements of this Agreement and the timing and procedures set forth in the Permit Work Processing Procedures (the “**Third Party Review Services Fee**”). The Third Party Review Services Fee shall assume three (3) plan check review cycles by Third Party Review Consultants in accordance with the Permit Work Processing Procedures.

(b) The City will strive to conduct all inspection services for the CP Center Permit Work using the capacity of the Public Works Inspector and the Senior Inspector listed on **Exhibit B**. However, if the City is unable to provide inspection services for the CP Center Permit Work using only the capacity of the Public Works Inspector and the Senior Inspector listed on **Exhibit B** with respect to any Expedited Permit, then City will provide Developer notice of the cost (including requisite software licensing fees) based on the specific scope of work of Third Party Inspection Consultants required to assist the City in its inspection of work conducted pursuant to the applicable Expedited Permit (the “**Third Party Inspection Services Fee**”). Developer may also request the City to retain Third Party Inspection Consultants if Developer believes that the City is unable to provide inspection services for the CP Center Permit Work using only the capacity of the Public Works Inspector and the Senior Inspector with respect to any Expedited Permit. If Developer chooses to have the work expedited by such Third Party Inspection Consultants, payment for the same shall be made consistent with **Section D.2** below.

2. Expedited Third Party Services and Administrative Fee Payments.

(a) Concurrently with its submittal of the application for the applicable Expedited Permit, Developer shall (i) deposit with the City the amount of the Third Party Review Services Fee and (ii) pay to the City the applicable portion of the Discounted Fee for the applicable Expedited Permit required to be paid at application time (consistent with City regulations and policies otherwise applicable to the same type of permit). Upon the City’s completion of plan review and prior to issuance of the final Expedited Permit, the City shall provide Developer with a final accounting of the fees actually incurred for services of Third Party Review Consultants retained to assist the City in its review of the applicable Expedited Permit, which shall include (i) a brief non-confidential description of the work completed, (ii) the amount of any additional costs incurred for services of Third Party Review Consultants beyond the amounts previously deposited by Developer, based on hours spent and published hourly rates, (iii) the amount of any remaining unspent funds previously deposited by Developer for services of Third Party Review Consultants, and (iv) the amount due to the City for any underpayment or due to the Developer for any Third Party Review Services Fee deposits made by Developer that remained unused at the issuance of the final Expedited Permit (the “**Permit Final Accounting**”). Prior to issuance of the final Expedited Permit, Developer shall pay to City any balance due or City shall refund to Developer any balance due in accordance with the Permit Final Accounting. Prior to issuance of the final Expedited Permit, Developer shall pay any remaining amount of Discounted Fees due (consistent with City regulations and policies otherwise applicable to the same type of permit).

(b) Within ten (10) business days following City’s provision to Developer of notice of a Third Party Inspection Services Fee, Developer shall notify City if it chooses to have the City retain the Third Party Inspection Consultants, and if so shall deposit with City the amount of

the Third Party Inspection Services Fee. Upon City's completion of inspection services related to any Expedited Permit and prior to acceptance of work under the permit or issuance of a certificate of occupancy (whichever pertains), City shall provide Developer with a final accounting of the fees actually incurred for services of Third Party Inspection Consultants concerning work undertaken pursuant to the applicable Expedited Permit, which shall include (i) a brief non-confidential description of the work completed, (ii) the amount of any additional costs incurred for services of Third Party Inspection Consultants beyond the amounts previously deposited by Developer, based on hours spent and published hourly rates, (iii) the amount of any remaining unspent funds previously deposited by Developer for Third Party Inspection Consultants, and (iv) the amount due to the City for any underpayment or due to the Developer for any Third Party Inspection Services deposits made by Developer that remain unused (the **"Inspection Final Accounting"**). Prior to acceptance of the work or issuance of a certificate of occupancy, Developer shall pay to City any balance due or City shall refund to Developer any balance due in accordance with the Inspection Final Accounting.

3. Periodic Notification.

As City incurs costs for Third Party Consultants contemplated by this Agreement, City shall pay for such Third Party Consultant services from fees deposited by Developer for Third Party Review Services or Third Party Inspection Services. If, prior to the applicable Permit Final Accounting or Inspection Final Accounting, City reasonably determines that (i) any Third Party Consultant costs incurred with respect to a particular Expedited Permit are at or around eighty percent (80%) of the Third Party Review Services Fee, Third Party Inspection Services Fee for that Expedited Permit and (ii) an increase in the deposit will be required to process the Expedited Permit through issuance or through completion of the inspection work, the City shall so notify Developer (the **"Third Party Consultant 80% Notice"**). The Third Party Consultant 80% Notice shall indicate the additional fees that the City reasonably anticipates will be necessary to fund the applicable Third Party Consultant for the remainder of the work for the pertinent Expedited Permit, as well as a brief explanation of the basis for the increased projected cost. Developer shall (i) notify the City in writing whether it agrees to pay the City the additional fee amounts equal to the estimated overage specified in the Third Party Consultant 80% Notice within 10 days after receipt of the same, and (ii) deposit with the City additional fee amounts equal to the estimated overage specified in the Third Party Consultant 80% Notice within forty-five (45) days receipt of the same. If Developer fails timely to notify City of its intention to pay or to make such additional deposit, (i) the City may discontinue providing Third Party Consultant services for the applicable Expedited Permit, (ii) the Permit Work Processing Procedures shall no longer apply to the applicable Expedited Permit, and (iii) any further Administrative Fees due for such Expedited Permit shall be payable at the full (rather than discounted) level; however, in no event will City cease processing any other aspects of the CP Center Permit Work not requiring such additional funding.

4. Other Third Party Consultant Services Requiring Special Expertise.

Certain permits and inspection services may require the City to contract with Third party Consultants with expertise that City staff does not have to provide plan check and inspection services regardless of whether the permitting and inspection processes are handled in an

expedited manner. The fees for such Third Party Consultants shall be paid by Developers as set forth in the City's standard fee schedule which provides that fees for use of outside consultants for plan checking and inspections, or both, shall be actual costs, including administrative and overhead costs. The payment of such fees shall be considered payment of City Costs as described in the Development Agreement.

E. DEVELOPER PAYMENT FOR PERMIT EXPEDITING STAFF.

The following process described in this **Article E** is separate from and in addition to the budgeting and funding process described in Section 5.3 of the Development Agreement, which shall continue to apply for all City Costs not covered by this Agreement.

1. Semi-Annual Deposit Request.

(a) Within thirty (30) days after the Effective Date of this Agreement and thereafter, no later than December 1 and June 1 of each year during the term hereof, City shall provide Developer with a deposit request based upon City's anticipated budget for Expedited Staffing Costs to perform the CP Center Permit Work for the period of January 1-June 30 and July 1-December 31 of each year (each, a "**Semi-Annual Deposit Request**" and each six-month budget period, a "**Budget Period**"). The first Semi-Annual Deposit Request will cover Expedited Staffing Costs for the remainder of the then-current Budget Period. Without limiting the foregoing, and notwithstanding anything to the contrary in the Development Agreement, the Expedited Staffing Costs included as part of the Semi-Annual Deposit Request will include City's projected City Costs for Permit Expediting Staff, but not Third Party Consultants which shall be funded in accordance with the procedures set forth in **Article D** above.

(b) If Developer reasonably objects to the anticipated costs set forth in a Semi-Annual Deposit Request, it shall provide written notice to the City of its objections and the Parties shall cooperate in good faith to reach agreement on the projected costs in the Semi-Annual Deposit Request for the applicable Budget Period. If the Parties do not reach agreement on the projected costs within the applicable Semi-Annual Deposit Request prior to commencement of the applicable Budget Period, then the Semi-Annual Deposit Request for such Budget Period shall be deemed to be the greater of (i) the Semi-Annual Deposit Request for the immediately prior Budget Period, or (ii) the actual Expedited Staffing Costs for the immediately prior Budget Period, until such time, if any, as the Parties reach agreement on the applicable Semi-Annual Deposit Request. Within thirty (30) days after commencement of the applicable Budget Period, Developer shall deliver to the City funds equal to the estimated total of the Semi-Annual Deposit Request as agreed upon or deemed to apply pursuant to this subsection (b) (the "**Semi-Annual Deposit**"). For purposes of the first Budget Period, within thirty (30) days of City providing its proposed Semi-Annual Deposit Request, Developer shall deposit with the City the specified amount, and any excess payment that Developer is found to have made shall be applied as a credit to the next Semi-Annual Deposit.

(c) The Semi-Annual Budget for City Costs under Section 5.3.1 of the Development Agreement will not include (i) any City Costs attributable to the Expedited Staffing Costs, which costs will be included in the Semi-Annual Deposit Request for Permit

Expediting Staff hereunder, or (ii) any City Costs attributable to the Third Party Consultants covered by this Agreement, which costs will be paid in accordance with the procedures set forth in **Article D** above. The Semi-Annual Deposit Request produced under this Agreement shall be separate from the Semi-Annual Budget for City Costs prepared under Section 5.3.1 of the Development Agreement.

2. Periodic Notification.

(a) City shall notify Developer at such time as it reasonably determines that the Expedited Staffing Costs actually incurred during the applicable Budget Period are at or around eighty percent (80%) of the approved Semi-Annual Deposit Request for the applicable Budget Period (the “**Staffing 80% Notice**”) and that City reasonably anticipates that an increase in the amount of the Semi-Annual Deposit Request will be required. The Staffing 80% Notice shall indicate the additional funds that the City reasonably anticipates will be necessary to fund the Expedited Staffing Costs for the remainder of the Budget Period, as well as a brief explanation of the basis for the increased projected cost consistent with this Agreement. Developer shall (i) notify the City in writing whether it agrees to pay the City the additional fee amounts equal to the estimated overage specified in the Staffing 80% Notice within 10 days after receipt of the same, and (ii) deposit with the City additional fee amounts equal to the estimated overage specified in the Staffing 80% Notice within forty-five (45) days receipt of the same. Developer’s failure timely to notify City of its intention to pay or to make such additional deposit shall be a material default of this Agreement; however, in no event will City cease processing any other aspects of the CP Center Permit Work not requiring such additional funding.

(b) If City provides Developer with the Staffing 80% Notice, then directs the Permit Expediting Staff to refrain from performing those aspects of the expedited CP Center Permit Work that would require funding in excess of the Semi-Annual Deposit Request due to Developer’s failure to deliver funds to cover the increased Semi-Annual Deposit Request, any resulting slow-down in the CP Center Permit Work shall not constitute an event of Force Majeure in Developer’s favor for the purposes of any of the Project Documents.

3. Accounting of Expedited Staffing Costs. Within thirty (30) days following the end of each Budget Period, City shall deliver to Developer an accounting of Expedited Staffing Costs incurred during such concluded Budget Period and credits applied to such costs due to deposits made by Developer under **Section E.1(b)** and **Section E.2(a)** of this Agreement (the “**City Cost Accounting**”), as well as a brief non-confidential description of the work completed. To the extent that the City Cost Accounting shows a balance due to the City, Developer shall pay such balance due within forty-five (45) days from receipt thereof. Any remaining unspent funds previously deposited by Developer shall be credited toward the approved Semi-Annual Deposit Request for the next Budget Period.

F. TERM AND TERMINATION.

This Agreement shall continue in effect until the earlier of (a) the end of the Budget Period in which the Funding Termination Date occurs for the last Permit Expediting Staff still funded by Developer under this Agreement; or (b) eight (8) years after the Effective Date, unless

terminated earlier as otherwise specified in this Agreement. Developer's obligations to pay City outstanding amounts shall survive termination of this Agreement.

G. ADDITIONAL PROVISIONS.

1. Relation to Development Agreement. Except as otherwise specified in this Agreement, the terms of the Development Agreement shall apply regarding implementation of the Project and Developer funding of City's costs and expenses thereto, and specifically Article 5 of the Development Agreement regarding City Costs and Administrative Fees to the extent not addressed in this Agreement.

2. Amendments. Any amendment to this Agreement shall be in writing and agreed to by the Parties. Without limiting the foregoing, the Parties acknowledge that amendments may be considered to fund costs attributable to additional positions as Permit Expediting Staff to manage and expedite the CP Center Permit Work, to modify the Permit Work Rules and Procedures, or to apply this Agreement to additional portions of the Project beyond Phases 1 and 2, subject to the written agreement of both Parties hereto.

3. Assignment.

(a) Assignment to Phase Developer. Except as otherwise provided herein, Developer shall have the right to transfer all or a portion of its rights and obligations under this Agreement to the Phase Developer of Phase 1 or Phase 2 in connection with a Consent Transfer or Permitted Transfer of its applicable rights and obligations as to Phase 1 or Phase 2, so long as such transfer complies with the requirements of the DDA, including, without limitation, Article 22 thereof. Notwithstanding the foregoing, the budgeting and funding rights and obligations for Permit Expediting Staff under Articles A and E shall be retained by a single entity, and so long as such entity is not in default of its obligations to pay any sums due hereunder, any Phase Developer submitting an application for an Expedited Permit shall be given all of the benefits provided to Developer under this Agreement, including the application of Discounted Fees and the processing of Expedited Permits, as and to the same extent as Developer. A transfer of the rights and obligations under this Agreement may be effectuated through an AA&R delivered in compliance with Section 22.6 of the DDA or by separate instrument, which AA&R shall include a release of Master Developer as to the applicable Phase to the extent permitted under 22.7 of the DDA. City shall accept any payments required under this Agreement from a Phase Developer in satisfaction of Developer's obligations hereunder, and from Developer in satisfaction of a Phase Developer's obligations to the extent assigned under the AA&R.

(b) Assignment of Master Developer's Interest. Master Developer shall have the right to transfer all or a portion of its rights and obligations under this Agreement and be released from its obligations hereunder in connection with a Consent Transfer or Permitted Transfer of Master Developer's entire right or interest in the DDA, so long as such transfer complies with the requirements of the DDA, including, without limitation, Article 22 thereof, and, in the event of a Direct Assignment (as defined in the DDA), the rights and obligations so assigned, and the release of Master Developer, is included in any AA&R between Master Developer, the City and the successor entity. Any other transfer of this Agreement not otherwise

contemplated by Section 3.1.1 or 3.1.2 hereof shall be subject to the approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

4. Entire Agreement; Amendment. This Agreement and its exhibits, terms, and conditions, embodies the entire agreement between the Parties relative to the matters set forth herein. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

5. Waiver. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to California or federal laws and statutes shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated.

7. Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary or desirable to achieve the Parties' intent in entering into this Agreement.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages to this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

9. Notices

(a) **Notice Addresses.** Whenever this Agreement permits or requires that a notice, demand, request, consent, approval or other communication to be given by a Party (each, a "Notice"), and whenever either Party desires to give or serve a Notice, such Notice must be in writing and shall not be effective for any purpose unless it is in writing and given or served as follows: (a) by personal delivery (including by same day commercial courier or messenger service) with receipt acknowledged; (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified; or (c) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal

acknowledged in writing or by telephone, and with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Section 9; in each case to the Parties at the following addresses:

If to Master Developer:

Related Santa Clara, LLC
c/o the Related Companies
60 Columbus Circle
New York, NY 10023
Attn: Joshua Young

and

Related Santa Clara
5201 Great America Parkway, Suite 532
Santa Clara, California 95054
Attn: Chief Legal Officer

With a copy to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attn: Neil H. Sekhri, Esq.

If to City:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Attorney

A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten (10) days' written notice of such change(s) to the other Parties in accordance with the provisions of this Section 9. The attorney for any Party may send Notices on that Party's behalf.

To be effective, every notice given to a Party under the terms of this Agreement must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given; (b) if applicable, the action or response required; (c) if applicable, the period of time within which the recipient of the notice must respond thereto; (d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach; (e) if Approval is being requested, shall be clearly marked "Request for Approval"; and (f) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

(b) When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, or (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee if delivered before 5:00 pm (in the recipient's time zone) on a Business Day, otherwise on the next Business Day, regardless of the timing of receipt of any confirmatory copy, in each case with failure to accept delivery to constitute delivery for such purpose and with inability to deliver because of changed address of which no Notice was given under this Section 9 to constitute delivery for such purpose (provided, that, the sending Party shall use good faith efforts to deliver to any other address of the intended recipient known to the sending Party).

/SIGNATURES ON FOLLOWING PAGE./

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY

CITY OF SANTA CLARA,
a California chartered municipal corporation

By: _____

Name: Deanna J. Santana

Title: City Manager

Approved as to form:

By: _____

Name: _____

Title: City Attorney

DEVELOPER

RELATED SANTA CLARA, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

PHASE 1 AND PHASE 2

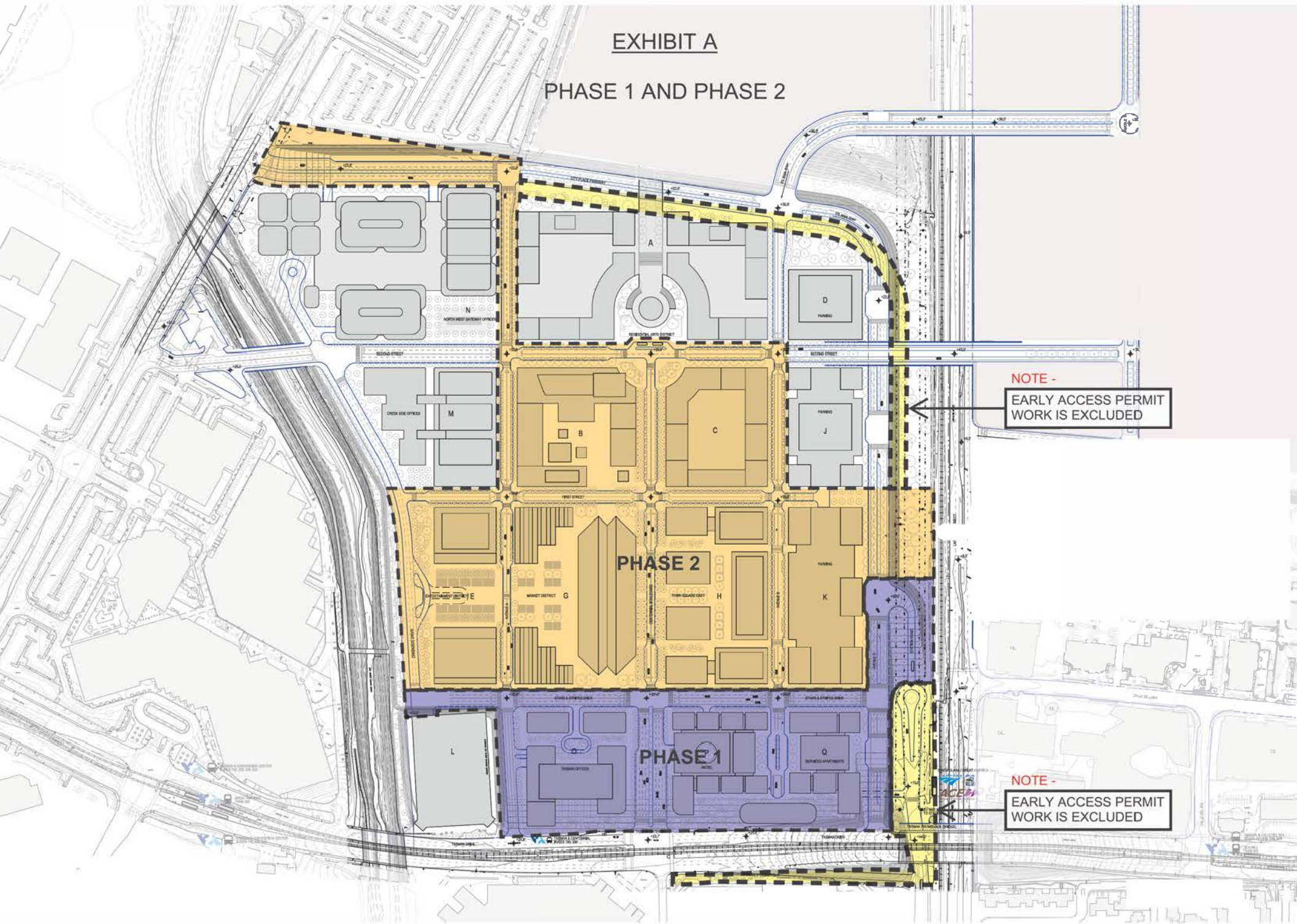


EXHIBIT B

CITY OF SANTA CLARA ADDITIONAL PERMIT STAFF FOR RELATED CITY PLACE PHASES 1 AND 2

<u>Staff Positions</u>	<u>2019 Estimated Combined Salary and Benefits</u>
Principal Engineer (Unit 9)	\$285,660
Senior Civil Engineer (Unit 4)	\$225,151
Associate Civil Engineer (Unit 4)	\$193,464
Public Works Inspector (Units 5, 7, 8)	\$173,436
Senior Plans Examiner (Units 5, 7, 8)	\$206,813
Senior Inspector (Units 5, 7, 8)	\$198,421
Fire Protection Engineer (Unit 10)	\$232,716
Deputy Fire Marshall (Unit 1)	\$298,111

*Salaries and benefits may change as a result of merit and range increases, adjustments to comparable staff salaries and benefits, and union negotiations.

