

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRIGHTVIEW LANDSCAPE SERVICES, INC.
FOR 2017-2022 LANDSCAPING SERVICES AT THE SANTA CLARA CONVENTION
CENTER COMPLEX**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between Brightview Landscape Services, Inc.; a California corporation, with its principal place of business located at 825 Mabury Road, San Jose, California 95133 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision

and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the initial term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2020. The City Manager shall have the option to extend the Agreement for up to two (2) additional terms of one (1) year each. The City Manager shall exercise each option by notifying Contractor in writing no later than sixty (60) days in advance of the then-current term.

6. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

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

8. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. BUSINESS TAX LICENSE REQUIRED.

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

10. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed 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 and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

11. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

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

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

14. 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.

15. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

18. USE OF CITY NAME OR EMBLEM.

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

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

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

21. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

22. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. 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.

28. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

29. NOTICES.

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

City of Santa Clara
Attention: Building Maintenance
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 247-0594

And to Contractor addressed as follows:

Name: Brightview Landscape Services, Inc.
Address: 825 Mabury Road
San Jose, California 95133
or by facsimile at (408) 437-1817

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT 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.

32. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

34. AFFORDABLE CARE ACT OBLIGATIONS

To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

35. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial

interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

36. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

37. PREVAILING WAGES

Labor Code Compliance. Contractor must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. Contractor agrees to include prevailing wage requirements in its contracts for the Project.

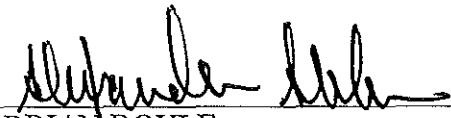
Requirements in Subcontracts. Contractor shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement. Subcontracts shall include all prevailing wage requirements set forth in Contractor's contracts.

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; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.


The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

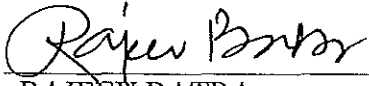
CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

for 
BRIAN DOYLE
Interim City Attorney

ATTEST:

for 
ROD DIRIDON, JR.
City Clerk

Dated: 6.19.17

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

"CITY"

BRIGHTVIEW LANDSCAPE SERVICES, INC.
a California corporation

Dated: MAY 31, 2017
By: 
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Mike Carter
Title: Vice President – General Manager
Local Address: 825 Mabury Road
San Jose , California 95133
Email Address: Mike.carter@brightview.com
Telephone: (408) 988-8480
Fax: (408) 988.8715

"CONTRACTOR"

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

BRIGHTVIEW LANDSCAPE SERVICES, INC.

FOR 2017-2022 AT THE SANTA CLARA CONVENTION CENTER COMPLEX

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Brightview Landscape Services, Inc.

a California corporation

By: Mike Carter
Signature of Authorized Person or Representative

Name: MIKE CARTER

Title: VICE PRESIDENT GENERAL MANAGER

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

California Compliant
Notary Certificate
Attached

California General All-Purpose ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA}

COUNTY OF Santa Clara,

On May 31, 2017 before me, **Sheila Meinecke**, Notary Public,

Personally appeared Mike Carter

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

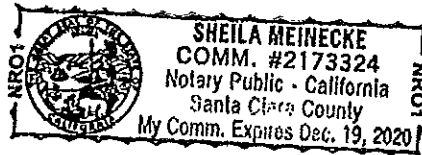
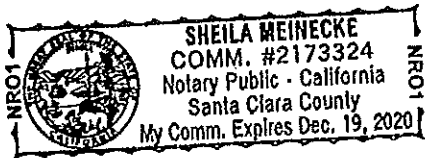
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (NOTARY SEAL)
Sheila Meinecke

My Commission expires December 19, 2020

Commission #2173324



ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type Exhibit E- Affidavit of
Number of Pages one compliance with
Date of Document 5/31/17 ethical
Standards
Signer(s) Other Than Named Above none

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

BRIGHTVIEW LANDSCAPE SERVICES, INC.

**FOR 2017-2022 LANDSCAPING SERVICES AT THE SANTA CLARA CONVENTION
CENTER COMPLEX**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described below. In the event of any conflict between the terms of this Exhibit A and the terms of the main Agreement, the terms of the main Agreement shall control.

I. SPECIFICATIONS - GENERAL

A. Scope of Work

The Contractor shall furnish all supervision, material, labor, equipment and transportation required to maintain the landscape at the Santa Clara Convention Center Complex, Santa Clara, California in a first-class condition throughout the duration of the contract.