EXHIBIT C

EXPEDITED PERMITS

Expedited Permits include requisite departmental Plan Review and Permit Issuance Fees paid to City's Building Department and Department of Public Works for the following:

BUILDING DEPARTMENT

Plan Review

- Building Plan Review (Including MEP) Fee
- Fire Plan Review Fee

Permit Fees

- Building Permit Fee
- Electrical Permit Fee
- Mechanical Permit Fee
- Plumbing Permit Fee

DEPARTMENT OF PUBLIC WORKS

Encroachment Permit

- Engineering Plan Review Fee
- Engineering Inspection Fee

All fees that are not discounted as listed above shall be based upon the full permit value (not a discounted valuation).

EXHIBIT D

PERMIT WORK PROCESSING PROCEDURES

CP CENTER PERMIT WORK REVIEW TIMING REQUIREMENTS

City, Permit Expediting Staff and Third Party Consultant will complete the CP Center Permit Work in accordance with the timing and procedures set forth on Exhibits D-1, Exhibit D-2, Exhibit D-3, and Exhibit D-4 (the “**Review Timelines**”). As part of its Fee Proposal, each Third Party Consultant for permit and plan review shall review and assess the complexities of the permit package identified for submittal and affirm its commitment to achieve the Review Timelines. In the event that Developer and City agree that the volume or complexity of any particular permit/plan submittal requires more time than indicated in the Review Timelines, the parties shall mutually agree, in writing (which may be via email), to alternate review timelines for such permit package. If either Developer and/or City do not agree that the volume or complexity of a particular permit/plan submittal requires more time than indicated in the Review Timelines, then the Third Party Consultant shall complete the applicable CP Center Permit work in accordance with the Review Timelines.

CONCURRENT ON-LINE PLAN REVIEW

City, Permit Expediting Staff and Third Party Consultants shall work concurrently with Developer and its team during all stages of the CP Center Permit Work process, using integrated on-line review systems provided by the City, which provide Developer, Third Party Consultants and City with real time processing. The City will coordinate interdepartmental resources during CP Center Permit Work processing, including any necessary Permit Expediting Staff and Third Party Consultants.

PLAN REVIEW PROCESSING

For each Expedited Permit, Developer shall upload plans to an electronic database in PDF format via a secure server in accordance with the specific procedures provided by the applicable Third Party Consultant (the “**Plan Review Database**”). Each City staff member, Permit Expediting Staff and Third Party Consultant charged with review of the plans shall be notified immediately upon uploading of the plans to the Plan Review Database to begin their area specific plan review. Each plan review completed by the Third Party Consultants shall be provided to the Developer with a letter summarizing the Third Party Consultant’s red-lined comments, sent to (i) the Developer, (ii) the Architect of Record, (iii) the Engineer

of Record, (iv) the Landscape Architect, and (v) applicable City staff and Permit Expediting Staff. Plan review documentation completed by Third Party Consultants and the City, including comments and red-lined plan sheets, shall be scanned and uploaded to the Plan Review Database, consistent with the Review Timeline. Third Party Consultants shall meet with the Developer representative(s) and City staff to review comments to facilitate timely completion of the review process in accordance with the Review Timeline. Developer and its team (including architects and engineers) will work in good faith with the City and the Third Party Consultants as required to facilitate timely completion of the review process in accordance with the Review Timeline. Each plan review will follow the timing set forth in the Review Timeline. Any required plan review beyond the initial three (3) rounds assumed for the purposes of this Agreement shall follow the timeline applicable to the third plan review, as set forth in the Review Timeline. Upon completion of the plan review process, Developer shall provide digitally stamped plans to the City for final processing.

PERMIT PROCESSING

Upon completion of plan review, City will determine the applicable Expedited Permit fee in accordance with the Agreement and notify Developer. City will process the applicable Expedited Permit within ten (10) days from the completion of final plan review, as set forth in the Review Timeline, provided that pertinent requirements such as insurance and license fees have been satisfied.

STAFFING

Each Third Party Consultant engaged in plan review must be a State of California licensed professional engineer/architect or under the supervision of a licensed professional engineer/architect. Each Third Party Consultant engaged in plan review shall include a project team dedicated to all aspects of the applicable CP Center Permit Work, including the initial review and all subsequent reviews, to completion of the assigned CP Center Permit Work. Specialized qualified Third Party Consultants shall be assigned to each discipline, handling building, structural, MEP, fire, soils and geotechnical reviews. Third Party Consultant hours for plan review will be Monday through Friday, from 8:00 AM through 5:00 PM, not including City holidays.

CITY OF SANTA BARBARA DOWNGRADED PERMITS - SUBJECT TO DOWNGRADED FEES
PHASE 3 / DEVELOPMENT AREA PLAN

<u>Project Location / Building Department</u>	WS 1	WS 2	WS 3	WS 4	WS 5	WS 6	WS 7	WS 8	WS 9	WS 10	WS 11	WS 12	WS 13	WS 14	WS 15
Tasman Block O/Office	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 2 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wks	Oty Proc'ding / Permit Issue 2 Wks			
Tasman Block O/Office - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wk	Oty Proc'ding / Permit Issue 2 Wks			
Tasman Block Q/City Work	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wk	Oty Proc'ding / Permit Issue 2 Wks			
Tasman Block Q/Retail	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wks	Oty Proc'ding / Permit Issue 3 Wks			
Tasman Block Q/Retail - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'dg / Permits Issued 3 Wks +			
Tasman Block Q/Food & Beverage	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wks	Oty Proc'ding / Permit Issue 2 Wks			
Tasman Block Q/Food & Beverage - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wk	Oty Proc'ding / Permit Issue 3 Wks			
Tasman Block P/Hotel	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'dg / Permits Issued 2 Wks +			
Tasman Block P/Hotel Interiors	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 2 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Response 3 Wks	Oty Proc'ding / Permit Issue 2 Wks			
Tasman Block P/Site Work	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'ding / Permit Issue 2 Wks +			
Tasman Block Q/Extended Stay	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'ding / Permits Issued 2 Wks +			
Tasman Block Q/Retail	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'ding / Permit Issue 2 Wks +			
Tasman Block Q/Retail - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'ding / Permits Issued 3 Wks +			
Tasman Block Q/Event-Office	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 3 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'dg / Permits Issued 3 Wks +			
Tasman Block Q/Event-Office - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'dg / Permits Issued 2 Wks +			
Tasman Block Q/Event-Office - Tenant Improvements	CdC - 3rd Party - 3rd Comments / 3 Weeks			AOR Response 3 Weeks		CdC - 3rd Party - 3rd Comments / 3 Weeks		AOR Response 2 Weeks		GSC - 3rd Party - 3rd Comments / 3 Weeks	AOR Resp 3 wks + 1 Wk +	Oty Proc'dg / Permits Issued 2 Wks +			

Project Location / Department or Public Works																													
WB 1	WB 2	WB 3	WB 4	WB 5	WB 6	WB 7	WB 8	WB 9	WB 10	WB 11	WB 12	WB 13	WB 14	WB 15	WB 16	WB 17	WB 18	WB 19	WB 20	WB 21	WB 22								
Public Streets & Utilities																													
CUE + 3rd Party - 1st Components / 4 Weeks				ADR Response - 3 Weeks				CUE + 3rd Party - 2nd Components / 4 Weeks				ADR Response - 3 Weeks				CUE + 3rd Party - 3rd Components / 3 Weeks				ADR Response - 2 Weeks				CUE + 3rd Party - 4th Components / 2 Weeks		ADR Response - 3 Weeks		On-Process / Approved / 2 Wks	

EXHIBIT 2
CITY of SANTA CLARA DISCOUNTED PERMITS - SUBJECT TO DISCOUNTED FEE
PHASE 2 / DEVELOPMENT AREA PLAN / INFRASTRUCTURE

Project Location / Department of Public Works

LFG & Grading

Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15
Cd/C + 3rd Party - 1st Comments / 3 Weeks			ADR Response 2 Weeks			Cd/C + 3rd Party - 2nd Comments / 3 Weeks			ADR Response 2 Weeks		Cd/C + 3rd Party - 3rd Comments / 3 Weeks		ADR Response 1 Wk	City Processing / Permit Issued 1 Wk

Structural - On/Off Platform

Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15	Wk 16	Wk 17
Cd/C + 3rd Party - 1st Comments / 4 Weeks				ADR Response 2 Weeks		Cd/C + 3rd Party - 2nd Comments / 4 Weeks				ADR Response 2 Weeks		Cd/C + 3rd Party - 3rd Comments / 2 Weeks		ADR Response 2 Wk	City Processing / Permit Issued 2 Wks	

Public Streets & Utilities

Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15	Wk 16	Wk 17	Wk 18	Wk 19	Wk 20	Wk 21	Wk 22
Cd/C + 3rd Party - 1st Comments / 4 Weeks				ADR Response 2 Weeks		Cd/C + 3rd Party - 2nd Comments / 4 Weeks				ADR Response 2 Weeks		Cd/C + 3rd Party - 3rd Comments / 3 Weeks			ADR Response 2 Weeks		Cd/C + 3rd Party - 4th Comments / 2 Weeks		ADR Response 1 Wk	City Processing / Permit Issued 2 Wks	

EXHIBIT D-3

[illegible]

EXHIBIT D-4
CITY OF SANTA CLARA DISCOUNTED PERMITS - SUBJECT TO DISCOUNTED FEE
PHASE 2/ DEVELOPMENT AREA PLAN

Project location / Building Department	Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15
Block B / Hotel	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Hotel Interiors	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Retail	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Retail - Tenant Improvements	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Food & Beverage	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Food & Beverage - Tenant Improvements	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Residential	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block B / Site Work	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Residential	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Retail	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Retail - Tenant Improvements	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Food & Beverage	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Food & Beverage - Tenant Improvements	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	
Block C / Site Work	CoSC + 3rd Party - 1st Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 2nd Comments / 3 Weeks			AOR Response 2 Weeks		CoSC + 3rd Party - 3rd Comments / 2 Weeks		AOR Response 1 Wk	City Processing / Permit Issued 2 Wks	



Agenda Report

19-920

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Discussion and Direction on the Conversion of the Santa Clara Tourism Improvement District (TID) Established Under the Parking and Business Improvement Area Law of 1989 to a TID Established under the Property and Business Improvement District Law of 1994

EXECUTIVE SUMMARY

Lodging businesses located within the Santa Clara Tourism Improvement District are interested in establishing the district under the Property and Business Improvement District Law of 1994 (1994 Law). Concurrently, the lodging businesses are interested in changing the assessment from \$1.00 per occupied room night to 2% of gross revenue of short-term room rentals. Staff is seeking direction from the Council on the proposed changes sought by the lodging businesses.

BACKGROUND

The existing Santa Clara Tourism Improvement District (TID) was formed in 2005 pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Law). On January 11, 2005, City Council approved Ordinance No. 1797 (the "Ordinance") amending the Santa Clara Municipal Code and establishing TID. The Ordinance established the boundaries of the TID, which currently includes eleven hotels near the Santa Clara Convention Center: AC Hotel Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element Santa Clara, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The Plaza Suites, and TownePlace Suites by Marriott.

The Ordinance also established a District Advisory Board (the "Advisory Board") to administer the affairs of the TID. The Advisory Board is constituted of the general managers from the lodging businesses within the TID and all hotels collect a \$1.00 fee from hotel guests on each occupied hotel/motel room night within the district boundaries.

In 1994, the State Legislature passed the Property and Business Improvement Law, adding Sections 36600, et seq., to the California Streets and Highways Code. The 1994 Law is based upon the belief that there is a particular local benefit to be derived from allowing business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements. The 1994 Law includes procedural differences for the District, as compared with the 1989 Law.

DISCUSSION

Many tourism improvement districts have undergone a public process to disestablish under the 1989 Law and reconstitute under the 1994 Law. Tourism improvement districts throughout California are primarily formed pursuant to the 1994 Law.

Lodging businesses in the Santa Clara TID are interested in establishing the district under the 1994 Law. If established under the 1994 Law, the new district, the Santa Clara Tourism Improvement District (SCTID), would operate in accordance with a Council-approved management district plan. A draft SCTID Management District Plan (MDP) has been prepared with the assistance of Civitas Advisors and provides the overall format and budget for SCTID activities. This draft MDP is provided for reference purposes only.

Governance

Under the 1989 Law, City Council appointed the TID Advisory Board to administer the affairs of the TID based upon Council's budget approval. Under the 1994 State Law, the appointment of an advisory board is not required, rather it provides that a district is operated through an owners' association that is a private non-profit corporation, under contract with the City to administer or implement improvements, maintenance, and activities specified in the MDP and manage the affairs of the SCTID. The City would provide general oversight, the manner and extent of which is being determined, while the non-profit would be responsible for the day-to-day operations.

The Silicon Valley/Santa Clara Destination Marketing Organization (DMO) recently incorporated in August 2019 and is composed of nine Directors. Eight of the Board seats are filled, and staff is working to fill the last vacancy:

- Two (2) Directors representing lodging businesses in TID;
- Two (2) Directors representing local union groups;
- One (1) Director representing the Santa Clara Convention Center;
- One (1) Director representing the travel and tourism industry;
- One (1) Director representing large businesses in Santa Clara;
- One (1) Director representing the City of Santa Clara; and
- One (1) Director representing the technology industry.

A report on the status of the formation of the DMO is a separate item on the November 12 Council agenda (RTC# 19-1257).

As noted in the draft MDP, it is proposed the Silicon Valley/Santa Clara DMO be designated as the owners' association of the SCTID to manage funds and implement programs in accordance to the MDP. The Silicon Valley/Santa Clara DMO would also be responsible for providing annual reports to the City Council at the end of each year of operation of the district.

The 1994 State Law considers the owners' association a legislative body and is therefore, subject to the Ralph M. Brown Act and the California Public Records Act. As such, all activities and meetings of the Silicon Valley/Santa Clara DMO Board of Directors, as it would relate to SCTID assessment funds and activities, would have to follow the Brown Act and be subject to Public Records requests.

District Boundary

The proposed SCTID boundary includes lodging businesses near the Santa Clara Convention Center. The proposed boundary would not change from what is currently established and would include all lodging business, existing and in the future. There are currently 11 hotels within the proposed boundary: AC Hotel Santa Clara, Avatar Hotel, Biltmore Hotel & Suites, Element Santa Clara, Embassy Suites, Hilton Santa Clara, Hyatt House, Hyatt Regency, Marriott Santa Clara, The

Plaza Suites, and TownePlace Suites by Marriott. Any lodging business that opens after the formation of the district would be automatically included in the district.

Staff is in the process of determining the manner in which, and extent to which, the SCTID requirements could apply to short-term rentals, such as those advertised on Airbnb.

District Assessment Formula

The process to change the district assessment method can be completed independently from the conversion process; however, the timing for City Council to consider a change aligns to the current effort being proposed and therefore is being brought forth at this time. The final assessment formula is to be further determined by City Council and if approved with the conversion process, would be incorporated into the MDP.

The lodging businesses within the TID collect a \$1.00 fee from hotel guests on each occupied hotel/motel room night and this is the same assessment formula that has been used since the TID was formed in January 2005. It is the desire of the TID lodging businesses to change the assessment from \$1.00 per occupied room night to 2% of gross revenue on short-term room rentals (30 days or less). Feedback from the TID lodging businesses indicate that a percent assessment would allow for a fairer assessment formula as the larger hotels would pay proportionately more into the assessment than the smaller hotels as the larger hotels generally have a higher average daily rate (ADR) and derive more direct benefit from the programs funded by TID dollars. Additionally, the TID hotels see this as opportunity to increase funds to directly support sales, marketing and promotional efforts with the goal of increasing hotel occupancy in the district and overall visitor spending in the tourism market. At 2% of gross revenue on short-term room rentals, it is estimated the SCTID could generate approximately \$3.75 million annually. The current TID revenue is around \$800,000 annually.

A policy consideration on the conversion of the district assessment formula from \$1.00 per occupied room night to 2% of the gross revenue on short-term room rentals is the overall Transient Occupancy Tax (TOT) being charged. Staff provided a report to Council at its November 5, 2019 meeting regarding the City's financial outlook and potential opportunities for revenue enhancement. One of those opportunities is an increase in the TOT for General Fund purposes.

The current TOT rate within with the TID boundary is 11.5% (General City TOT is 9.5% and the Community Facilities District is an additional 2%). Table 2 outlines the General City TOT rates in the area.

Table 2 - Transient Occupancy Tax Rates**Transient Occupancy Tax by City**

City	Rate
Gilroy	9.0%
Santa Clara (w/o CFD)	9.5%
Morgan Hill	10.0%
Saratoga	10.0%
Fremont	10.0%
Mountain View	10.0%
San Jose	10.0%
Santa Clara (w/ CFD)	11.5%
Los Altos	12.0%
Campbell	12.0%
Cupertino	12.0%
Los Gatos	12.0%
Sunnyvale	12.5%
Milpitas	14.0%
Palo Alto	15.5%

The collection method of the district funds by the City would not change. The assessment from the lodging businesses would be collected at the same time the City collects the Transient Occupancy Tax from those businesses. The lodging business would be responsible for submitting the assessment to the City who would then transfer the funds to the DMO, the owners' association of the SCTID.

Staff are working with the lodging businesses to address items that surfaced from the TID Audit; one of which was the variances in how the lodging businesses were applying the assessment fee. To ensure ongoing consistency, the proposed MDP clearly outlines situations whereby the collection of assessments would be exempt subject to claim requirements to be submitted to the City for approval.

Budget and Services

Monies raised with the assessment must directly benefit the lodging businesses paying the assessment. SCTID funds would be used to support destination marketing initiatives as outlined in the MDP designed to increase overnight visitation and room night sales of the lodging businesses in the SCTID.

Based on a 2% assessment formula, the first-year annual budget as proposed in the MDP is summarized in Table 3 below.