B. Work Force

1. General

Contractor's Representative (Site Superintendent/Horticulturist) shall be experienced in landscape maintenance and preferably should have an education in ornamental horticulture. Contractor is expected to maintain a consistent site presence seven (7) days a week, including holidays (except Thanksgiving and Christmas). Contractor is responsible to have adequately maintained backup equipment and relief workforce. Any personnel staffing level changes will require justification as to how the level of service will be maintained and written approval of the City's Representative.

The work force onsite on weekdays (Monday thru Friday) is to involve as many employees as required to perform the work, including at least one (1) supervisory level employee; and on Saturday and Sunday one (1) grounds maintenance level employee, typically classified by title and skills as follows:

a. Supervisory Level

- b. Site Superintendent/Horticulturist
 - c. Field Representative/Foreman
 - d. Pest Management Coordinator/Grounds Maintenance Worker III
 - e. Grounds Maintenance Worker Level
 - f. Irrigation Specialist/Grounds Maintenance Worker II
 - g. Grounds Maintenance Worker I
2. In addition to this, Contractor is to assign one (1) Project Supervisory level employee to coordinate with the City's Representative regarding special projects and weekly status reports, etc. The Site Superintendent is required to attend one (1) Convention Center Complex Assessment District meeting (one to one and one-half hours in length) each month. Contractor's personnel used for work under the contract shall project a positive public image. Contractor's employees are to be personably presentable at all times. All personnel shall be courteous and responsive to the general public.
 3. Contractor shall provide City an updated list of all employees (names and titles) who work on the site along with their schedules. Contractor is to designate employees that are assigned to the site fulltime.
 4. A maintenance structure has been provided onsite for Contractor's use for storage of equipment and materials and will be kept clean, free of debris at all times by Contractor.
 5. Mowing equipment assigned to the site will remain onsite; mowing equipment from offsite will not be allowed.
 6. The Contractor is responsible for training and educating employees used on the contract. All employees used on the contract shall be thoroughly familiar with the methods, equipment, schedules and quality of work required. Personnel education and training shall be at Contractor's expense and no payment shall be made therefore.
 7. Contractor's employees shall be required to comply with the following requirements:
 - a. Observe and report deficiencies.
 - b. Communicate effectively with the public. The Contractor shall make every effort to hire bilingual (English/Spanish) personnel for the work under the contract.

- c. Understand written and oral instructions, schedules and procedures.
 - d. Contractor shall remove any employee from work under the contract at the request of the City's Representative.
 - e. Contractor's personnel shall wear a company uniform with Contractor's name and insignia at all times while performing work under the contract within the boundaries of the Complex. Uniforms shall consist of shirts, pants, jackets and rainwear, in summer and winter versions. Uniform shall be acceptable to the City's Representative. Contractor shall procure uniforms at Contractor's sole expense.
 - f. All employees must attend Contractor's training program to educate employees on the Complex facilities, unique features, public relations etiquette, complaint procedures, care and use of uniforms, etc. Employees who have not received this training shall not be permitted to work under this contract.
 - g. U.S. citizenship or valid U.S. work permit.
 - h. At least eighteen (18) years of age.
 - i. Free of felony or major misdemeanor criminal record, and multiple DUI's.
 - j. Valid California driver's license or valid State of California identification card.
 - k. Successfully pass Contractor's required Drug and Alcohol Pre-employment test and ongoing Drug and Alcohol Abuse Prevention and Testing program. Contractor is to provide a copy of the program to the City.
 - l. Pass Contractor's pre-employment background checks, previous employment check, and reference check, conducted at Contractor's expense.
 - m. Physically able to accomplish various tasks required.
8. Contractor responsible to conduct all testing, checks, and all costs for items in this section (B. Work Force).