Table 3- Proposed SCTID Budget

Program	Description	Budget
Convention Sales, Incentives, and Services (50%)	Promote sales activity for the booking of Convention Center events and increased room night sales of attendees; Provide financial incentives to current and new clients.	\$1,875,000
Marketing & Communications (30%)	Promote SCTID lodging businesses through internet marketing efforts, attendance at trade shows, lead generation activities, production and distribution of tourist-related marketing collateral, etc.	\$1,125,000
Administration (15%)	For administrative staffing costs, office costs, policy development and other general administrative costs such as insurance, legal, and accounting fees.	\$562,500
Contingency/Reserve (3%)	Held in a reserve fund or could be utilized for other program, initiative, administration or renewal costs; at the discretion of the DMO.	\$112,500
City Collection Fee (2%)	Paid to the City to cover costs of collection and administration.	\$75,000
	TOTAL	\$3,750,000

A change in the rate would impact the proposed budget and programs of the TID/DMO.

It should be noted that the previous Convention and Visitor's Bureau operated by the Santa Clara Chamber of Commerce was provided approximately \$1.5 million in City funding from the General Fund on an annual basis. Therefore, annual funding for convention and visitor programs was approximately \$2.3 million (\$1.5 million from the City and \$800,000 from the TID). A change in the assessment method from \$1 per occupied room night to a percentage of the gross revenue on short-term room rentals provides the future DMO with replacement funding without any direct contribution from the General Fund. All General Fund monies for CVB/DMO operations have already been removed from the City Operating Budget and 10-year forecast.

District Term

Currently, the TID can only be renewed for a one-year term. Under the 1994 Law, the SCTID can be initially formed for up to five years and renewed for up to ten years.

The draft MDP notes an initial term based on the calendar year however, staff is proposing the term of the SCTID, if established, be aligned to the City's Fiscal Year. It will also be important to ensure that the conversion effort aligns with the ongoing development of the DMO.

The lodging businesses in the TID are interested in establishing the new district and to begin collection of the new assessment as soon as possible. The current TID term does not expire until June 30, 2020 and a concurrent process to disestablish the TID would be required if the establishment of the new district were to occur prior to its expiration. Alternately, efforts to establish the new district could be initiated so that it is formed effective July 1, 2020. In this case, the current TID term could naturally expired and no further action would be required.

SCTID Formation Process Under the 1994 Law

The driving force to form a district is normally through a request from the businesses that will be subject to the assessment, in this case, the lodging businesses. However, as only cities and counties can form such districts, request for the formation of a district are made to the local legislative body and the legislative body then follows the process dictated by the 1994 Law.

The 1994 Law requires a thorough approval process, which begins with submission of petitions from the lodging businesses that will be assessed in the district.

Resolution of Intention Hearing: Upon the submission of a written petition, signed by the lodging businesses in the proposed district who will collectively pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to establish a district by the adoption of a resolution expressing its intention to establish a district.

Notice: The 1994 Law requires the City to mail written notice to the lodging businesses proposed to be within the new district. Mailing the notice begins a mandatory forty-five (45) day period in which lodging businesses may protest the formation of the SCTID.

Public Meeting: A public meeting is required to allow public testimony on the formation of the SCTID and levy of assessments. No Council action would be required at this time.

Final Public Hearing: If written protests are received from the lodging businesses in the proposed SCTID which will collectively pay more than fifty percent (50%) of the assessments, and are not withdrawn prior to the hearing, then the City Council can take no further action to levy the proposed assessment for a period of one (1) year.

At the conclusion of the public hearing to establish the SCTID, the Council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessment.

If the Council, following the public hearing, decides to establish the proposed SCTID, the Council shall adopt a resolution of formation.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

Under the current TID, the City administrative fee is \$3,000. If the SCTID is established under the 1994 Law, the City administrative fee increases to approximately \$75,000 annually (2% of the total assessment collected) to cover administrative and collection costs.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Provide direction to proceed with the conversion of the Santa Clara Tourism Improvement District (TID) established under the Parking and Business Improvement Area Law of 1989 to a TID established under the Property and Business Improvement District Law of 1994.
2. Provide direction to continue the TID under the 1989 Law.
3. Provide direction regarding the District assessment formula.
4. Any other action as directed by Council.

RECOMMENDATION

1. Alternative 1: Provide direction to proceed with the conversion of the Santa Clara Tourism Improvement District (TID) established under the Parking and Business Improvement Area Law of 1989 to a TID established under the Property and Business Improvement District Law of 1994;
and
2. Alternative 3: Provide direction regarding the District assessment formula.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Santa Clara Tourism Improvement District Management District Plan (Draft)

2020-2024



SANTA CLARA TOURISM IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

*Prepared pursuant to the Property and Business Improvement District Law of
1994, Streets and Highways Code section 36600 et seq.*

August 27, 2019

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Prepared by
Civitas



I. OVERVIEW

The Santa Clara Tourism Improvement District (SCTID) is an assessment district proposed to provide specific benefits to payors, by funding convention sales, incentives, and services and marketing and communication programs for assessed businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of additional room night sales directly to payors.

Location: The proposed SCTID includes all lodging businesses located within the boundaries of a portion of the City of Santa Clara, as shown on the map in Section III.

Services: The SCTID is designed to provide specific benefits directly to payors by increasing room night sales. Convention sales, incentives, and services and marketing and communication programs will increase overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing room night sales.

Budget: The total SCTID annual budget for the initial year of its five (5) year operation is anticipated to be approximately \$3,750,000.

Cost: The annual assessment rate is two percent (2%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty. Additionally, assessments will not be collected on stays by any Federal or State of California officer or employee on official business who shall provide one of the following; a warrant or check drawn on the Treasury of the United States; a copy of the official travel orders indicating the issuing governmental agency and the employee's full name; or, a copy of a letter on the official letterhead of an exempt governmental agency requesting exemption and listing the employee's name and stating that the stay is for official government business. The dates of occupancy must also be included. These requirements must be demonstrated by the guest at the time of registration. Failure to satisfy these requirements will result in no assessment exemption. Copies of the documentation for each exemption claimed must be submitted to the Director of Finance with each remittance of assessments.

Collection: Each lodging business located in the boundaries of the SCTID shall be responsible for remitting the assessments to the City in accordance with this Management District Plan. The City will be responsible for collecting the assessment on a quarterly basis or at the close of any shorter reporting period as established by the Director of Finance (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the SCTID. The City shall take all reasonable efforts to collect the assessments from each lodging business.

Duration: The proposed SCTID will have a five (5) year life, beginning January 1, 2020 through December 31, 2024. Once per year, beginning on the anniversary of SCTID formation, there is a thirty (30) day period in which owners paying fifty percent (50%) or more of the assessment may protest and initiate a City Council hearing on SCTID termination.

Management: Silicon Valley/Santa Clara DMO (SVSCDMO) will serve as the SCTID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the City Council.

DRAFT

II. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the SCTID as defined in Streets and Highways Code §36612. The City Council has determined that Silicon Valley/Santa Clara DMO will serve as the Owners' Association for the SCTID.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the SVSCDMO board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

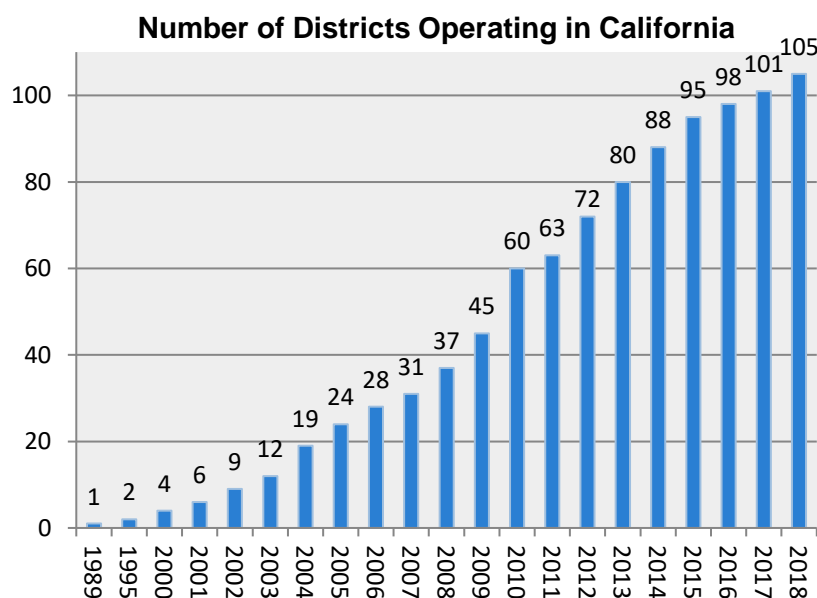
C. Annual Report

The SVSCDMO shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

III. BACKGROUND

TIDs are an evolution of the traditional Business Improvement District. The first TID was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model – Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TID. And, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TIDs without a state law.



California's TIDs collectively raise over \$275 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Santa Clara lodging businesses invest in stable, lodging-specific marketing programs.

TIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TIDs allow lodging business owners to organize their efforts to increase room night sales. Lodging

business owners within the TID pay an assessment and those funds are used to provide services that increase room night sales.

In California, TIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TIDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TIDs:

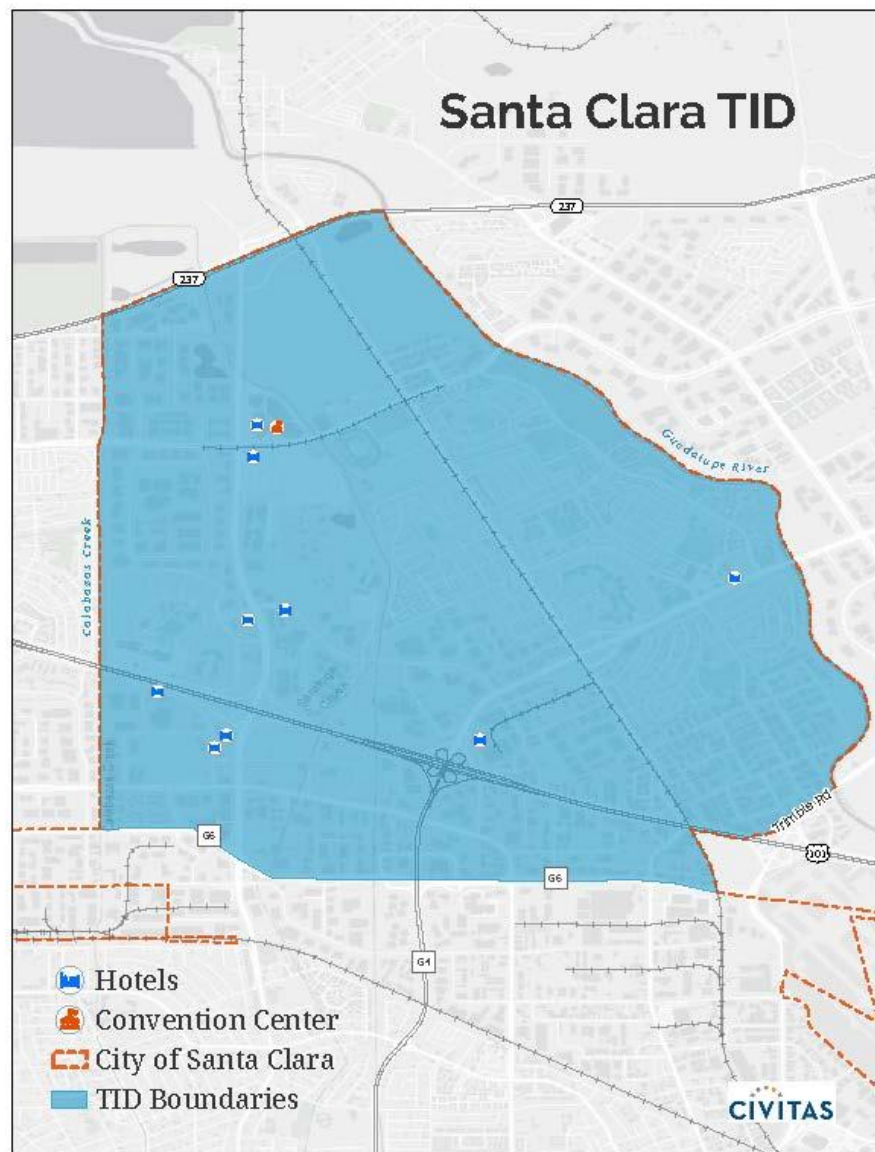
- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

IV. BOUNDARY

The SCTID will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of a portion of the City of Santa Clara.

Lodging business means: any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home, or house trailer at a fixed location, or other similar structure or portion thereof.

The boundary, as shown in the map below, currently includes eleven (11) lodging businesses. A complete listing of lodging businesses within the proposed SCTID can be found in Appendix 2.

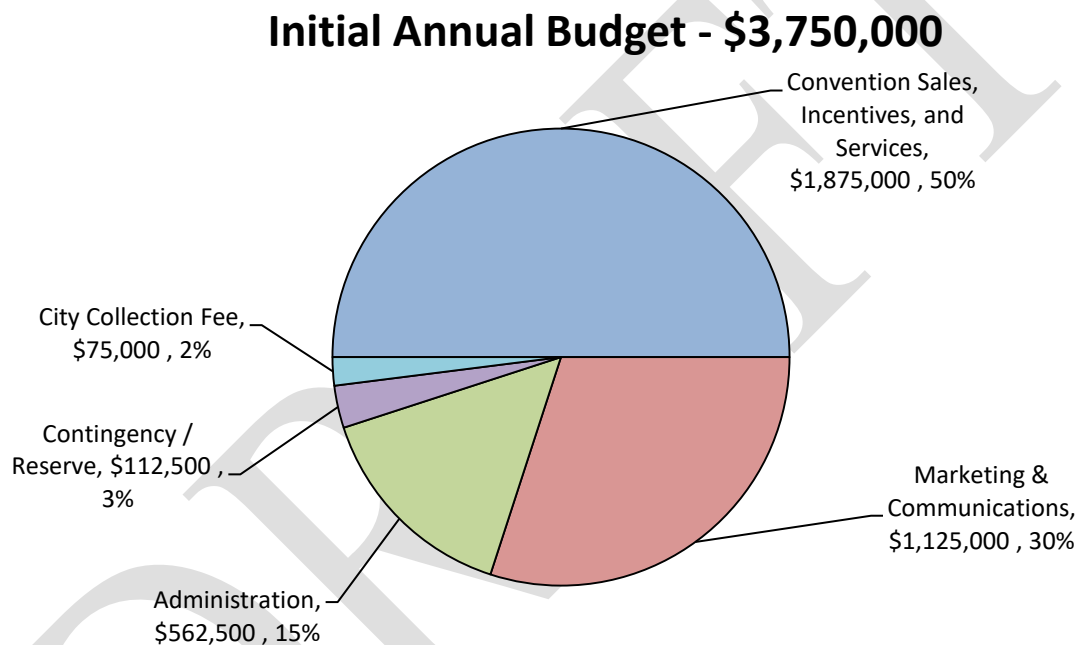


V. BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the SCTID funds are convention sales, incentives, and services and marketing and communication programs available only to assessed businesses within the SCTID.

A service plan budget has been developed to deliver services that benefit the assessed businesses within the SCTID. A detailed annual budget will be developed and approved by SVSCDMO. The table below illustrates the initial annual budget allocations. The total initial budget is \$3,750,000.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the SVSCDMO board shall have the authority to adjust budget allocations between the categories by no more than twenty percent (20%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the SCTID, any and all assessment funds may be used for the costs of defending the SCTID. In the first year of operation, the costs of creating the SCTID may be repaid by deducting repayment funds proportionally from budget categories.

Each budget category includes all costs related to providing that service, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the marketing and communications budget includes the cost of staff time dedicated to overseeing and implementing the marketing and communications program. Staff time dedicated purely to administrative tasks is allocated to the administration portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the services below will be determined by the SVSCDMO on an as-needed basis.

Convention Sales, Incentives, and Services

The convention sales, incentives, and services program will promote sales activity for the booking of Convention Center events and increased room night sales of Convention Center attendees. The budget will be dedicated to providing financial incentives to maintain and attract new meetings, conventions, sporting, and other events that have a significant impact on assessed lodging business room demand in the SCTID. The program may include providing incentives to attract marquee events that previously could not be pursued due to insufficient funding. Program services may include any maintenance related to the facility or performance of booking Convention Center events.

Marketing & Communication

The marketing and communication program will promote assessed lodging businesses as tourist, meeting, and event destinations. The marketing and communications program will have a central theme of promoting the destination as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed lodging businesses, and may include, but is not limited to, the following activities:

- Internet marketing efforts targeted directly at potential visitors to increase awareness and optimize internet presence designed to increase room night sales at assessed lodging businesses;
- Attendance at trade shows to drive room night sales to assessed lodging businesses;
- Marketing and promotions programs designed to increase room night sales at assessed businesses;
- Familiarization tours featuring assessed lodging businesses;
- Lead generation activities designed to attract tourists to assessed lodging businesses;
- Supporting special events designed to increase room night sales at assessed lodging businesses;
- Visitor Center and Information phone answering designed to increase room night sales at assessed lodging businesses;
- Tourism related investments designed to increase room night sales at assessed lodging businesses;
- Production and distribution of tourist-related marketing collateral featuring assessed lodging businesses;
- Maintaining industry public relations and communications featuring assessed lodging businesses; and
- Marketing efforts to promote assessed businesses as desirable leisure, meeting, and event destinations.

Administration

The administration portion of the budget shall be utilized for administrative staffing costs, office costs, policy development, and other general administrative costs such as insurance, legal, and accounting fees.

Contingency/Reserve

The budget includes a contingency line item to account for uncollected assessments, if any. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, administration or renewal costs at the discretion of the SVSCDMO Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies

from the reserve fund shall be set by the SVSCDMO Board. Contingency/reserve funds may be spent on District programs or administrative and renewal costs in such proportions as determined by the SVSCDMO Board. The reserve fund may be used for the costs of renewing the SCTID.

City Administration Fee

The City of Santa Clara shall be paid a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.

B. Annual Budget

The total five (5) year improvement and service plan budget is projected at approximately \$3,750,000 annually, or \$18,750,000 through 2024. This amount may fluctuate as sales and revenue increase at assessed businesses, but is not expected to change significantly over the term.

C. California Constitutional Compliance

The SCTID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.¹ Rather, the SCTID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the SCTID, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the SCTID. The activities described in this Plan are specifically targeted to increase room night sales for assessed lodging businesses within the boundaries of the SCTID, and are narrowly tailored. SCTID funds will be used exclusively to provide the specific benefit of increased room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in SCTID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by this SCTID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in room night sales. The specific benefit of an increase in room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing and sales programs promoting lodging businesses paying the SCTID assessment. The marketing and sales programs will be designed to increase room night sales at each assessed lodging businesses. Because they are necessary to provide the convention sales, incentives, and services and marketing and communication programs that specifically benefit the assessed lodging businesses, the administration and contingency/reserve services also provide the specific benefit of increased room night sales to the assessed lodging businesses.

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

Although the SCTID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

2. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the SCTID are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

3. Reasonable Cost

SCTID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by the SVSCDMO, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from SCTID-funded activities, be featured in advertising campaigns, and benefit from other SCTID-funded services. Non-assessed lodging businesses will not receive these, nor any other, SCTID-funded services and benefits.

The SCTID-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-SCTID funds. SCTID funds shall only be spent to benefit the assessed businesses, and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is two percent (2%) of gross short-term room rental revenue. Based on the benefit received, assessments will not be collected on stays by any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty. Additionally, assessments will not be collected on stays by any Federal or State of California officer or employee on official business who shall provide one of the following; a warrant or check drawn on the Treasury of the United States; a copy of the official travel orders indicating the issuing governmental agency and the employee’s full name; or, a copy of a letter on the official letterhead of an exempt governmental agency requesting exemption and listing the employee’s name and stating that the stay is for official government business. The dates of occupancy must also be included. These requirements must be demonstrated by the guest at the time of registration. Failure to satisfy these

³ Government Code § 53758(a)

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

requirements will result in no assessment exemption. Copies of the documentation for each exemption claimed must be submitted to the Director of Finance with each remittance of assessments.