C. Workmanship and Quality Level

1. It is the intention of the City that a first-class standard of maintenance be applied in the area covered by this contract. The Contractor's actions shall always be in accordance with this primary concern for quality.
2. All work shall be performed by experienced personnel directly employed and supervised by Contractor. Contractor shall provide management and technical supervision as required to implement the work. The Contractor shall accompany the City's Representative on an inspection tour once weekly or more frequently as requested by the City at no additional cost.
3. The completion dates of fertilization and aeration for each site shall be submitted in writing by Contractor to the City's Representative. A copy of the fertilizer receipt shall accompany this report.
4. Contractor shall be responsible for the skills, methods and actions of his employees and for all work done.
5. Contractor shall perform the work herein provided to the satisfaction of the City's Representative. The City's Representative will make inspections on a regular basis to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor shall be available for consultation with the City as needed.
6. Asset Management: Contractor shall be held accountable for any and all City assets (i.e. maintenance building) which are part of the improvements in the project area. Upon verification of project quantities, the Contractor shall maintain all improvements in a healthy, operable and safe condition throughout the life of the contract. If any City-owned asset is damaged or destroyed by others, the Contractor shall report said damage and the causes for it within a maximum five (5) working day period. The City shall verify the cause and loss based on the Contractor's report. If the Contractor is unable to substantiate the cause or neglects to report such occurrences, the cost of replacement shall be borne by the Contractor. The City must be assured that the undocumented deterioration of public improvements does not occur during this Contract.
7. Maintenance Deficiencies: Contractor will be notified by phone or email when work has not been completed as per specifications. If Contractor has not responded to make required corrections within two (2) hours, the City's Representative shall have the authority to take action to perform the work necessary to bring the facility to a proper condition and the Contractor will be charged for the cost of these services, as follows:
 - a. \$150.00 mobilization fee for each incident.
 - b. In addition, a \$75.00 per hour charge with one (1) hour minimum for the City or contracted personnel required to complete stated work will be assessed.

- c. Cost to provide supplies and materials used.
- d. These charges will be deducted from the following monthly bill.

8. Responsibility for damage: Contractor shall assume the defense and shall indemnify and hold harmless the City, its officers, officials, directors, employees and agents from and against any and all loss, liability, expense, claim, costs, suits or damages of every kind, nature and description directly or indirectly arising from the performance of the services required under the contract.

D. Compliance with Law

Contractor shall, at his or her expense, obtain all necessary permits and licenses, etc. required for performance of this project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety. Contractor shall have a valid California landscape contractor's license (C-27) for the type of work required for this project. Contractor shall have, or have subcontract arrangements with person licensed with a Santa Clara County Department of Agriculture Pest Control Advisor's License to provide recommendations and control for portions of work required for this contract.

E. Preservation of Property

Contractor shall exercise due care to avoid injury to existing improvements or facilities, adjacent property and real or personal property in the performance of the work of the contract. Contractor shall be fully responsible for, and shall hold the City, its officers, agents and employees free and harmless from, any such damage.

F. Protection of General Public (i.e. barricades and cones)

Wherever it is necessary, Contractor shall be required to keep and maintain at Contractor's sole cost and expense during the course of operations on his project, such warnings, signs, and barriers as maybe required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the City and are for the express benefit of the general public.

G. Notifications

Contractor shall notify the City's Representative at least one week prior to undertaking any of the following work:

1. Broadleaf weed spraying within turf areas.
2. Aeration

- 3. Fertilization
- 4. Dethatching
- H. Progress Payments

Contractor shall submit an invoice for payment on a monthly basis to the following address:

City of Santa Clara
c/o Orchard Commercial
2055 Laurelwood Rd, Ste 130 Santa Clara, CA 95054
mhardy@orchardcommercial.com

I. Additional Payments

Replacement or addition of new materials, such as shrubs, plants, groundcover, turf, trees, sprinkler system components, etc., must be approved by the City's Representative. These materials can be priced by the Contractor at the City's request, showing Contractor's total price for the labor and materials. The City reserves the right to make its own cost comparison and to accept the Contractor's offer, or to make other arrangements for the work.

J. Licenses and Permits

At the time of bid, Contractor must, bylaw, have a C-27 California State Landscape Contractor's License. Contractor must purchase all other licenses and/or permits required by City, State, or Federal governments.

K. Independent Contractor

The bidder receiving an award agrees that he/she will be acting as an independent contractor, not as an agent or as an employee, of the City of Santa Clara.

L. Work Performed by Special Forces or Other Special Services

When the City's Representative and Contractor determine that supplemental work cannot be performed by the forces of Contractor, the Contractor may be directed to find a subcontractor that meets the City's approval. Invoices for such supplemental work performed by subcontractor may be accepted without complete itemization of labor, materials and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

Contractor may add a markup surcharge (See Exhibit B) to such subcontractor invoices as payment in full for the overhead, profit and handling the payment transaction.

If the City selects a subcontractor and the landscape Contractor has limited involvement in the supplemental work, but handles the subcontractor bill paperwork for payment, a surcharge (see Exhibit B) maybe added to compensate the landscape Contractor for handling the payment transaction.

M. Supplemental Work Compensation

Payment for supplemental work by Contractor's forces (see Exhibit B) will be determined by the Contractor's cost of labor, materials and equipment required to do the work.

N. Penalties for Non-Compliance with Agreement

If City's Representative determines that Contractor's services were not provided per Agreement, City may reduce payment for each day services are not performed. City shall notify Contractor by phone as soon as possible concerning non-compliance. If Contractor can correct deficiencies within two (2) hours of notification, no reduction in payment shall be made. If not corrected within two (2) hours of notification on the same day of non-compliance, or as otherwise agreed upon, City shall deduct one hundred fifty (\$150) dollars per day of non-compliance from payment due to Contractor. Contractor shall meet with City's Representative and discuss corrective actions taken to prevent future contract performance deficiencies.

II. SPECIFICATIONS - DETAILED

A. Materials

1. All materials used shall either conform to bid specifications, or shall otherwise be acceptable to the City. The County Agricultural Commissioner's Office must, by law, be given a monthly record of all agricultural chemicals used.
2. Water – To be furnished by the City.
3. Fertilizer – To be furnished and applied by the Contractor.
4. Pesticides – To be furnished and applied by the Contractor.
5. Replacement Trees, Shrubs and Ground Cover – Replacement trees and plants of a size, condition and variety acceptable to the City's Representative are to be furnished by the Contractor if he/she has damaged the originals; otherwise the City will furnish these materials or reimburse the Contractor.
6. Lawn Seed for Reseeding/Sod – A type, matching the variety at the site, will be furnished by the Contractor.

B. Storage of Equipment

Contractor shall be allowed to store equipment, parts, and material onsite within a City-owned maintenance facility located north of the parking garage structure. Contractor will be solely responsible for the maintenance of this structure and for any damage to it during its usage.

C. Storage Collection and Disposal of Refuse

Contractor shall dispose of all refuse collected by his/her operations at an approved waste disposal facility and shall pay all costs involved. No City facilities, other than specified above, are available for disposal. Refuse resulting from street sweeping or sidewalk cleaning operations shall not be stored on the street beyond the end of the work shift, but shall be loaded into trucks or into appropriately placed containers approved by the City's Representative. An area maybe designated for the use of such a storage container.

D. Communications

Contractor shall equip Superintendent, Foreman and Project Manager with cellphones, direct connect, or other technology and related equipment (chargers, etc.) for communications.

E. Watering

1. Plants should not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball. A need for water should dictate the frequency of watering by an automatic or manual sprinkler system.
2. Maintain a large enough water basin around plants so that enough water can be applied to establish moisture through the major root zone. When hand watering, use a water breaker to break the water force.

F. Tree Care

1. General – Maintain trees and shrubs in a healthy, growing condition by performing all necessary operations, including the following:
2. Contractor will be responsible for the pruning of all trees that are up to 15' tall on this site. For trees in excess of 15' in height, Contractor will be responsible for trimming trees other than palms and evergreens, approximately 285 trees, over the term of the contract (approximate species counts are included in Exhibit B).
3. All tree pruning will be performed according to International Society of Arboriculture Tree Pruning Standards and American National Safety standards.

4. All pruning activities shall be done under the general supervision of an arborist certified by the Western Chapter of International Society of Arboriculture.
5. Contractor shall maintain the natural characteristics and appearance of each tree species. No tree shall be pollarded. Large trees shall be pruned by working from the top downward. Each branch shall be pruned individually. The branch shall be removed at its origin or by cutting it back to another lateral. All limbs one inch in diameter, or over, shall be undercut to avoid splitting or tearing of the bark. The first cut shall be made on the underside of the limb approximately one foot from the trunk and sawing through one third of the branch. The second cut shall be made on the top of the branch about three inches in from the bottom cut, sawing until the branch splits off at the parallel point of the two cuts. The final cut should be just outside the branch bark ridge and collar (see ISA Western Chapter Pruning Standards).
6. All pruning and cutting tools shall be kept sharpened and clean at all times.
7. All trees shall be pruned to remove dead wood, hazardous branches, weak, diseased and insect-infested, broken, low or crossing limbs, suckers, watersprouts and ivy. Branches with extremely narrow angle of attachments shall be removed. Any structural weakness, decayed trunk, or branches shall be reported to the City's Representative.
8. All trees shall be pruned to force new growth on the windward side of the canopy. Contractor shall not remove more than 30% of the total healthy canopy of any tree. All cut branches, three inches in diameter or larger shall be lowered to the ground by means of a rope. Any damage caused by dropping limbs shall be repaired promptly at the Contractor's expense and to the satisfaction of the City's Representative. No climbing shall be permitted on any tree less than ten inches DBH. If the desired cut cannot be made properly from the ground on trees less than ten inches DBH, an aerial lift bucket shall be used.
9. Contractor shall remove all debris resulting from pruning operations daily and upon completion of each portion of the work. Due to the inherent danger of tree maintenance operations, all work shall proceed under appropriate safety standards.
10. Tree Establishment Care –Staking and guying shall be maintained until a particular tree no longer requires support. Stakes and support cables shall be monitored carefully for chafing on tree trunks and limbs. Improve or maintain temporary berms as necessary.