The term “gross room rental revenue” as used herein means: the consideration received, whether or not actually charged by the lodging business, for the occupancy of space in a lodging business valued in money, whether said gross room rental revenue is received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind or nature. A lodging business may provide complimentary non-assessable rooms for employee use, guest satisfaction or charitable purposes (by a qualified 501(c)(3) charity) and a lodging business shall detail all complimentary non-assessable rooms in its regular reporting. Failure to accurately report complimentary rooms shall result in assessment of the rooms in question. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the SCTID assessment is identified separately it shall be disclosed as the “SCTID Assessment.” As an alternative, the disclosure may include the amount of the SCTID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the “Tourism Assessment.” The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purpose, including calculation of transient occupancy taxes.

Bonds or any debt obligation shall not be issued.

E. Penalties and Interest

The SCTID shall reimburse the City of Santa Clara for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent SCTID assessment are sought to be recovered in the same collection action by the City, the SCTID shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Delinquency Interest:* Any lodging business that fails to remit any assessment imposed within the time required shall pay interest as described in subparagraph 3 below.
2. *Penalty for Willful Noncompliance or Repeated Delinquencies:* If the City determines that the nonpayment of any remittance due is due to willful noncompliance or repeated delinquencies, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the interest as required by subparagraph 3 below.
3. *Calculation of Interest:* In addition to the penalties imposed, any lodging business that fails to remit any assessment imposed shall pay interest at the rate of the United States government T-Bills sold at the latest sale prior to the date of the delinquency plus three percent (3%) prorated per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
4. *Penalties and Interest Merged with Assessment:* Except for the purpose of calculation of interest and penalties, every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the assessment herein.

F. Time and Manner for Collecting Assessments

The SCTID assessment will be implemented beginning January 1, 2020 and will continue for five (5) years through December 31, 2024. On or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period as established by the Director of Finance, each assessed business shall remit to the City all assessments collected through the last day of the previous quarter, including any delinquencies, penalties, and interest, which have not previously been remitted to the City. Each lodging business located in the boundaries of the SCTID shall be responsible for remitting the assessments to the City in accordance with this Management District Plan. The City will be responsible for collecting the assessment on a quarterly basis or at the close of any shorter reporting period as established by the Director of Finance (including any delinquencies, penalties and interest) from each assessed lodging business. The City shall take all reasonable efforts to collect the assessments from each assessed lodging business. The City shall forward the assessments collected to the Owners' Association.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. “Activities”

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. “Assessment”

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
 - (1) A map showing the boundaries of the district.
 - (2) Information specifying where the complete management district plan can be obtained.
 - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
 - (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
 - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a

statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that

does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted

pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

- (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
 - (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
 - (2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

- (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
- (b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Lodging Business Name	Lodging Business Address	City, State, ZIP
AC Hotel	2970 Lakeside Dr	Santa Clara, CA 95054
Avatar Hotel	4200 Great America Pkwy	Santa Clara, CA 95054
Biltmore Hotel & Suites	2151 Laurelwood Rd	Santa Clara, CA 95054
Embassy Suites	2885 Lakeside Dr	Santa Clara, CA 95054
Hilton Santa Clara	4949 Great America Pkwy	Santa Clara, CA 95054
Hyatt House	3915 Rivermark Plaza	Santa Clara, CA 95054
Hyatt Regency	5101 Great America Pkwy	Santa Clara, CA 95054
Marriott Santa Clara	2700 Mission College Blvd	Santa Clara, CA 95054
The Element	1950 Wyatt Dr	Santa Clara, CA 95054
The Plaza Suites	3100 Lakeside Dr	Santa Clara, CA 95054
TownePlace Suites by Marriott	2877 Lakeside Dr	Santa Clara, CA 95054



Agenda Report

19-1257

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Update on the Formation of the New Destination Marketing Organization (DMO) Entity

BACKGROUND

On April 9, 2019, City Council directed the City Manager to commence work efforts to form a new destination marketing organization (DMO) to provide convention and visitor services such as a Convention-Visitors Bureau (CVB). Council actions included approval of: a governance model whereby the City contracts directly with a nonprofit DMO and a separate Convention Center operator; the configuration of the initial DMO Board of Directors with added direction to increase the number of board members from seven to nine; and the use of public funds from the Tourism Improvement District (TID) to support the formation and operation of the DMO.

On May 21, 2019, City Council directed the City Manager to proceed with the formation of a new DMO entity including the appointment of the final composition of the Board of Directors and to pursue legal services as needed to support the establishment of the DMO.

The purpose of this report is to provide Council with an update on the progress of the DMO formation.

DISCUSSION

The new entity, the Silicon Valley/Santa Clara Destination Marketing Organization (DMO), incorporated as a California nonprofit mutual benefit corporation in August 2019 with the assistance of attorney Terry Conner of Thoits Law Firm (Thoits). Thoits prepared and filed the articles of incorporation; drafted, finalized and adopted the bylaws and provided the Board with a review of their fiduciary duties. Currently, Mr. Conner is assisting with the development of the corporation's conflict of interest policy and attends the Board of Directors meetings to advise on formation and process matters.

Location

A virtual office has been established at 5201 Great America Parkway, Suite 320, Santa Clara, CA (TechMart Building) and meetings have been taking place alternately at the Hyatt Regency, Hilton Santa Clara, and California Great America. It is the desire of the Board of Directors to establish an office at the Santa Clara Convention Center and discussions are ongoing regarding this possibility. If Council action is required, at the appropriate time, staff will bring an item for the Council's consideration.

Board of Directors

The Board of Directors have met several times since August 2019 and held their first official meeting as a corporation on September 23, 2019 whereby the corporation bylaws were adopted by Mr.

Conner as the sole incorporator and approved by the Board. Additionally, the Officers of the Board were elected. Table 1 below lists the DMO's Board of Directors. Eight of the seats are filled and staff are working to fill the last vacancy. A qualified candidate has been identified but the candidate's employer would need to approve this role and ensure that there are no conflicts.

Table 1 - DMO Board of Directors

Title	Name	Industry
Chair	Eron Hodges	Hyatt Regency
Vice-Chair	Manny Gonzalez	California Great America
Treasurer	Nadine Nader	City of Santa Clara
Secretary	Joe Eustice	Hilton Santa Clara
Member	Kelly Carr	Santa Clara Convention Center
Member	Leo Wandling	I.A.T.S.E - Local 134 Silicon Valley/ Santa Clara County
Member	Pablo Barrera	International Brotherhood of Teamsters Local 287
Member	Stephen Eimer	Related Urban
Member	Vacant	Technology Industry
Ex-Officio	City Manager or designee	City of Santa Clara

Next Steps

In addition to working towards finalizing the Conflict of Interest policy, the Board of Directors have begun efforts to: establish the mission and vision of the corporation; establish an outward facing organization name; formally establish Audit and Nominating Committees; establish insurance needs of the corporation; and review the final draft of the job description for the executive director. Forthcoming activities include recruitment and selection of the executive director and applying for non-profit tax-exempt status.

Staff will also continue to provide the Board of Directors with regular updates on the TID Advisory Board's efforts to establish the district under the Property and Business Improvement District Law of 1994. A discussion about the potential conversion/establishment under the 1994 Law is a separate item (RTC 19-920) on the November 12 Council agenda.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact other than administrative expense.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the November 2019 report on the update on the formation of the Santa Clara Destination Marketing Organization.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager



Agenda Report

19-1318

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Presentation, Discussion and Direction on the TAP International Financial Audit Titled "Contract Close Out Review: Convention and Visitor's Bureau"

BACKGROUND

On May 22, 2018, Council provided direction to staff to begin an audit of the Convention Center and Convention-Visitors Bureau (CVB) and the City hired TAP International to complete a performance audit of the Santa Clara Convention Center (SCCC) and the Convention-Visitors Bureau (CVB). To date, TAP International has completed two audits that have been presented to Council.

At the September 18, 2018 Council meeting, TAP International presented the analysis and findings of the performance audit entitled "Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue". The audit revealed while the fiscal health of the SCCC and CVB was good when evaluated separately and received high customer satisfaction scores, the audit also revealed serious failures to manage public assets with appropriate stewardship, accountability and transparency by the Contractor (Santa Clara Chamber of Commerce).

On November 27, 2018, TAP International presented the analysis and findings of the performance audit entitled "City of Santa Clara Tourism Improvement District - Governance, Internal Controls and Oversight Need Attention". The findings revealed similar issues found in the Santa Clara Convention Center and Convention-Visitors' Bureau Audit including the need for updated policies and improved record keeping as the Fiscal Agent of the Tourism Improvement District (TID).

In November 2018, the agreement with TAP International was amended to include a close out of the 2017 Agreement between the City and the Santa Clara Chamber of Commerce (Chamber) to operate and administer the Convention and Visitors Bureau (CVB).

The scope of work of the audit included a financial analysis and review of the following:

- 1) Revenue and cost allocation methods used by the Chamber for the CVB;
- 2) Review of credit card statements (AMEX) issued to the Chamber to determine if the Chamber accurately expensed CVB-generated expenses;
- 3) Review of final invoices submitted by the Chamber to the City to ensure they were expenses allowable under the contract and were verifiable expenses; and
- 4) Review of how \$80,000 provided to the Chamber in June 2018 to fund salaries of the CVB staff for 60 days upon the termination of the Management Agreement was allocated.

DISCUSSION

At this session, the City Council will be presented with the Auditor's findings of the above referenced audit. Different from previous audits, a formal response from the Chamber was not required.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

There is no fiscal impact associated with the presentation of the close-out report.

COORDINATION

This report was coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

It is recommended that Council receive and file the TAP International Financial Audit Titled "Contract Close Out Review: Convention and Visitor's Bureau" and refer any Council direction to Closed Session under Anticipated Litigation.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Audit - "Contract Close Out Report: Convention and Visitor's Bureau"



TRAINING | ANALYTICS | PERFORMANCE
3436 American River Drive, Suite 9A
Sacramento, CA 95864
PH: 916.333.3401
www.tapinternational.org

Date: November 6, 2019

Memorandum For: Deanna J. Santana, City Manager, City of Santa Clara

From: Denise Callahan, President, TAP International, Inc.

Subject: Transmittal of Contract Close-Out Review of Convention Visitors Bureau

Attached is our report, Contract Close-Out Review of Convention Visitors Bureau: Reimbursements are Needed from Various Funding Sources.

Our review found that reimbursements are needed from either the City Chamber of Commerce (Contractor), the Convention Visitors Bureau reserves, or the Tourism Improvement District reserves based on the nature of the expenditures and the balances at the end of the Contractor's agreement with the City.

The report contains nine recommendations for the City applicable to the final close-out of the City's Agreement with the Contractor. The City generally agreed with these recommendations. The City's full response to the audit recommendations is enclosed in the attached report. The findings have been discussed with the Contractor and a copy of the draft report has been provided.

If you have questions about the audit report, please contact me at (916) 333-3401 or denise@tapinternational.org.

TAP International, Inc.



TAPInternational

**CONTRACT CLOSE-OUT REVIEW OF
CONVENTION AND VISITORS BUREAU:
REIMBURSEMENTS ARE NEEDED FROM
VARIOUS FUNDING SOURCES**

**FINAL REPORT
NOVEMBER 2019**



November 6, 2019

Deanna Santana, City Manager, City of Santa Clara, CA
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana:

This report presents the results of the contract close-out activities that TAP International completed related to the 2017 Agreement between the City of Santa Clara (City) and the Santa Clara Chamber of Commerce (Contractor) to operate and administer the Convention and Visitors Bureau (CVB).¹

Table 1 below summarizes the outcomes of the contract close-out activities.

Table 1: Close-Out Amounts by Reimbursement Source

Close-Out Activity	Reimbursement Source		
	Contractor	CVB Cumulative Reserves	Tourism Improvement District (TID) Reserves
1. Annual Spending of CVB Funds (Revenue vs. Expense Analysis, Through FY 2016-17)	\$448,068		
2. Allocation of General Overhead Expenses to CVB and Vendor (Cost Allocation)	\$60,819 ^a	\$10,552 ^b	
3. Allocation of Revenue from Ticket Sales (Revenue Allocation)	\$704		
4. Review of Credit Card Purchases (Credit Card Transaction Analysis)	\$52,940 ^c		
5. Review of Four CVB Invoices	\$0		
6. Annual Spending of CVB Funds (2017-18 Fiscal Year-End Analysis)		\$57,885	
7. Verification of Expenses Incurred for July-August 2018 and \$80,000 Supplemental City 6/29/18 Payment		\$78,079	
8. Review of TID Invoices Submitted for Reimbursement			\$4,993
Total	\$562,531	\$146,516	\$4,993

^a Based on the proportion of full-time equivalents (FTEs) assigned to the CVB.

^b Based on the Vendor's cost allocation practice.

^c Includes reduction of \$1,265 for unused gift cards returned to the City. Details provided on pages 8 and 9 of the report and Appendix D. The amount also does not include the credit card transactions reviewed as part of item 8 below, Review of TID Invoices Submitted for Reimbursement.

¹ *Agreement for the Operation of a Convention and Visitors Bureau*, dated July 3, 2017. Referred to as "2017 Agreement" in this report.

Recommendations

1. The City should consider whether it wants to pursue \$448,068 in cumulative CVB reserves retained by the Contractor through Fiscal Year (FY) 2016-17.
2. The City should determine whether it wants to allow the Contractor to use the CVB reserves for operating expenses incurred in FY 2017-18 and 2018-19 that exceeded the contract's "not to exceed" amounts of \$57,885 and \$78,079, respectively.
3. The City should seek reimbursement from the Contractor for shared operating costs of \$50,267 (\$60,819 less \$10,552).
4. The City should seek reimbursement of \$704 for its portion of the revenue generated from the sale of tickets for area attractions.
5. The City should seek reimbursement of \$52,940 in net credit card expenses that were identified as "not allowable," "questionable," or "not verifiable." (This amount includes a reduction of the value of the purchased gift cards returned to the City by the Contractor of \$1,265.)
6. The City should seek a refund from merchants for the purchased gift cards in its possession that were returned from the Contractor.
7. The City should release \$4,993 from the held TID funds to reimburse expenses on the outstanding TID invoices submitted by the Contractor.
8. Because the Contractor could not provide documentation to support its claim that TID-funded Contractor employees were actively engaged in TID activities between July and August 2018, the City should withhold reimbursement to the Contractor for \$61,092 in TID expenditures for employee salary, benefits, taxes, bonuses, vacation payouts, and payroll processing fees incurred during this period. The City should also not reimburse \$2,372 in other credit card and employee expense reimbursement requests.
9. The City should conduct further review for any potential violation of laws for the use of public funds to support Contractor member recruiting and Contractor use of gift cards.

TAP International would like to thank the Contractor and City staff for their assistance in this review. If you have questions concerning this report, please do not hesitate to contact Denise Callahan, TAP International.

Sincerely,

TAP International, Inc.

Section A: Background

Introduction

Since 1975, the Contractor has administered an agreement for the operations of the local Convention Visitors Bureau (CVB) for Convention and Visitor Services. The Contractor, in its administration of the CVB, was to, among other things:

- market, promote, and book the Convention Center to potential local, state and national users;
- provide services to conventions and groups with events at the Convention Center and Tourism Improvement District (TID) hotels;
- market and promote tourism and commerce within the City; and
- provide services to large scale events held at Levi's® Stadium.

In June 2018, the City did not renew its Agreement for the Operation of a Convention and Visitors Bureau (2017 Agreement) with the Contractor to operate the CVB.

It is customary for public agencies to conduct close-out reviews at the end of multi-million-dollar public contracts. This process involves several tasks, such as comparing funds received against expenditures, verifying that expenses reimbursed were allowed under the contract, reconciling contract payments made by the City to the Contractor against actual expenses, and reconciling excess revenue. Contract close-out audits provide one of the last opportunities to ensure that public agencies have received what they contracted and to detect and recover erroneous payments.

Objectives, Scope and Methodology

The objective of our review was to determine whether the City funds were properly spent and accounted for by the Contractor in accordance with requirements specified in the 2017 Agreement. To complete our work, TAP International:

- Completed a revenue versus expenditure analysis for the time period FY 2015-16 to FY 2017-18.
- Verified the Contractor's allocation of shared revenue and expenses to the CVB and compared the results to standard allocation methods for the time period FY 2013-14 to FY 2017-18.
- Examined \$311,858 in credit card purchases for the time period FY 2015-16 to FY 2017-18 for compliance to the City's 2017 Agreement with the Contractor. These purchases included CVB and TID employee-related purchases on the Contractor's credit card account. Purchases made on an employee's personal credit card account and submitted for reimbursement were excluded from the scope of this review.
- Examined four monthly invoices submitted by the Contractor to the City in FY 2017-18.
- Reviewed documentation intended to support \$80,000 in supplemental expenditures by the Contractor.
- Examined additional invoices submitted to the City by the Contractor for payment of the TID expenses for June to July 2018.

Our review was performed in accordance with the International Internal Auditing Standards. TAP International discussed the findings in detail with the Contractor and the City. Comments by each entity, where applicable, were incorporated into the report. The City generally agreed with the recommendations. See Appendix F to view the City’s response to the audit recommendations.

Section B: Key Findings

Finding 1: Contractor Likely Owes the City \$448,068 in Unspent Public Funds Through FY 2016-17

The 2017 Agreement between the City and the Contractor, which continues an Agreement that was executed in 1975, is a “not to exceed” government contract. Under this type of government contract, the contractor cannot keep any unspent funds provided by the public agency. However, should expenditures by the Contractor exceed the contract amount, the contracting public agency has the discretion to reimburse the vendor for the additional expenses.

Between FY 2013-14 and FY 2016-17, the Contractor did not spend all the funds provided by the City. The City remitted about \$6.1M in funds to the Contractor to support CVB operations and the Contractor spent \$5.8M, leaving a cumulative total of \$448,068 in unspent funds, as shown in Table 2.² These unspent funds are referred to in this report as “CVB cumulative reserves”. The Contractor’s current president explained that these cumulative reserves were carried over to subsequent years for spending by the CVB. However, our review included the analysis of the CVB’s audited financial statements, which confirmed that not all reserve funds were spent.

In response to our finding, the Contractor’s current president submitted additional documentation for the purpose of reducing the amount of cumulative reserves. These expense items were for “Management Fee for CC”,³ expenses for FY 2018-19, and TID accounts receivable. However, documentation for the “Management Fee for CC” of \$133,144 was not provided, and thus a reduction was not applied against the cumulative reserve owed by the Contractor. Documentation submitted by the Contractor for other expenditures incurred in FY 2018-19 totaling \$178,328, and for TID accounts receivable amounting to \$68,645, are addressed later in this report.

Table 2: Results of Revenue Versus Expenditure Analysis

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
TOTAL REVENUES	\$1,566,591	\$1,564,199	\$1,584,455	\$1,510,906	Addressed later in this report
TOTAL EXPENDITURES	\$1,598,128	\$1,605,055	\$1,218,106	\$1,360,207	Addressed later in this report
BALANCE REMAINING	(\$31,537)	(\$40,856)	\$366,349	\$150,699	Addressed later in this report
NET ASSETS (RESERVES), Beginning of Year	\$3,413	(\$28,124)	(\$68,980)	\$297,369	

² Our audit period was from FY 2015-16 through FY 2016-17. However, we noted that the Contractor had exceeded its contract amount for FY 2013-14 and FY 2014-15 and therefor opted to include this time period in our analysis in the interest of fairness.

³ Convention Center.