11. Initial Training – Due to the high winds frequently experienced at this site, the initial care of trees is of primary importance. Trees shall be pruned and otherwise maintained to encourage strong trunk growth. Primary branches and suckers, located below the main limbs, shall be maintained approximately 6 inches apart vertically 120 degrees radially to 10 inches maximum until no longer required
12. Tree and Stump Removal – For stump removal operations, Contractor shall provide for safety of employees and the general public at all times when work is in progress. Removal shall include, but not be limited to, removal of all visible buttress roots, grinding of all stumps to a depth appropriate for replanting of a 24" box replacement tree, removal of all chips in excess of that which is required to back fill the removed stump hole to grade, removal from the site all debris immediately upon completion of a tree removal operation. Contractor shall be responsible for initiating location of all underground utilities and coordinating with utility agencies as related to carrying out the work. Any damage to utilities shall be Contractor's responsibility.
13. Palm Tree Well Maintenance – Contractor is responsible to monitor all palm tree well inspection tubes daily and pump all water out of the planting pit. Maintenance personnel are to measure the quantity of water pumped and time duration of pumping required. Data is to be logged daily on a City form issued by the City's Representative. All forms are to be submitted to the City's Representative on a weekly basis.
14. Arboricultural Pest Management – Trees shall be maintained in as pest-free condition as possible. Report all unusual or plant injurious pest infestations promptly to the City's Representative who shall make the determination if such a pest population requires control. Biological controls are considered as well as chemical control. Under this contract, all tree pest control and fruit control (i.e. olive fruit) shall be accomplished by others.
15. Chemical applications must under all circumstances be performed under the supervision of a California State Certified Pest Control Advisor or Qualified Applicator (QAC) or QAL and under strict observance of all applicable local, county, state and federal regulations.
16. Tree Fertilization and Fruit Control – Cherry and Magnolia trees are to be fertilized every other year with humates, mycorrhizae, bio-stimulants and microorganisms to stimulate root development and improve overall plant health. Olive trees are to be sprayed for fruit control each year and to ensure walkways remain clear of fruit at all times.
17. Tree Inventory -No later than 1 month after full execution of contract for Tree Trimming and Tree Maintenance, the successful Bidder shall provide

an update of the tree inventory. The tree inventory data shall include following data fields:

a. Tree Location.

Contractor shall create an inventory showing the location of every existing tree site and vacant tree site on sitemaps. The tree inventory shall be conducted by visiting each tree site or vacant planting site and plot the position. Contractor shall update the tree inventory as conditions require (e.g., tree removed, tree planted, etc.).

b. Measurement of Canopy Spread.

As a part of the data collection process, successful Bidder shall measure the canopy spread of each tree using either a laser range finder or a Roll-a-Tape, to the nearest foot, using a pre-established uniform protocol. This data shall be included in the tree inventory.

c. Tree Condition.

General condition of individual trees

Pruning requirements (i.e. recommended pruning cycle)

Condition of surrounding hardscape (i.e. displacement, recent repairs)

18. Emergency Response Protocol – Contractor is required to have a Project Manager available by telephone on a 24-hour basis who is assigned to provide direct and prompt attention to requests from City for emergency and after-hours tree service requests.

Contractor shall acknowledge tree related emergency calls during normal business hours of operation and after-hours within (15) fifteen minutes of the initial call by the City's Representative.

The response time for a crew to arrive on-site for tree related emergencies during normal business hours of operation shall not exceed thirty (30) minutes.

The response time for a crew to arrive on-site for tree related emergencies outside of normal business hours of operation shall not exceed two (2) hours.