TOTAL NET ASSETS (CVB RESERVES - CUMULATIVE)	(\$28,124)	(\$68,980)	\$297,369	\$448,068
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Finding 2: Amounts Charged Differ for Shared General Overhead Expenses

A September 2018 performance audit report of the Convention Center and CVB stated that “when administrative services are shared among entities or different business functions, the expenses incurred from performing these services are allocated and charged to each entity or business function. The allocation of these administrative expenses is usually based on a cost accounting study or a business policy that shows a reasonable basis for the allocations. While the Contractor did not have a formal allocation study or policy, Contractor staff reported it is long-standing practice to allocate 80 percent of overhead (administrative) expenses to the CVB and 20 percent to the Contractor.”⁴ The 2018 audit report found that the Contractor did not consistently apply this allocation criterion – the actual allocation of expenses ranged from 70 and 85 percent of the expenses for office supplies and maintenance and between 79 and 86 percent of telephone expenses.

This audit report further examined the Contractor’s method of allocating expenses to the CVB. The Contractor both overcharged and undercharged expenses to the CVB across the time period shown in Table 3. Overall, the Contractor’s cost allocation method led to undercharging the CVB by \$10,552.

Table 3: Results of the Expense Allocation Based on the Contractor’s Practices⁵

Fiscal Year	Contractor Allocation of Expenses to the CVB	Expenses that Should Have Been Allocated to the CVB	Expense Amount Overcharged to the CVB	Expense Amount Overcharged to the Contractor
2013-14	\$92,316	\$95,219		\$2,903
2014-15	\$118,976	\$116,895	\$2,081	
2015-16	\$127,905	\$121,137	\$6,768	
2016-17	\$110,656	\$115,550		\$4,894
2017-18	\$89,456	\$101,060		\$11,604
Total	\$539,309	\$549,861	\$8,849	\$19,401
Net Expense Amount Overcharged to the Contractor				\$10,552

When we applied a standard methodology for allocating expenses based on the proportion of Full-Time Equivalents (FTEs) assigned to different entities (i.e. Contractor and the CVB), the CVB was charged more than its share of expenses, as shown in Table 4. This method suggests the Contractor had charged the CVB \$60,819 more than it should have. We recommend on page 2 of this report that the City should seek reimbursement of \$50,267. (\$60,819 less \$10,552).

⁴ Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations can Strengthen Accountability, Performance and Revenue, TAP International, Inc. September 2018.

⁵ The overhead related expenses examined were accounting and audit services, office supplies/maintenance, office equipment, computer services/maintenance, telephone, and postage.

Table 4: Results of the Expense Analysis Based on Standard Cost Allocation using Full Time Equivalent Employees

Fiscal Year	Contractor Allocation of Expenses to the CVB	Overhead that Should Have Been Charged to the CVB Applying Standard Allocation Methods	Expense Amount Overcharged to the CVB	Expense Amount Overcharged to the Contractor
2013-14	\$92,316	\$83,655	\$8,661	
2014-15	\$118,976	\$101,864	\$17,112	
2015-16	\$127,905	\$101,092	\$26,813	
2016-17	\$110,656	\$100,958	\$9,698	
2017-18	\$89,456	\$90,921		\$1,465
Total	\$539,309	\$478,490	\$62,248	\$1,465
Net Expense Amount Overcharged to the CVB			\$60,819	

Finding 3: Contractor Owes \$704 to the CVB in Additional Revenue from the Sale of Tickets to Area Attractions

A 2018 audit report⁶ to the City found that that the Contractor did not allocate all revenue due to the CVB for ticket sales over two fiscal years. When the CVB collected revenue from the sale of tickets to area attractions, the Contractor allocated 70 percent of the ticket sales revenue to the CVB prior to FY 2015-16 and 30 percent to the Contractor. In FY 2015-16 and FY 2016-17, the CVB began selling tickets online exclusively. As a result, the Contractor should have allocated to the CVB 100 percent of the revenue generated from ticket sales, thus owing additional revenue to the CVB of about \$1,000.

This audit examined the allocation of revenue over five fiscal years, FY 2013-14 to FY 2017-18. The CVB should have received an additional net amount of \$704 from the Contractor, as shown in Table 5.⁷ We recommend on page 2 of this report that the City should seek reimbursement from the Contractor for this amount.

Table 5: Revenue Allocation Between CVB and the Contractor

Fiscal Year	Total Revenue Received from Ticket Sales	Amount the Contractor Allocated to the CVB	Amount That Should Have Been Allocated to the CVB	Amount Under Allocated to the CVB	Amount Under Allocated to the Contractor
2013-14	\$10,268	\$7,149	\$7,188	\$39	
2014-15	\$7,743	\$5,812	\$5,420		\$392
2015-16	\$2,737	\$2,114	\$2,737	\$623	
2016-17	\$1,889	\$1,455	\$1,889	\$434	

⁶ Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations can Strengthen Accountability, Performance and Revenue, TAP International, Inc., September 2018.

⁷ The 2019 TAP International 2018 Performance Audit report said the CVB should have received \$4,626 in collected fees but received only \$3,569 for FYs 2015-16 to 2016-17. Table 5 of this report reflects a different time period, FY 2013-14 to 2017-18.

Fiscal Year	Total Revenue Received from Ticket Sales	Amount the Contractor Allocated to the CVB	Amount That Should Have Been Allocated to the CVB	Amount Under Allocated to the CVB	Amount Under Allocated to the Contractor
2017-18 ⁸	0	0	0	0	
Total	\$22,637	\$16,530	\$17,234	\$1,096	\$392
Net Amount Under Allocated to the CVB				\$704	

Finding 4: Contractor Overcharged the City \$52,940 for Credit Card Purchases

The Contractor allowed its employees to use the Contractor’s credit card account to purchase goods and services for travel and operations. The City’s expectation, as established in the 2017 Agreement, was for the Contractor to provide documentation that allows for the determination of whether expenses are necessary and reasonable.

Analysis of \$311,858 in credit card charges showed that about 17 percent or \$54,205 were either “not allowable,” “questionable,” or “not verifiable.” See Table 6 below. The Contractor was provided the opportunity to review all the transactions that had some type of exception. No additional documentation had been submitted to support their allowability. We recommend on page 2 of this report that the City seek reimbursement of \$52,940 from the Contractor (\$54,205 less \$1,265 for unused gift cards returned to the City).

Table 6: Credit Card Transaction Review Results⁹

	Total Credit Card Expenses Reviewed ^a	Not Allowable Expenses	Questionable Expenses	Not Verifiable Expenses	Exception Rate
FY 2015-16	\$43,655	\$3,180	\$2,268	\$167	
FY 2016-17	\$91,554	\$4,983	\$9,524	\$451	
FY 2017-18	\$176,649	\$17,100	\$16,224	\$308	
Sub Total	\$311,858	\$25,263^b	\$28,016	\$926	\$54,205 (17%)
Returned Gift Cards					(\$1,265)
Total					\$52,940

^a Purchases that were clearly marked as overhead and split between the Contractor and CVB were excluded from this analysis to avoid double-counting in the results reported under Finding 2.

^b Includes \$6,072 in gift card expenses.

Not Allowable Expenses - \$25,263

The City’s 2017 Agreement with the Contractor says that the City’s funds provided to support CVB operations should be usefully and properly expended by the Contractor in accordance with the stated purposes. These purposes include:

- Information services to carry out its duties.

⁸ For FY 2017-18, there were no recorded revenue receipts from the sale of tickets to area attractions under the CVB account.

⁹ Excludes credit card transactions reviewed and reported on pages 12 and 13 of this report to avoid double-counting.

- Target sales and promotion efforts across various market sectors, e.g. corporate business, association and SMERF (social, military, educational, religious, fraternal), and sports groups.
- Attract city-wide groups.
- Research and prospect new client opportunities.
- Perform sales calls and City bid presentations to prospective businesses and organizations.
- Conduct site inspections showcasing the City of Santa Clara hotels, convention center, stadium, entertainment and attraction venues, and local businesses.
- Sponsor exhibits in key tradeshows, attend industry-related meetings, and sponsor special industry-related events.
- Implement direct mail, e-marketing/social media, and e-blasts.
- Advertise in key trade publications, newsletters, directories, and social media platforms.
- Develop convention sales and marketing materials.
- Advertise and promote the City of Santa Clara and Santa Clara Convention Center.
- Sponsor memberships in various hospitality associations.
- Attend association chapter meetings, trade shows, luncheons, and sponsorships.
- Hold monthly group sales/client luncheons/breaks/breakfasts.

Credit card purchases that did not meet the above stated purposes of the Agreement, or the supporting documentation provided did not support the expense, were identified as “not allowable.”

Examples of credit card purchases by the CVB and Contractor employees that were identified as “not allowable” are as follows:

- Repeated repair of personal cell phone glass covers.
- Purchase of an Apple Watch[®].
- Cell phone supplies, such as repeated purchases of cell phone chargers.
- Tools.
- Seat upgrades on flights.
- Dinner meetings (Contract specifies breakfasts and lunch only).
- Administrative lunch and dinner meetings with other CVB staff and TID participating hotels.
- Lunch meeting paid for by public funds to recruit Contractor members (isolated incident). This transaction needs further review by the City for potential violation of state law.¹⁰
- Contractor-related expenses that were paid for by CVB funds (See footnote 10).
- Gift related expenses. About 24 percent of the \$25,263 in unallowable expenses are for the purchase of gift cards. These gift cards had a monetary cash value from \$10 to \$100 each and is equivalent to providing a gift of public funds, which is a potential violation of state law that needs further review by the City.¹¹ Although the CVB reportedly used these for marketing purposes, these gift cards did not have the logo or brand of the CVB and/or Convention Center affixed to the gift card for it to be considered a marketing expense and

¹⁰ CA Government Code § 8314 states it is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

¹¹ Cal. Const., art. XVI, § 6b prohibits the giving or lending public funds to any person or entity, public or private.

justify the use of public funds. In addition, the Contractor/CVB did not establish controls to govern the distribution of the gift cards. We could not determine the recipients of the gift cards except in one instance. Upon termination of the Agreement by the City, the City found 66 gift cards valued at \$1,265 while cleaning CVB inventory. See Appendix D for a complete list of gift cards returned to the City.

A complete list of “not allowable” expenses is shown in Appendix A.

Questionable Expenses - \$28,016

The City’s Agreement with the Contractor states that any expenses related to travel or entertainment shall be verified by a statement and invoice. Credit card purchases were found “questionable” when expenses did not contain supporting documentation or other detailed information on the credit card statement to clearly verify the nature or allowability of the expense. Other credit card purchases for Contractor related operations were also determined to be “questionable” if an expense was incurred by a Contractor (and not a CVB) employee and we could not locate the posting of the expense in the Contractor’s general ledger. Therefore, raising the risk that the purchase may have been paid for by the CVB public funds.

Common examples of credit card related purchases by the CVB and Contractor employees that were identified as “questionable” are as follows:

- Restaurant expenses without information on the purpose of the expense.
- Contractor related expenses where we could not locate the account posting in the Contractor’s general ledger.
- Local Starbucks charges from CVB staff without any detail on the purpose of the expense.
- Amazon charges by the CVB without detailing the purpose of the expense.

A complete list of questionable expenses is shown in Appendix B.

Not Verifiable Expenses - \$926

Under Section 2 of the Agreement, the Contractor was to provide reporting and accounting to enable the City to determine and verify that the money paid by the City to the Contractor was “usefully” and “properly” expensed. There were some credit card transactions that we did not have any information about the credit card charge to draw any type of conclusion about its allowability or proper accounting. These transactions were classified as “non-verifiable.” Examples of “non-verifiable” expenses include only a name, such as Walmart, Hyatt, or Target.

A complete list of “not verifiable” expenses is shown in Appendix C.

Finding 5: Review of Contractor's Monthly Invoices Identified \$201 in Overbilling

In FY 2017-18, the City requested that the Contractor begin to submit monthly invoices for reimbursement for CVB expenses. The Contractor sent four invoices totaling \$395,907 for the five-month period of July to October 2017. The City requested we review these four invoices for accuracy.

We determined that the Contractor overbilled the City by a small amount of \$201, but the expenses were allowable. The data for this analysis was incorporated into Finding 6 of this report to avoid the double-counting of expenses.

Table 7: Review of Four Monthly Invoices Submitted to the City^a

Month of Invoice	Invoice Amount Submitted to the City by the Contractor	Amount that Should have been Billed to the City
July-17	\$96,892	\$98,395
August-17	\$87,444	\$92,812
September-17	\$119,419	\$105,036
October-17	\$92,151	\$99,462
Total	\$395,907	\$395,706
Net Amount Overcharged to the City.		\$0
Difference of \$201 is part of overall Finding 6, below.		

^a Numbers were rounded.

Finding 6: The CVB Spent \$57,885 More than it Received in Funding from the City for FY 2017-18

When we analyzed whether there were unspent public funds as of June 30, 2018 for FY 2017-18, CVB expenditures exceeded CVB revenues by \$57,885, as shown in Table 8. When the City did not renew the Contractor's contract to operate the CVB in June 2018, the Contractor opted to terminate the CVB employees, which led to one-time payments for unused vacation time for CVB employees at fiscal year-end and contributed to nearly all of the \$57,885 in cost overruns for FY 2017-18. We included the vacation pay-outs as a reimbursable item for two reasons.

1. Vacation pay-outs issued to terminated CVB employees were appropriately accounted for in the year the pay-out occurred (FY 2017-18). See Appendix E for detailed vacation pay-out information.
2. A vacation pay-out is a component of salary and benefit expenses. Payroll related expenses are allowed under the 2017 Agreement between the Contractor and the City.

Table 8: Results of FY 2017-18 Revenues versus Expenditure Analysis

Contracted Not to Exceed Amount	\$1,461,601
FY 2017-18 CVB Related Expenditures	\$1,476,476^a
Less CVB Revenue (Hotel Reservations, Service Commissions, TID Reimbursements, Interest)	(\$18,635)
Net FY 2017-18 CVB Related Expenditures	\$1,457,841
City Funding Remitted to the Contractor to support CVB Operations	\$1,399,956^b
Net Reduction in CVB Reserves (Expenses Exceeding City Funding)	\$57,885

^aPer Contractor's 2017-18 General Ledger (not audited). Includes vacation pay-outs for terminated CVB employees.

^bDoes not include the June 29, 2018 City payment of \$80,000 for CVB payroll expenses to cover 60 days following contract termination.

Finding 7: Contractor Incurred Another \$158,079 in Allowable CVB Expenses from July to August 2018

On June 29, 2018, the City issued an additional payment of \$80,000 to the Contractor. This amount, along with the current CVB reserves of \$390,183 (at fiscal year-end 2017-18 per the CVB general ledger) already in the Contractor's possession, were to cover payroll expenses and related costs¹² for CVB employees for the 60 days following the contract termination date of June 30, 2018. When the City issued the supplemental payment, a request to the Contractor was made to submit a reconciliation and detailed accounting of its expenditures by September 2018. The Contractor submitted the requested documentation in May 2019.

The Contractor reported spending \$158,079 on CVB payroll activities between July and August 2018, exceeding the City's \$80,000 payment by \$78,079¹³ and were considered allowable, as shown in Table 9. The Contractor's current reserves for the CVB funded these additional \$78,079 expenses, which were for:

- Employee salaries
- Employee accrued vacation
- Employee benefits
- Payroll and human resources service fees
- Employer taxes

In response to the findings of the report, the Contractor provided other documentation for \$20,242 in expenses, in addition to the \$158,079 for allowable CVB payroll activities, incurred between July and August 2018. These additional expenses were for a Convention Center Management Fee, Accounting/Audit expenses, and Technical Support/Computer Upgrades. However, these additional expense items are not allowed under the terms of the supplemental payment and thus were considered unallowable.

¹² <https://santaclara.legistar.com/LegislationDetail.aspx?ID=3538163&GUID=0D2E7E69-1B4D-42C3-A829-EA6957C20C53&Options=&Search=>

¹³ Payroll expenses included salary expenses, payroll taxes, benefits, payroll vendor fees, and vacation pay-outs of \$8,885 paid on August 29, 2018.

Table 9: Analysis of the City's Additional Payment of \$80,000 to the Contractor

June 29, 2018 City Payment	\$80,000
Allowable Expenses for July to August 2018^a	\$158,079
CVB Expenses Covered by Reserves Held by Contractor	\$78,079

^a 60-day period after June 29, 2018.

Finding 8: The Contractor Has Not Provided Sufficient Documentation to Support Payment by the City of \$63,464 in Other TID Expenses Submitted for Reimbursement

On August 3, 2018, the City provided direction to the TID Advisory Board to temporarily freeze its cash reserve account and all transactions, including payment of any outstanding invoices, until resolution of open TID and Santa Clara Convention Center (SCCC) issues.

On January 9, 2019, the TID Advisory Board, whose operations were supported by the Contractor, submitted invoices for reimbursement to the City. These invoices totaled \$132,642. The Contractor requested the City to use the TID reserves, whose cash reserve balance was estimated to be \$390,183 at the end of FY 2017-18.

The City had previously reviewed and initially approved \$64,185 of the \$132,642 in outstanding invoices. At the time of this audit, another six invoices totaling \$68,457 were awaiting approval by the City for reimbursement to the Contractor.

For one invoice, totaling \$6,427.89 for credit card expenses, the Contractor had provided sufficient documentation to support \$4,993.45. For the remaining \$1,434.44 in expenses, the Contractor had not provided adequate documentation to support the charges, as shown in Table 10.

For another three invoices totaling \$61,091.98 for employee salaries, benefits, vacation pay-outs, bonuses, employer taxes, and payroll processing fees incurred between July and August 2018, the Contractor had not provided adequate documentation to support reimbursement. The Contractor provided payroll processing reports only, but no other documentation to support that two TID funded employees were actively working to promote TID interests during the two-month period.

For the remaining two invoices totaling \$937.22 for credit card charges and employee expense reimbursements, the Contractor had not provided adequate documentation to support reimbursement. Table 10 provides a summary of all six invoices that we reviewed.

Table 10: Review of Outstanding Contractor Invoices for TID Operations

Item #	Vendor	Invoice Date	Invoice Amount	Description	Allowable Expenses	Unable to Support
1	Contractor	6/20/18	\$6,427.89 ^a	American Express credit card charges from 5/3/18 to 6/30/18.	\$4,993.45	\$1,434.44
2	Contractor	6/20/18	\$15,964.21	TID accrued vacation payout expense for pay period ending 6/24/18. 391 vacation hours.	0	\$15,964.21
3	Contractor	7/31/18	\$18,954.31	TID Payroll expense for pay period ending 7/13/18 and 7/27/18.	0	\$18,954.31
4	Contractor	7/31/18	\$26,173.46	TID Payroll expense and bonus payout for pay period ending 8/10/18, 8/24/18, and 8/29/18.	0	\$26,173.46
5	Contractor	8/31/18 ^c	\$335.86	Credit card expenses charged on the June 2018 statement.	0	\$335.86
6	Contractor	8/31/18 ^c	\$601.36	Employee expense reimbursements.	0	\$601.36
		TOTAL^b	\$68,457		\$4,993	\$63,464

^a Amount excluded from credit card expense analysis discussed in Finding 4.

^b Rounded.

^c Date of email request from Contractor.

Section C: Appendixes

Appendix A: List of “Not Allowable” Expenses

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
7/1/2015	250.00	7330	Macy’s gift cards
7/21/2015	2.75	7330-0	Hyatt Regency bottled water
7/21/2015	13.51	7330-0	Hyatt Regency bottled water
7/28/2015	39.71	Unable to Locate Account Posting (ULAP)	Administrative meeting with staff
8/5/2015	18.50	7380-0	Budget meeting with internal staff
8/15/2015	55.94	CVB	Hyatt - administrative meeting
8/23/2015	29.35	7894-0	UBreakiFix - replacement of cell phone glass cover
8/25/2015	450.00	6548	Starbucks - 8 multipack gift cards
8/27/2015	75.00	6256/7303-1	See’s candies - appreciation gifts
8/30/2015	87.18	6526	dinner meeting
8/31/2015	25.00	6548	American Airlines - upgrade
9/2/2015	127.93	7370-0	Mission City Grill - administrative lunch meeting with staff
9/5/2015	76.36	7485-0	Hyatt Regency food expense
9/22/2015	35.62	ULAP	Administrative meeting with staff
9/23/2015	42.62	6280-0	Mission City Grill - staff lunch
9/30/2015	27.98	ULAP	Administrative meeting with Hyatt
10/7/2015	19.26	7370-0	Hyatt lunch
10/14/2015	35.37	ULAP	Costco client gift
10/15/2015	110.33	6540	Administrative lunch meeting at Piatti’s
10/29/2015	1.85	6280-0	CSU Dept of Transportation
11/4/2015	39.50	6280-0	Nothing But Bundt Cakes
11/5/2015	167.85	6694	Safeway - 3 \$50 gift cards
11/19/2015	1.95	6280-0	Starbucks - cookie, Santa Clara
11/19/2015	359.70	6280-0/6511	PayPal - rhinestone lanyard gifts
1/16/2016	24.46	7894-0	Verizon wireless charger
1/19/2016	169.65	7520-0	Bourbon Steak lunch for potential chamber member attended by CVB and Contractor staff. Thank you note indicated that a gift was also provided.
2/2/2016	100.00	6507	Macy's \$100 gift card
2/3/2016	57.06	7370-0	See’s Candies - gifts
2/9/2016	5.38	6530	DollarTree - gift wrap
2/15/2016	25.25	6512	Target - food for TID staff mtg
2/17/2016	11.66	6530	Walmart - gift wrap
2/19/2016	68.64	7520-0	Bourbon Steak - administrative meeting with TID participating hotel
2/23/2016	30.00	6540	Starbucks gift cards

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
3/1/2016	26.25	8100	Target - Administrative meeting
3/1/2016	19.95	CVB	Starbucks administrative meeting
3/10/2016	35.37	8100	Vespa restaurant - mtg with Hyatt house – administrative meeting
3/10/2016	75.08	8100/7520-0	Bourbon Steak - dinner
3/27/2016	24.46	7894-0	Verizon wireless - vehicle charger
3/27/2016	30.98	7894-0	UBreakiFix - PHONE tempered glass
5/10/2016	50.43	6540	Costco gifts
5/12/2016	8.54	6507	Wal mart - gift supplies
5/12/2016	3.21	6507	Marshalls - gift supplies
5/18/2016	90.00	ULAP	Macy's - gift cards
6/7/2016	18.00	ULAP	Sutter Club
6/11/2016	20.00	ULAP	Starbucks card reload
6/21/2016	47.65	8100	Piatti's Ristorante - administrative meeting at Hyatt
6/22/2016	300.00	ULAP	Starbucks gift cards
6/28/2016	20.00	1150-0	Chevron - charged as Accounts Receivable
6/29/2016	73.89	8100	Hyatt - Santa Clara - Administrative Budget meeting with staff
7/5/2016	43.98	ULAP	Hyatt - administrative lunch meeting
7/21/2016	72.91	ULAP	Birks - administrative lunch meeting
8/4/2016	732.84	6212	Hyatt – Sacramento
8/23/2016	400.00	6548	Starbucks - 40 Gift cards for connect marketplace
9/7/2016	200.00	6519	American Airlines - change fee
10/1/2016	63.18	6540	Wal Greens - gifts
10/7/2016	214.67	ULAP	TID participating hotel administrative meeting
10/19/2016	200.00	ULAP	Starbucks gift cards
10/24/2016	23.87	6540	Target gifts
11/1/2016	200.70	6694	Safeway Store - 6 visa gift cards
11/7/2016	15.00	7520-0	Southwest - Early bird check-in
11/7/2016	15.00	7520-0	Southwest - Early bird check-in
11/29/2016	11.80	ULAP	Grocery outlet - Wine - Gift bag donation
12/1/2016	21.70	ULAP	Starbucks - internal staff meeting
2/16/2017	66.00	6280-0	Aldos Ristorante - Dinner
2/22/2017	56.66	6512-0	Il Fornaio Cucina - administrative meeting with TID participating hotel
2/22/2017	696.000	6530-0	Cirquesoleil - Tickets
3/2/2017	40.87	1150-0	Enterprise
3/13/2017	357.61	1150-0	Six Flags Discovery
3/30/2017	67.34	7370-0	Il Fornaio Cucina - Santa Clara - administrative lunch meeting with TID participating hotel
4/19/2017	495.00	1150-0	Crime Stoppers

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
4/20/2017	89.47	1150-0	VTs San Diego
5/4/2017	166.52	ULAP	Il Fornaio Cucina - Santa Clara - dinner
5/20/2017	23.09	1150-1	Enterprise Rental Cars (coded to CVB on GL)
5/22/2017	23.09	1150-0	Enterprise rental charged by Contractor employee and posted to CVB
5/24/2017	19.99	2100-0	Safeway coded to CVB on GL
5/25/2017	35.26	1150-0	Enterprise rental
5/26/2017	32.25	6512-0	Xanh Restaurant - dinner
6/7/2017	450.00	6530-0	Macy's - Gift Cards (9)
6/10/2017	10.00	ULAP	Starbucks Gift Cards
6/14/2017	55.87	7370-0	Il Fornaio - administrative lunch meetup with TID participating hotel
6/16/2017	50.00	6521	Starbucks cards
6/19/2017	150.00	7380-0	\$25 Starbuck cards
6/23/2017	160.23	6221	Education summit
6/23/2017	200.00	6530/TID	Starbucks 50 cards
6/24/2017	720.53	6530/TID	Firebirds
6/28/2017	125.00	6530	Starbucks gift cards
7/8/2017	119.92	6301	Amazon computer mouses and computer sleeves (gifts)
7/15/2017	19.78	ULAP	Amazon I-phone cases
7/16/2017	11.90	ULAP	Amazon
7/19/2017	96.17	ULAP	Amazon I-phone cases
7/28/2017	65.29	ULAP	Hyatt meal
8/1/2017	12.15	6214	Deli food for CVB staff in Santa Clara
8/12/2017	79.40	ULAP	Il-Fornaio - dinner
8/15/2017	25.00	ULAP	Airline upgrade
8/18/2017	315.00	7381-0	Collinson Media
8/18/2017	24.05	7370-0	Specialty's Café - Administrative staff meeting to discuss marketing
8/19/2017	52.00	7381-0	Taxi
8/24/2017	14.98	7830-0	UBER
8/25/2017	22.08	7830-0	Sushi King
8/25/2017	7.62	7830-0	Subway
8/25/2017	12.96	7830-0	Silver Street Market
8/25/2017	15.42	7381-0	Taxi
8/25/2017	50.00	7381-0	Taxi
8/26/2017	13.21	7830-0	Little Anitas
8/27/2017	8.77	7830-0	Seven Eleven
8/27/2017	7.62	7830-0	Subway
8/27/2017	16.98	7830-0	Farina Downtown

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
8/28/2017	741.41	7830-0	Andaluz Hotel
8/28/2017	18.47	7830-0	Comida Buena
8/28/2017	11.78	7830-0	Burrito Company
8/28/2017	104.00	7830-0	Laz Parking
8/28/2017	14.54	7830-0	LYFT
8/30/2017	85.95	7498-0	Southwest
9/2/2017	153.96	7498-0	Southwest
9/2/2017	627.45	CVB	Starbucks - 90 cards PO was for \$55 worth
9/2/2017	30.00	ULAP	Airline
9/14/2017	22.52	6209-0	Gift baskets
9/20/2017	94.83	6290-0	Computer Mouses - gifts
9/27/2017	536.82	ULAP	Zoro Tools
10/15/2017	19.71	CVB	UBER eats
10/18/2017	92.33	6209-0	Computer Mouses (gifts)
10/27/2017	147.46	ULAP	Fleming's - Dinner
10/30/2017	221.75	6694-0	Visa gift cards - Reception
10/31/2017	25.00	ULAP	Starbucks gift card reload
11/5/2017	16.56	1150-0	UBER - personal, Accounts Receivable noted
11/9/2017	10.71	6209-0	Mouse
11/21/2017	1,200.00	6693-0	The Portofino (On G/I shows CC advance - special ops)
12/6/2017	290.00	ULAP	Starbucks gift cards
1/5/2018	143.13	6220-0	Amazon purchase - gift bags
1/18/2018	119.29	CVB	Hardware
2/7/2018	78.56	CVB	Construction
2/8/2018	14.01	6507	Dollar tree gift wrap
2/13/2018	11.06	7370-0	Michael's gift wrap
3/6/2018	165.00	7370-0	Restaurant, Santa Clara, client dinner
3/10/2018	2,226.54	ULAP	Zoro tools
3/13/2018	120.00	ULAP	TRAK chain service
3/17/2018	92.55	7495-0	QVC gifts
3/17/2018	97.55	7495-0	QVC gifts
3/19/2018	446.89	7382-0	Apple WATCH
3/21/2018	52.02	6301-0	Ubreak cell phone repair
3/22/2018	70.63	ULAP	Air purifier
3/28/2018	28.96	6230-0 ; 6209-0;	Amazon purchase - cell phone cases
3/29/2018	144.80	6529	Airline
4/7/2018	6.54	6209-0	Amazon phone card
4/13/2018	26.80	1156-2	Groceries
4/13/2018	83.73	6507	Starbucks card
4/18/2018	233.05	ULAP	Stop signs

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
4/24/2018	10.78	8100	Target soda
4/25/2018	11.96	8100	Smart and final soda
4/26/2018	373.09	ULAP	Michigan company
4/26/2018	25.95	CVB	Safeway muffins
4/27/2018	30.81	6209-0	Airline charge
4/27/2018	18.04	ULAP	Cal steam
5/1/2018	93.30	7370-0	Flemings (dinner)
5/1/2018	330.25	ULAP	Zoro tools
5/4/2018	265.52	ULAP	Zoro tools
5/8/2018	350.00	7361-0/7361-1	Sierra Elk Grove- event table for Chamber and split charge with CVB
5/19/2018	68.57	7370-0	Flemings - lunch with Hyatt
5/19/2018	5.99	6209-0	Amazon bags
5/22/2018	92.12	7370-0	Piatti's - administrative meeting with TID participating hotel
5/23/2018	64.37	7370-0	OPA - dinner
5/23/2018	98.21	6540	Starbucks
5/30/2018	32.48	6512	Breakfast mtg with CVB staff at Hilton
5/30/2018	72.88	6512	Hilton - Lunch mtg with CVB staff
5/30/2018	205.86	6512	Dinner mtg
5/30/2018	25.17	6512	Peets
6/10/2018	11.00	6512	Starbucks reload
6/12/2018	43.58	7361-0	Amazon
6/13/2018	11.74	7361-0	Hyatt
6/13/2018	320.00	7361-0	Macy's gift cards
6/13/2018	91.83	CVB	Cell phone supplies
6/15/2018	70.00	7096-0	Starbucks gift cards
6/16/2018	161.31	1176-0	Zoro tools
6/26/2018	350.00	7361-0	Starbuck gift cards
6/29/2018	3.48	6512	Hyatt regency
6/29/2018	220.00	7330-0	Starbucks gift cards
6/29/2018	659.95	7096-0	Starbucks gift cards
6/30/2018	273.08	7330-0	Paul Martins
7/3/2018	1,441.26	1176-0	Zoro tools
7/4/2018	78.09	1176-0	Wal Mart

Appendix B: List of “Questionable” Expenses

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
9/5/2015	100.05	ULAP	Go daddy - domain renewal for silicon valley professionals
9/6/2015	30.59	ULAP	Go daddy
9/9/2015	49.99	ULAP	Adobe
10/17/2015	1,000.00	ULAP	Great America online
11/6/2015	20.97	ULAP	Safeway Peets coffee
2/5/2016	40.00	ULAP	Contractor expense. Next generation - unable to locate in Contractor GL
2/15/2016	89.94	ULAP	Contractor expense Meet up (unable to locate in Contractor general ledger
2/8/2016	260.45	7520-0	Hilton
2/11/2016	70.74	7520-0	Piatti's
7/3/2015	19.75	7330-0	Hyatt Santa Clara
7/2/2015	161.70	7370-0	Bourbon Steak
7/10/2015	30.61	7370-0	Hyatt Santa Clara
12/2/2015	158.29	7370-0	Birks restaurant
10/23/2015	37.99	ULAP	Amazon
10/27/2015	49.69	ULAP	Amazon
2/16/2016	22.80	7370-0	Cost Plus donation basket to SC Schools Foundation
4/4/2016	73.18	6512	Hyatt Regency
4/19/2016	14.14	6230-0	Hyatt
2/19/2016	5.95	6530	Starbucks
2/21/2016	5.90	6530	Starbucks
4/4/2016	10.00	1015-0	PayPal - Silicon Valley score
12/4/2015	5.25	6511	Bottom up
8/5/2015	9.79	6209-0/1	Keys for Contractor's office
2/14/2017	23.93	ULAP	Libero 7
2/14/2017	113.22	ULAP	Amazon
2/14/2017	52.61	ULAP	Amazon
2/14/2017	28.32	ULAP	Amazon
2/15/2017	25.32	ULAP	Amazon
2/16/2017	108.47	ULAP	Amazon
2/20/2017	2,000.00	ULAP	2017 Spring Advo San Francisco
2/24/2017	20.30	ULAP	Chipotle
2/24/2017	25.00	ULAP	Starbucks
2/26/2017	224.04	ULAP	Southwest
2/26/2017	139.94	ULAP	Southwest
2/26/2017	245.44	ULAP	Southwest
2/27/2017	50.97	ULAP	Amazon

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
2/28/2017	25.00	ULAP	Starbucks
3/7/2017	33.75	ULAP	Enterprise
3/7/2017	26.50	ULAP	Amazon
3/7/2017	63.98	ULAP	Amazon
3/8/2017	42.00	ULAP	Peet's
3/9/2017	38.46	ULAP	Amazon
3/9/2017	245.46	ULAP	Amazon
3/13/2017	36.79	ULAP	Enterprise
3/13/2017	33.61	ULAP	Amazon
3/13/2017	31.45	ULAP	Amazon
3/14/2017	11.91	ULAP	Bold Bite Dogs
3/14/2017	9.16	ULAP	Peet's
3/15/2017	5.46	ULAP	Uber
3/15/2017	4.85	ULAP	Uber
3/15/2017	7.64	ULAP	Uber
2/14/2017	3.00	ULAP	CSJ 3rd Street Parking - unable to locate in GL
4/20/2017	7.70	ULAP	Starbucks
4/26/2017	9.65	ULAP	Starbucks
4/27/2017	9.20	ULAP	Starbucks
5/2/2017	7.40	ULAP	Starbucks
5/5/2017	6.00	ULAP	Laz Parking
5/10/2017	8.70	ULAP	Starbucks
5/13/2017	34.00	ULAP	Starbucks
7/28/2016	236.61	ULAP	La Quinta
7/31/2016	313.64	ULAP	Plus Scotts
8/9/2016	49.99	6485-1	Adobe Creative Cloud - software subscription
7/1/2016	577.44	ULAP	Scotts Valley
7/12/2016	2,215.32	ULAP	Scotts Valley
7/12/2016	194.79	ULAP	Scotts Valley
1/31/2017	3.22	ULAP	Dollartree - gift wrap for silent auction donation
6/2/2017	39.70	6512-0	Hyatt - Santa Clara
5/18/2017	29.42	6280-0	Vino Locale
5/26/2017	45.24	6280-0	Vino Locale
6/2/2017	15.25	8100-0	Hyatt - Santa Clara
5/30/2017	15.00	7380-0	Southwest - unknown reason
6/5/2017	29.00	6507-0	Amazon
6/7/2017	25.70	6507-0	Amazon
6/8/2017	36.90	7380-0	Amazon
6/8/2017	223.45	6543-0	Sisco Breakers

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
3/15/2017	20.96	6209-0	Amazon
2/18/2017	25.16	6280-0	Hyatt - Santa Clara - Lunch
3/14/2017	597.59	ULAP	Industrial Equipment Houston
4/28/2017	47.94	ULAP	Safeway Store
4/30/2017	58.14	ULAP	Hyatt - Santa Clara
5/12/2017	146.30	ULAP	Kelly Moore Paint
5/13/2017	9.35	ULAP	David's Restaurant
3/15/2017	55.79	6209-0	Amazon
4/4/2017	41.72	7370-0	Mission City Grill - Santa Clara
10/13/2016	313.19	6540	Hyatt - Santa Clara
11/3/2016	52.50	6540	Il Fornaio
11/10/2016	110.20	6540	Il Fornaio
7/16/2016	61.66	8100	Village Café
7/15/2016	27.26	6540	Hyatt
8/10/2016	146.36	6220-0	Best Buy
6/3/2017	25.00	ULAP	Starbucks
6/15/2017	50.08	ULAP	Cell phone
6/21/2017	35.00	ULAP	Starbucks
7/8/2017	2.00	ULAP	Amazon
9/12/2017	748.51	ULAP	Facebook Ads
8/31/2017	134.92	ULAP	Linq Adv Rsvn
5/17/2018	12.00	7370-0	Santa Clara hotel
2/6/2018	124.20	7370-0	Playing with dough cookies
2/15/2018	60.72	7370-0	Lunch items
2/6/2018	3.19	6209-0	Walmart sympathy card
2/8/2018	20.00	6507	Dante club with clients
2/8/2018	7.00	6507	Dante club drinks with clients
12/23/2017	436.99	6295-0	Electronics
12/27/2017	217.99	6693	Best buy electronic
3/4/2018	34.99	ULAP	Amazon books
6/19/2017	256.31	6540/TID	Specialty Café
4/4/2018	174.37	6544	Restaurant
4/7/2018	10.90	6544	Starbucks
4/7/2018	24.00	6544	Starbucks
5/8/2018	2,725.30	6507	Bourbon steak for MPI SNN retreat
4/18/2018	100.00	ULAP	Triton museum chairs
5/1/2018	22.95	ULAP	Safeway
4/21/2018	72.96	ULAP	Airlines
5/8/2018	7.00	ULAP	LYFT
5/9/2018	88.52	6544/6507	Budget

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
6/8/2018	32.07	7330-0	Penny's
6/9/2018	169.99	6230-0	Amazon
6/11/2018	320.87	6230-0	Amazon
6/12/2018	72.00	7361-0	Yiannis
6/6/2018	150.71	7823-0	Panera bread
6/7/2018	42.00	7823-0	Spa
5/24/2018	33.11	7823-1	Amazon
6/9/2018	3.96	6209-0	Target
6/11/2018	32.81	6209-0	Michael's
6/12/2018	473.65	7361-0	Amazon
6/22/2018	138.76	7370-0	Hyatt Regency
7/15/2018	70.06	6230-0	Amazon books
6/19/2018	1,152.71	7331-0	Party concierge
6/14/2018	43.49	6209-0	Ross
6/19/2018	55.86	7370-0	Village café
6/15/2018	26.15	7361-0	Michaels - party supplies
6/9/2017	8.13	ULAP	Target - Stationery
7/14/2017	152.95	ULAP	Plumbing/heating
7/19/2017	81.73	ULAP	Verizon
7/25/2017	5.45	ULAP	Verizon
7/25/2017	284.00	ULAP	Hyatt
7/28/2017	1,636.11	CVB	Asian Auto Clinic
9/1/2017	15.00	ULAP	Southwest
9/1/2017	153.96	ULAP	Southwest
9/1/2017	15.00	ULAP	Southwest
8/16/2018	10.53	ULAP	Hyatt
8/30/2017	8.04	ULAP	Hyatt
8/31/2017	33.25	ULAP	Hyatt
9/1/2017	192.23	ULAP	Hyatt
9/4/2017	123.46	ULAP	Hilton
9/7/2017	145.97	ULAP	OPA Authentic Greek
9/8/2017	63.87	ULAP	Mission City Grill
9/9/2017	76.22	ULAP	Jang Su Jang
9/13/2017	11.00	ULAP	Fairmont
9/30/2017	70.86	7370-0	Il Fornaio lunch
10/1/2017	4.32	6544-0	Michael's
9/27/2017	13.06	ULAP	Amazon
9/28/2017	32.54	ULAP	Amazon
10/13/2017	354.25	ULAP	Sisco Breakers
10/14/2017	71.09	ULAP	TAP Plastics

Date of Charge	Charge Amount (\$)	Charged to Contractor/CVB or TID	Description
10/14/2017	973.88	ULAP	TAP Plastics
10/31/2017	189.00	ULAP	ID Zone
11/22/2017	10.75	ULAP	Hyatt
11/28/2017	599.00	ULAP	CA Travel Summit - Conference
11/29/2017	8.17	4297-0	GoDaddy - Webdomain
11/30/2017	505.82	6693-0	Facebook Ads
11/25/2017	15.59	ULAP	Michaels Stores
11/29/2017	22.92	ULAP	Amazon
11/29/2017	27.98	ULAP	Amazon
12/3/2017	911.00	ULAP	STL, LTD
12/8/2017	1,026.03	ULAP	The Party Concierge
6/15/2018	70.96	CVB	Amazon
6/13/2018	12.51	7361-0	Amazon
4/24/2018	74.69	ULAP	Groceries

Appendix C: List of “Non-Verifiable” Expenses

Date of Charge	Charge Amount	Charged to Contractor/CVB or TID	Description
3/23/2016	37.20	ULAP	Target
3/29/2017	6.25	ULAP	Hyatt Regency
4/30/2016	14.14	ULAP	Hyatt
2/15/2016	86.45	ULAP	Hyatt
10/13/2015	3.25	7370-0	Plummbiner
10/27/2015	19.76	7370-0	Target
5/25/2017	17.63	6280-0	Cape EPI
5/20/2017	103.79	6543-0	RSD
12/9/2016	50.00	6511-0	STL
12/13/2016	279.20	7410-0, 6544-0	EAX World Wide
1/5/2018	17.80	6512	Walmart
3/17/2018	75.00	ULAP	Certifyme
5/11/2018	215.25	ULAP	Smart city networks

Appendix D: Inventory of Gift Cards

Source: City of Santa Clara

STARBUCKS		AMOUNT ON CARD	
#1	\$5.00	#26	\$5.00
#2	\$5.00	#27	\$5.00
#3	\$5.00	#28	\$5.00
#4	\$5.00	#29	\$5.00
#5	\$5.00	#30	\$5.00
#6	\$5.00	#31	\$5.00
#7	\$5.00	#32	\$10.00
#8	\$5.00	#33	\$10.00
#9	\$5.00	#34	\$10.00
#10	\$5.00	#35	\$10.00
#11	\$5.00	#36	\$10.00
#12	\$5.00	#37	\$10.00
#13	\$5.00	#38	\$10.00
#14	\$5.00	#39	\$10.00
#15	\$5.00	#40	\$10.00
#16	\$5.00	#41	\$10.00
#17	\$5.00	#42	\$10.00
#18	\$5.00	#43	\$10.00
#19	\$5.00	#44	\$10.00
#20	\$5.00	#45	\$10.00
#21	\$5.00	#46	\$10.00
#22	\$5.00	Subtotal	\$305.00
#23	\$5.00		
#24	\$5.00		
#25	\$5.00		

BOURBON STEAK & PUB		AMOUNT ON CARD
#1		\$60.00
#2		\$60.00
#3		\$60.00
#4		\$60.00
#5		\$60.00
#6		\$60.00
#7		\$60.00
#8		\$60.00
#9		\$60.00
#10		\$60.00
#11		\$60.00
#12		\$60.00
#13		\$60.00
#14		\$60.00
#15		\$60.00
#16		\$60.00
Subtotal		\$960.00

RESTAURANT	TOTAL AMOUNT
STARBUCKS	\$305.00
BOURBON STEAK & PUB	\$960.00
Subtotal	\$1,265.00

Appendix E: CVB Employee Vacation Payouts

CVB	FY 2018-19				FY 2017-18		
Employee	Pay Date	Vacation Pay Amount (\$)	Payout Hours		Pay Date	Vacation Pay Amount (\$)	Payout Hours
CVB Employee 1	8/29/2018	2,162.77	46.15		6/29/2018	9,700.84	207.0
CVB Employee 2	8/29/2018	495.69	15.4		6/29/2018	1,939.99	41.4
CVB Employee 3	8/29/2018	333.10	15.4		6/29/2018	812.21	17.3
CVB Employee 4	8/29/2018	481.25	15.4		6/29/2018	724.76	15.5
CVB Employee 5	8/29/2018	989.77	30.75		6/29/2018	3,758.61	80.2
CVB Employee 6	8/29/2018	761.37	30.75		6/29/2018	2,502.59	53.4
CVB Employee 7	8/29/2018	1,790.32	30.75		6/29/2018	6,423.42	137.1
CVB Employee 8	8/29/2018	703.37	15.4		6/29/2018	1,182.99	25.2
CVB Employee 9	8/29/2018	457.69	15.4		6/29/2018	1,839.14	39.2
CVB Employee 10	8/29/2018	342.65	15.4		6/29/2018	801.97	17.1
CVB Employee 11	8/29/2018	367.29	15.4		6/29/2018	637.37	13.6
		\$8,885.27				\$30,323.89	

Appendix F: City Response to Report Recommendations



**City of
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City Manager's Office

October 30, 2019

Ms. Denise Callahan
President & Principal Consultant
TAP International, Inc.
3436 American River Drive, Suite 9
Sacramento, CA 95864

Re: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

Dear Ms. Callahan:

Thank you for your final draft audit report. Staff has had the opportunity to review the key findings of your audit and has prepared the following responses to your nine Recommendations. As requested under your audit requirements, the City has provided a response to each Recommendation with one of three possible options:

1. City provides response and outlines corrective action plan to address the recommendations;
2. City can agree or disagree and have no other narrative; or
3. City does not agree or disagree and will take recommendations under advisement.

For clarification, it should be noted that the audit refers to the Contractor throughout the audit and that this response refers to the "Contractor" as the Santa Clara Chamber of Commerce (Chamber).

This letter, along with proposed responses from staff (through a staff report), will be presented to the City Council on November 12, 2019 for their consideration. Following the presentation of your report to the City Council, the Council will make the final determination on the proposed responses and any next steps:

Recommendation 1

The City should consider whether it wants to pursue \$448,068 in cumulative CVB reserves retained by the Contractor through Fiscal Year (FY) 2016-17.

Response to Recommendation 1: Staff agrees with the calculation of the unspent funds in the CVB reserves and will seek Council direction regarding the return of funds.

Recommendation 2

The City should determine whether it wants to allow the Contractor to use the CVB reserves for operating expense incurred in FY 2017-18 and 2018-19 that exceeded the contract's "not to exceed" amounts of \$57,885 and \$78,079, respectively.

Response to Recommendation 2: Staff agrees with the calculation of overspent funds. Staff will seek Council direction regarding whether expenditures should be offset by the CVB reserves retained by the Chamber.

1500 Warburton Avenue • Santa Clara, CA 95050 • Phone: (408) 615-2210 • Fax: (408) 241-6771 • www.santaclaraca.gov

TAP International, Inc.

Subject: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

October 30, 2019

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Recommendation 3

The City should seek reimbursement from the Contractor for shared operating costs of \$50,267.

Response to Recommendation 3: Staff agrees with the calculation of shared operating costs and will request Council direction regarding reimbursement.

Recommendation 4

The City should seek reimbursement of \$704 for its portion of the revenue generated from the sale of tickets for area attractions.

Response to Recommendation 4: Staff agrees with the calculation of the ticket sale revenues and will request Council direction regarding reimbursement.

Recommendation 5

The City should seek reimbursement of \$52,940 in net credit card expenses that were identified as "not allowable", "questionable" or "not verifiable." (This amount includes a reduction of the value of the purchased gift cards returned to the City by the Contractor of \$1,265.)

Response to Recommendation 5: Staff agrees with the calculation that \$52,940 in net credit card expenses were determined to be as "not allowable", "questionable" or "not verifiable" and will request Council direction regarding reimbursement.

Recommendation 6

The City should seek a refund from merchants for the purchased gift cards in its possession that were returned from the Contractor.

Response to Recommendation 6: Staff agrees with the calculation but given the time and effort that would be required to contact and engage merchants to request a refund, believe that the total staff cost outweigh the value of the gift cards. Accordingly, staff recommends we assess future opportunities on how to utilize the gift cards as a community benefit.

Recommendation 7

The City should release \$4,993 from the held TID funds to reimburse expenses on the outstanding TID invoices submitted by the Contractor.

Response to Recommendation 7: Staff agrees with the calculation. Staff will seek Council direction regarding reimbursement.

Recommendation 8

Because the Contractor could not provide documentation to support its claim that TID-funded Contractor employees were actively engaged in TID activities between July and August 2018, the City should withhold reimbursement to the Contractor for \$61,092 in TID expenditures for employee salary, benefits, taxes, bonuses, vacation payouts and payroll processing fees incurred during this period. The City should also not reimburse \$2,372 in other credit card and employee expense reimbursement requests.

TAP International, Inc.

Subject: Contract Close Out Review: Convention and Visitor's Bureau Draft Report August 2019

October 30, 2019

Page 3

Response to Recommendation 8: Staff agrees that any expenses that cannot be verified, whether it be staff time and or other, should not be reimbursed.

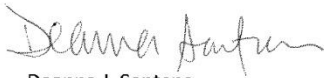
Recommendation 9

The City should conduct further review for any potential violation of laws for the use of public funds to support Contractor member recruiting and Contractor use of gift cards.

Response to Recommendation 9: Staff agrees with this recommendation and have submitted a copy of the August 2019 draft report "Contract Close Out Review: Convention and Visitor's Bureau" to the City Attorney's Office for review to assess if there are any potential violation of the law regarding the use of public funds. Determination is pending review.

Staff has provided responses based on instructions provided. Staff will seek City Council direction on reimbursements and policy directions regarding next steps. The decision to pursue funds owed to the City may entail legal action and as such would be directed by City Council.

Sincerely,



Deanna J. Santana
City Manager

cc: Brian Doyle, City Attorney



Agenda Report

19-1047

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Informational Memo on the Beta Website Launch Update

BACKGROUND

The City of Santa Clara's website redesign project began with usability testing in June 2017 to better inform the comprehensive overhaul of the website. The City's website vendor conducted a community survey from June 29 - Sept. 12, 2017 in which feedback was received from nearly 350 stakeholders about the current website's navigation, search functionality and areas for improvement.

The redesigned SantaClaraCA.gov website will replace a site that is approximately five years old while also creating three new subsites that will provide a streamlined user experience and address specific user needs for these City services and related information online.

The original timeline for project implementation was extended due to several factors including the vendor being purchased by another company and changes in staffing assigned to this City project, as detailed in the July 9, 2019 Report to Council.

DISCUSSION

Beta testing of the redesigned SantaClaraCA.gov website began on Oct. 23, 2019 and will run through Nov. 13, 2019. The purpose of beta testing is to receive user feedback about the online experience and ease-of-use, troubleshoot any functionality issues prior to launching the new website, and collect data to assess whether project objectives have been met.

The objectives of the 2019 Website Redesign Project are to:

- Enhance user experience to better serve [SantaClaraCA.gov](http://www.SantaClaraCA.gov) <<http://www.SantaClaraCA.gov>> visitors;
- Create a fresh, engaging and responsive website design and interface, enhancing usability with mobile devices;
- Implement a new web design for the main site as well as for Silicon Valley Power's (SVP) subsite, SVP's Fiber subsite, and Santa Clara City Library's subsite;
- Revamp and improve search functionality to provide a seamless interface across content groups; and
- Improve accessibility to people with disabilities in compliance with SCAG 2.0 and Section 508 of the Rehabilitation Act.

Over these several weeks, City staff has been conducting public beta testing through an online survey, several focus groups and multiple on-location testing sessions at City facilities. In collaboration with the website vendor, staff has continued to make improvements to

Beta.SantaClaraCA.gov <<https://Beta.SantaClaraCA.gov>>'s content, navigation and functionality during beta testing.

The launch of the new [SantaClaraCA.gov](http://www.SantaClaraCA.gov) <<http://www.SantaClaraCA.gov>> website is dependent on user feedback and the website vendor's responsiveness to addressing any critical issues that are discovered through the public beta testing. With these variables in mind, the redesigned City website is anticipated to go live and replace the current site before the end of this year.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of a California Environmental Quality Act ("CEQA") pursuant to the CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There's no fiscal impact other than staff administrative costs.

COORDINATION

This report has been coordinated with the Information Technology Department.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the Beta Website Launch Update.

Reviewed by: Lenka Wright, Director of Communications, City Manager's Office

Reviewed by: Gaurav Garg, Chief Information Officer, Information Technology Department

Approved by: Deanna J. Santana, City Manager



City of Santa Clara

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Santa Clara, CA 95050
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Agenda Report

19-1332

Agenda Date: 11/12/2019

SUBJECT

Verbal Report on the International Association of Science Parks and Areas of Innovation Conference in France



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

19-1301

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Update on City Council and Stadium Authority Staff Referrals

BACKGROUND AND DISCUSSION

During Council and Stadium Authority meetings, the City Council or Stadium Authority Board provide direction on policy issues or refer information requests to staff for follow-up.

The purpose of the City Council and Stadium Authority Referrals Update is to provide the City Council/Stadium Authority Board and the public a current status report. Completion of the referrals may be communicated by various means such as: Report to Council, Information Memorandum provided through a Council Agenda, City Manager Biweekly Report/Blog, or a City Manager/Executive report out during a future Council meeting.

The Referrals list will be published in the Council agenda packet under the "City Manager/Executive Director Report" section of the Council Agenda. Reports will include both open and closed referrals.



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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 11/6/19



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
1.	10/29/19	Council Meeting	Regarding GIS system, provide biannual updates via the City Manager/Executive Director Report at Council meeting	IT	April 2020	
2.	10/29/19	Council Meeting	Provide options for the \$750,000 commitment from Levy for community enrichment	City Manager	TBD	
3.	10/29/19	Council Meeting	City Manager to provide information on IASP Conference held in Nantes, France	City Manager	11/12/19	
4.	10/22/19	Council Meeting	Provide an update via the City Manager's Biweekly Report regarding what has already occurred on placemaking activities	Community Development	11/1/19	11/1/19
5.	10/22/19	Council Meeting	Provide a City Manager Biweekly Report item on why food truck vendors at the Library are being fingerprinted as well as what are food truck permitting requirements	Police	11/19/19	
6.	10/22/19	Council Meeting	Staff to return with budget appropriations in the budget cycle to improve the gazebo area at Mission Branch Library	Finance	May 2020	
7.	10/8/19	Council Meeting	Add for a future Council meeting a Special Order of Business for the Parade of Champions planning team	City Manager	11/12/19	
8.	10/8/19	Council Meeting	Staff to review the expenditure limits for November 2020 – to designate appropriately the expenditure limit for Districts vs. At-Large seats	City Clerk/ City Manager	TBD	
9.	9/24/19	Council Meeting	Staff to review the potential for rebates for the purchase of electric bicycles	SVP	TBD	
10.	9/24/19	Council Meeting	Staff to review the Ordinance and enforcement of illegal street food vendors	Police	TBD	
11.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred for Council consideration a request to the City Council to terminate the billboard agreement with All Vision, LLC (staff in process of analyzing further)	City Manager	December 2019	
12.	9/17/19	Council Meeting	Stadium Financial Audits – Forward comments and suggestions from the Stadium Authority Board to KPMG regarding the financial audits and seeking support documentation for the data in the audit reports	Finance	November 2019	
13.	9/17/19	Council Meeting	Ask the Mercury News why an article published in the print edition concerning the Rolling Stones concert contained some different information than the one that was published in an earlier version online	City Manager	11/5/19	
14.	9/5/19	Governance Session	Review current Santa Clara Code of Ethics and Values and discuss	City Manager	11/21/19	
15.	9/5/19	Governance Session	Discuss framework for January 2020 Council Priority Setting Session	City Manager	11/21/19	
16.	9/5/19	Governance Session	Review current Council referral policy and process; discuss potential updates	City Manager	February 2020	
17.	9/5/19	Governance Session	Council would like a better understanding of staff capacity and current workload allocation	City Manager	January 2020	
18.	9/5/19	Governance Session	Provide increased transparency and education on Public Records Act requests, what	City Manager	January 2020	



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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
			drives this workload and how it impacts staff capacity			
19.	9/5/19	Governance Session	Direction to establish process for scheduling Council and City Manager one-on-ones	City Manager	January 2020	
20.	9/5/19	Governance Session	Define a central location for Council to obtain accurate information from City staff before disseminating	City Manager	January 2020	
21.	9/5/19	Governance Session	Improve communication out to the public from official City staff (easy to understand, timely, accurate)	City Manager	January 2020	
22.	9/5/19	Governance Session	Provide scheduled communications and strategy	City Manager	January 2020	
23.	9/5/19	Governance Session	Need general guidelines for all social media	City Manager	January 2020	
24.	9/5/19	Governance Session	CAO to provide refresher course on the Brown Act as it pertains to confidentiality and what can be covered in closed session, and will include options regarding a "signed pledge;" this course will be in open session	City Attorney	January 2020	
25.	9/5/19	Governance Session	Develop a reporting method to keep Council better informed about the status of referred resident inquiries	City Manager	January 2020	
26.	9/5/19	Governance Session	Council expressed interest in being able to hold their own town halls or community meetings and asked whether City resources could be available, including use of City facilities, etc.	City Manager	January 2020	
27.	9/5/19	Governance Session	Refer discussion about another governance check-in to the Governance Committee	City Manager	January 2020	
28.	8/27/19	Council Meeting	Agendize Korea Town designation for a future Council meeting and return with information about outreach and what Sunnyvale is doing on El Camino Real	City Manager	TBD	
29.	8/27/19	Council Meeting	City North Framework – Accept report to allow staff to continue work on the project with direction to staff to return with more specific policies for density, building height, and traffic mitigation	Community Development	12/10/19	
30.	8/20/19	Council Meeting	Staff to return with report on establishing an ad-hoc committee to make recommendations regarding VTA Governance	City Manager/ Public Works	December 2019	
31.	7/9/19	Council Meeting	Add Lawn Bowl Clubhouse Project to a future agenda and return with information on costs of installation of module. Staff to notify Lawn Bowl Club of Council meeting date so they may update Council on their fundraising efforts.	Parks & Rec	December 2019	
32.	7/9/19	Council Meeting	Update on age-friendly activities per commission annual Work Plan	Parks & Rec	February 2020	
33.	7/9/19	Economic Development, Communications and Marketing Committee	Review if any legal restrictions exist for the City to post or advertise non-City sponsored events on the City's website or social media outlets	City Attorney	TBD	
34.	7/9/19	Economic Development, Communications and	Procure additional resources to support communications and marketing of local activities to enhance community's awareness of municipal services and activities	City Manager	December 2019	



**City of
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**CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION**
Updated 11/6/19



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed
		Marketing Committee				
35.	6/25/19	Council Meeting	Council, by consensus, requested that the City Attorney/staff review the matter related to the Cross at Memorial Cross Park (recent U.S. Supreme Court ruling)	City Attorney	November 2019	10/29/19
36.	6/4/19	Council Meeting	Councilmember O'Neill to provide more clarity on Innovation Zone referral	City Manager	11/19/19	
37.	6/4/19	Council Meeting	Regarding bicycle and scooter share devices: staff to bring back final plan for Council approval – Council asked staff to further look into items such as outreach events, insurance, speed monitoring, data, fee structure and drop-off locations (on hold – pending other public entities' litigation)	Public Works	TBD	
38.	5/21/19	Council Meeting	User Fee Study Session Follow-up: report on Proposed Housing Fee, Recreation Costs as related to Senior Center Space Use (implement space feedback forms and studying the marginal costs) and Nonprofit Room Rental Fees Rates, and Unit or Plot Costs for the Cemetery	Finance	11/19/19	
39.	4/30/19	Council Meeting	Number of public transit riders for large stadium events	49ers Stadium Manager	TBD	
40.	4/30/19	Council Meeting	Ask Stadium Manager for analysis to support their position that reducing the cost of parking would likely adversely impact public transit ridership, resulting in more cars on the roads	49ers Stadium Manager	TBD	
41.	4/25/19	Council Meeting	City Clerk Haggag to work with City Attorney's Office on next steps for enforcing the Dark Money Ordinance and the Lobbyist Ordinance	City Attorney/ City Clerk	January 2020	
42.	4/23/19	Council Meeting	Children's Health Screening Service Model: statistics on case management and procurement of services	Parks & Rec	December 2019	
43.	4/9/19	Council Meeting	Street Racing and Sideshows: take steps to make the 2004 ordinance operative and increase enforcement within existing resources	Police	Fall 2019	
44.	11/27/18	Council Meeting	TID: Reconciliation of reserve fund; disclosure of legal fees as determined by the performance auditor; and develop a subsidy policy	Finance	January 2020	
45.	10/9/18	Council Meeting	Dedicate Jerry Marsalli Community Center at grand opening of the facility	Parks & Rec	Spring 2020	
46.	10/2/18	Council Meeting	Amend sign ordinance to prohibit signs on public property	Parks & Rec/ City Attorney	Spring 2020	
47.	7/10/18	Council Meeting	Annual update on PD community engagement efforts	Police	January 2020	
48.	3/13/18	Council Meeting	Develop a Stadium Authority Financial Reporting Policy in conjunction with the Stadium Authority Auditor and the external auditor	Finance	December 2019	



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COMPLETED 2019
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 11/6/19



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
1.	11/13/18	Council Meeting	Review post-agenda material distribution to reduce paper (staff will continue with implementation of the paperless agenda process)	Clerk's Office	Fall 2019	10/29/19	Ongoing process to implement paperless agenda
2.	1/29/19	Council Meeting	Monitor and update to Council if the City of San Jose waives fees for developments along Steven Creek Blvd	Public Works	Ongoing	10/29/19	Updates to Council will be ongoing
3.	6/4/19	Council Meeting	Comparison study on how the staffing budget and expenses is less in other cities from the general fund; provide a written update on the 1% Development Impact Fee	Finance	10/29/19	10/29/19	Reported at Council Meeting
4.	8/27/19	Council Meeting	Parkland In Lieu Fee – Return to Council on 9/24/19 with alternatives to phase in the park improvement portion of the fee to longer than 3 years to lessen impact on new housing development and provide the pros and cons. (Remove paragraph 3.C of page 9 of the resolution)	Parks & Rec	10/29/19	10/29/19	Reported at Council Meeting
5.	9/18/19	Economic Development, Communications and Marketing Committee	The Committee referred the next steps on the Worker Cooperative to the City Council for review and approval, which includes directing staff to review the resolution and the process and procedures that the City of Berkeley used for their Worker Cooperative Program, and to have the Council consider allocating \$100,000 in the budget for this effort (funding request to be heard by Council on 11/5/19)	City Manager	10/29/19	10/29/19	Reported at Council Meeting
6.	9/17/19	Council Meeting	Complete community outreach for garbage contracts	Public Works	TBD	10/9/19	Email to Council on 10/9/19 re: community engagement efforts
7.	1/19/18	Council Meeting	Explore joint golf course use with City of Sunnyvale due to the forthcoming closure of the Santa Clara golf course	Parks & Rec	October 2019	10/8/19	Reported at Council Meeting
8.	11/27/18	Council Meeting	Massage Ordinance: recover administrative enforcement actions; explore charging a fee for non-conforming uses; develop a community engagement program (letters, workshops, in multiple languages)	Police/Finance	9/24/19	9/24/19	Reported at Council Meeting
9.	5/7/19	Council Meeting	Silicon Valley Power (SVP) Strategic Plan: provide information on rebate and community benefits programs	SVP	September 2019	9/24/19	Reported at Council Meeting
10.	9/4/19	Council Meeting	Staff was asked if the names of Public Records Act (PRA) requestors could be provided (effective 9/20/19 PRA Log posted weekly online)	City Clerk	9/20/19	9/20/19	Biweekly Report



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COMPLETED 2019
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 11/6/19



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
11.	4/9/19	Civil Service Commission	Work with Civil Service Commission on a Job Fair	Human Resources	9/20/19	9/20/19	Biweekly Report
12.	7/9/19	Council Meeting	Worker Cooperative – referred to a future Economic Development, Communication and Marketing Committee Meeting for City support options (heard by EDCM on 9/18/19; Committee's recommendations to be heard by Council in December 2019)	City Manager	Winter 2019	9/18/19	EDCM Committee
13.	7/9/19	Council Meeting	Provide a status report on the City's existing billboard contract and termination status of contract (heard by EDCM on 9/18/19; Committee's recommendations went to Council on 10/29/19)	City Attorney	9/18/19	9/18/19	EDCM Committee
14.	9/4/19	Council Meeting	Civil Grand Jury Report – Prepare a letter to the Honorable Deborah A. Ryan Presiding Judge, Santa Clara County Superior Court, for the Mayor's signature emphasizing the City Council's concern regarding: the lack of benchmarking that should have taken place during the investigation and inquiring why has the City of Santa Clara been targeted	City Manager/ City Clerk	9/13/19	9/13/19	Incorporated into Grand Jury response letter
15.	8/27/19	BPAC	BPAC Request for Letter regarding Freedom Bridge – Council to draft letter to Santa Clara Valley Water District in support of preserving Freedom Bridge	Public Works	9/10/19	8/30/19	Letter sent by staff on 8/30/19
16.	3/5/19	Council Meeting	Korea Town: legislative record, news article, etc. about previous effort to designate Korea Town (see 8/27/19 referral for follow-up request from Council)	City Manager	8/27/19	8/27/19	Reported at Council Meeting
17.	7/9/19	Council Meeting	Staff to add language to Development Agreement in regard to Phase II of Gateway Crossings being referred to the Architectural Committee	Community Development	8/23/19	8/23/19	Biweekly Report
18.	7/9/19	Council Meeting	Staff to evaluate wild geese at Central Park in response to community member John Haggerty's presentation	Parks & Rec	8/23/19	8/23/19	Biweekly Report
19.	5/21/19	Council Meeting	Reopen public hearing for Gateway Crossing and provide additional information on retail and lease options for PAL	Community Development	7/9/19	7/9/19	Reported at Council Meeting
20.	2/5/19	Council Meeting	Anti-Smoking Ordinance: Develop a police department policy regarding enforcement for persons under 21 (Information Report to Council)	Police	7/9/19	7/9/19	Reported at Council Meeting
21.	6/4/19	Council Meeting	Allocate \$70,000 funding in support of the Parade of Champions	Finance	6/25/19	6/25/19	Reported at Council Meeting; funding approved by Council



**City of
Santa Clara**
The Center of What's Possible

COMPLETED 2019
CITY COUNCIL AND STADIUM AUTHORITY STAFF REFERRALS
FOR FOLLOW-UP/ACTION
Updated 11/6/19



	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
22.	3/5/19	Council Meeting	Parade of Champions: confirm nonprofit status; report out on fundraising efforts	Parks & Rec	6/4/19	6/4/19	Reported at Council Meeting
23.	5/21/19	Council Meeting	Provide additional public information/outreach on Hauling and Recyclable items	Public Works	June 2019	5/31/19	Biweekly Report
24.	5/7/19	Council Meeting	Saratoga Creek Trail (Homeridge Park to Central Park): provide funding sources	Public Works	5/17/19	5/31/19	Biweekly Report
25.	4/23/19	Council Meeting	Street Trees: for newly developed homes, are street trees required? Who is responsible to water newly planted trees until they are established?	Public Works	5/31/19	5/31/19	Biweekly Report
26.	2/19/19		Attend Community Day School and talk to kids about the opportunities for jobs (staff has been in communication with the school and offered to make a presentation to students about job opportunities; date for event pending school's reply)	Parks & Rec	May 2019	5/21/19	Letter sent by staff on 5/21/19; no response from school to schedule an event
27.	5/22/18	Council Meeting	Review children at dog park signs	Public Works	June 2019	5/21/19	Reported at Council Meeting
28.	5/22/18	Council Meeting	Review use of canine turf at Reed & Grant Dog Park	Parks & Rec	5/21/19	5/21/19	Reported at Council Meeting
29.	4/23/19	Council Meeting	BART Extension: what is the estimated ridership for the future Santa Clara BART Station	Public Works	May 2019	5/3/19	Biweekly Report
30.	3/5/19	Council Meeting	Parade of Champions: SCPOC to respond to City Council Questions	Parks & Rec	5/17/19	5/3/19	Biweekly Report
31.	12/11/18	Council Meeting	Field Seats: Does the Stadium Authority receive revenue? Are the seats permanent or temporary? Are they allowable under the lease?	Stadium Manager	4/30/19	4/30/19	Reported at Stadium Authority Meeting
32.	11/27/18	Council Meeting	Taylor Swift Concerts: how many tickets were given away while we had to cover the full Public Safety costs	Stadium Manager	4/30/19	4/30/19	Reported at Stadium Authority Meeting
33.	3/26/19	Council Meeting	Monthly Financial Status Report: add prior year comparative information for Capital Expenditures	Finance	May 2019	4/23/19	Reported at Council Meeting
34.	2/5/19	Council Meeting	El Camino Real - Additional cost and scope to analyze a lane removal on El Camino and verify that whole Council cannot participate in the specific plan	Community Development	4/23/19	4/23/19	Reported at Council Meeting



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	Date Assigned	Source	Referral Description	Assigned Department	Projected Completion	Completed	Resolution
35.	3/26/19	Council Meeting	Investment Policy: identify whether any investments are linked to oil exploration, production, etc.	Finance	4/19/19	4/5/19	Biweekly Report
36.	3/26/19	Council Meeting	List of Measure A funded projects	Community Development	4/19/19	4/5/19	Biweekly Report
37.	12/11/18	Council Meeting	Parking in neighborhoods around the stadium during event dates: add to FY 2019/20 Stadium Authority Work Plan	Public Works/ Police/City Attorney	Mar 2019	3/27/19	Reported at Stadium Authority Meeting
38.	10/29/18	Council Meeting	Levi's Stadium Consolidated Parking Plan (Board approved – scheduled on FY 2019/20 Work Plan.)	City Manager	Winter 2019	3/27/19	Reported at Stadium Authority Meeting
39.	3/13/18		Work with the Stadium Manager to develop Key Performance Indicators (KPIs) regarding Non-NFL Event Management. (Board approved – scheduled on FY 2019/20 Work Plan.)	City Manager	3/19/19	3/27/19	Reported at Stadium Authority Meeting
40.	1/29/19	Council Meeting	Naming of Relay for Life City Team through outreach campaign	City Manager	3/26/19	3/26/19	Reported at Council Meeting
41.	12/4/18	Council Meeting	Quarterly SVP Strategic Plan Report	SVP	3/26/19	3/26/19	Reported at Council Meeting
42.	2/19/19	Council Meeting	Trash and RV parking along Hope Drive	Police/ Public Works	3/8/19	3/8/19	Biweekly Report
43.	2/19/19	Council Meeting	Post summary of Council's 12/13/18 session on Governance on the City's website	City Manager	3/8/19	3/8/19	Biweekly Report
44.	8/28/18		Workers' Comp Case related to injury at Stadium: does the Stadium Authority pay for these expenses?	HR/ Finance	3/8/19	3/8/19	Biweekly Report
45.	2/5/19	Council Meeting	Convention Center Transition Reports	City Manager	3/5/19	3/5/19	Council Meeting Verbal Report
46.	2/5/19	Council Meeting	Anti-Smoking Ordinance: Work with the Apartment Association to develop a condensed version of the ordinance attached to leases (Information Report)	City Attorney	Apr 2019	3/5/19	CAO completed 3/5/19; developed 2-sided 1-pager version of ordinance; shared with CA Apt. Assn.
47.	10/9/18	Council Meeting	Parade of Champions: sponsorships, budget (revenues and costs), contact cities in the County to learn from their experiences	Parks & Rec	3/5/19	3/5/19	Reported at Council Meeting



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48.	7/16/18	Council Meeting	Provide information on Cannabis insurance and banking issues	City Manager	2/19/19	2/19/19	Reported at Council Meeting
49.	12/11/18	Council Meeting	Lawn Bowling Clubhouse: Analyze health and safety and maintenance issues; explore acquiring a used modular from the school district	Parks & Rec/ Public Works	2/22/19	2/8/19	Biweekly Report
50.	11/15/18	Council Meeting	Convention Center Contract Recommendation RTC: describe reasons for not recommending other proposals	Finance	2/5/19	2/5/19	Reported at Council Meeting
51.	12/11/18	Council Meeting	10-Year Financial Forecast: model a lower CalPERS investment return 6.5% vs. 6%; and deeper recession; quantify impact for trade-offs	Finance	1/31/19	1/31/19	Priority Setting Session
52.	12/11/18	Council Meeting	Provide General Fund Revenue Strategy Options	Finance	1/31/19	1/31/19	Priority Setting Session
53.	1/19/18		Present employees' residence data	Human Resources	1/31/19	1/31/19	Priority Setting Session
54.	10/9/18	Council Meeting	Agrihood Project DDA: Review for potential Project Labor Agreement	City Manager	1/29/19	1/29/19	Reported at Council Meeting
55.	1/15/19	Council Meeting	Enforcement of Sidewalk Vendors vs. SB 946	Police/ City Attorney	1/25/19	1/25/19	Biweekly Report
56.	12/11/18	Council Meeting	Amend Resolution for the annual selection of Vice Mayor and Chaplain during a Council meeting in January	City Manager/ Mayor's Office	1/15/19	1/15/19	Reported at Council Meeting



City of Santa Clara

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Agenda Report

19-1228

Agenda Date: 11/12/2019

REPORT TO COUNCIL

SUBJECT

Tentative Meeting Agenda Calendar (TMAC)

BACKGROUND AND DISCUSSION

The purpose of the TMAC is to provide the public advanced notifications of tentative dates of Council Study Sessions, Joint Council/Commission meetings, as well as Council Public Hearing and General Business agenda items. It is important to note that the TMAC is a Tentative Calendar planning tool and reports listed are subject to change due to Public Hearing publication requirements and agenda management.

The TMAC will be published weekly no later than Friday on the City's website.



City of Santa Clara

Tentative Meeting Agenda Calendar

Tuesday, November 19, 2019 Council and Authorities Concurrent Meeting

Closed Session 5:00 p.m.

Public Hearing/General Business

- 19-1193** **Public Hearing:** Action on the Adoption of Phase II of the Fiscal Year 2019/20 Municipal Fee Schedule
- 19-1083** Consideration of Councilmember O'Neill's Request Related to the City's Participation in an "Innovation Zone" with the City of San José for the Stevens Creek Corridor
- 19-1082** Consideration of Councilmember O'Neill's Request to Work Collaboratively with the VTA, County of Santa Clara and the Cities of Cupertino and San Jose Regarding a Stevens Creek Boulevard Corridor Study
- 19-298** Action on Resolution Amending Rate Schedules for Electric Service for All Classes of Customers, Effective January 1, 2020 and establishing Rate Schedule PA-E
- 19-1007** Adopt a Resolution to Call a Special Election to Place a Charter Amendment Measure Regarding District Elections on the March 3, 2020 Ballot, Request that the County Consolidate the Election with the Statewide Primary Election, and Set the Dates for Arguments, Impartial Analysis and Rebuttals

Tuesday, December 3, 2019 – Santa Clara Stadium Authority Board Meeting and Special Council and Authorities Concurrent Meeting

Public Hearing/General Business

- 19-806** Consideration of a Successor Agreement with Recology for Residential Recycling
- 19-1081** Action on the Financial Status Report for the Quarter and /Fiscal Year Ending March 31, 2019
- 19-1275** Discussion and Council Direction on Assigned Responsibilities of the City Council Appointed City Auditor (TENTATIVE)
- 19-1154** Certify the 2019 Update to the Sanitary Sewer Management Plan (SSMP)

Tuesday, December 10, 2019 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

- 19-1195** Joint Dinner Meeting with Youth Commission

Public Hearing/General Business

- 19-1199** **Public Hearing:** Action on Patrick Henry Drive Specific Plan Notice of Preparation
- 19-451** Update on Requested Information on Commercial Cannabis Activities
- 19-807** Action on a Successor Agreement with Mission Trail Waste Systems for Exclusive Franchise for the Collection and Transportation of Garbage, Organics, and Commercial Recyclables
- 19-1272** Action on an Agreement with Greenwaste Recovery, Inc. for Solid Waste Processing, Transfer, Transport, Recycling and Disposal Services
- 19-324** Action on an Amendment to the Zoning Code, SCCC Chapter 18.76 Architectural Review

Tuesday, December 17, 2019 Council and Authorities Concurrent Meeting

Study Session

- 19-496** **User Fee Phase III 4:00 p.m. - 5:00 p.m.**
- 19-496** **City Hall Master Plan 5:00 p.m. - 6:00 p.m.**

Public Hearing/General Business

- 19-1225** **Public Hearing:** Action on 3035 El Camino Real Residential Project located at 3035 El Camino Real
- 19-1260** **Public Hearing:** Action on Amendment No. 1 to Development Agreement with Innovation Commons Owner LLC (Previously Yahoo)
- 19-074** SVP Quarterly Strategic Plan Update
- 19-1279** Action on the City of Santa Clara Audited Comprehensive Annual Financial Report (CAFR), Audited Silicon Valley Power (SVP) Financial Statements, an Audited Transportation Development Act (TDA) Financial Statements for Fiscal Year Ended June 30, 2019, as Recommended by the City Council Audit Committee
- 19-1300** Action on the Award of Agreement to Cascadia Consulting Group, Inc. for Climate Action Plan Update Services

Tuesday, January 14, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

- 19-1239** Action on Santa Clara Convention Center 1st Quarter Financial Status Report

Tuesday, January 28, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

- 19-1212** Joint Dinner meeting with Cultural Commission

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Thursday, January 30, 2020 City Council Goal and Policy Setting Session (time and location TBD)

Friday, January 31, 2020 City Council Goal and Policy Setting Session (time and location TBD)

Tuesday, February 11, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

19-1212 Joint Dinner meeting with Library Trustees

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, February 18, 2020 Santa Clara Stadium Authority Board Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, February 25, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, March 17, 2020 Council and Authorities Concurrent Meeting

Joint Dinner – 5:00 PM

19-1212 Joint Dinner meeting with Historical and Landmarks Commission

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

Tuesday, March 31, 2020 Council and Authorities Concurrent Meeting

Public Hearing/General Business

20-496 Agenda Items Pending – To Be Scheduled

AGENDA ITEMS TO BE SCHEDULED TO A FUTURE DATE