G. Shrub Care

1. Pruning Shrubs – The objectives of shrub pruning are the same as for trees. Shrubs shall not be clipped into balled or boxed forms unless such is required by the design.

All pruning cuts shall be made to lateral branches, or buds, or to the branch bark ridge. "Stubbing" will not be permitted. Contractor shall deadhead all agapanthus during the flowering season (May-September) weekly to remove all spent flower stalks and seed heads. Stalks shall be cut off cleanly at the base of the plant. Any brown foliage shall also be removed.

2. Rose Garden Pruning – Contractor is responsible to prune all roses according to American Rose Society standards. This includes cutting out the old wood and keeping the new wood while retaining the symmetrical shape of the plant. Cut the remaining new wood back three quarter the length of growth made the previous season, cutting a quarter inch above an eye facing the outside. Weak wood should be removed as well as crossing branches. Moderate pruning of floribunda and grandiflora roses will produce a greater abundance of blooms. Complete pruning and removal of all foliage is to be done during the dormant season (January). Deadheading of flowers and minor corrective pruning can be done all during the growing season (May thru November). Roses at the Complex area combination of floribunda and grandiflora roses (Show Biz, and carpet rose).
3. Weed Control (Shrubs) – Contractor shall keep all landscape areas weed free at all times.

Weed free shall refer to the required condition of all landscaped areas and adjacent hard surfaces within the project area and for the duration of the contract. Surfaces shall be judged to meet these performance criteria if the impression from a distance and at close hand is that the surface is free of any or all plants which are foreign to the planted area and are therefore out of place and undesirable. Should weed germination occur, Contractor shall eradicate pursuant to approved maintenance plan and prior to weeds reaching one week of (top growth) age. Any weed taller than 2" is to be hand pulled or mechanically removed to avoid unsightly brown stubble from using herbicides.

Contractor may not spray in open areas with Roundup on weeds 2" or less. Contractor is to apply a pre-emergent herbicide (Surflan) or approved equal on all planters (excluding annul color planters and beds) at least every three (3) months to control weeds. All herbicide applications are to be done by certified personnel who are trained and possess a Qualified Applicator Certificate (QAC or Qualified Applicators License QAL) with the Department of Agriculture. The applicator must also have in his/her possession at time of spraying a written recommendation from a Certified Pest Control Advisor (PCA). Contractor shall use extreme caution when applying herbicides to assure no damage occurs to the site or to adjacent properties. Any damage to desirable plant material shall be replaced at Contractor's expense. Contractor shall spray as needed.

Avoid soil cultivation under camellias that destroys shall roots. Use mulches (small 1¼" fir chips) to help prevent weed seed germination. Mulches are to be applied 1" thick. Caution is to be exercised when applying mulches around roses so as not to bury the crown and cause rotting and dieback.

4. Insect and Disease Control (Shrubs) – Maintain control with approved materials and integrated pest control management methods.
5. Fertilization (Shrubs) – Contractor shall fertilize all shrubbery at least three times per year (September, March and June) with a balanced pelleted fertilizer. All plant material shall be well watered two (2) days prior to fertilization to avoid any damage or burn to the plant. Contractor shall exercise caution not to allow fertilizer pellets to accumulate onto foliage or sidewalks where damage may occur. All plants are to be immediately watered after fertilizer is spread at the recommended rate evenly around the base of the plant out to its drip line. For established roses, Contractor shall fertilize with a balanced granular fertilizer according to the recommended label rate once every six weeks beginning March through September.

Acid Plants (i.e. camellias, azaleas, rhododendrons) – Apply fertilizer after blossoms have been shed in early Spring (March – September) for at least 7 consecutive months each year, using an acid fertilizer 8-4-12 or approved equal at the following rates along with liquid iron:

Shrub Size	Rate
2 feet high or wide	1/4 Cup
2 to 3 feet high or wide	1/3 cup
3 to 4 feet high or wide	1/2 cup
4 feet plus	1 cup

Camellias shall also receive one (1) cup of cottonseed meal at least every ninety (90) days to maintain plant health.

6. Plant Removal and Replacement – Contractor shall notify the City's Representative of any damaged, destroyed or dead plant material within one working day of its discovery. Plant material shall be removed within one working day after the City's Representative directs action, except for damaged plant material posing a safety hazard, which must be removed immediately.

The City's Representative shall make a final determination of the probable cause for the plant material loss and assign the cost responsibilities of replacement to the appropriate party. The City's Representative may elect to remove any plant material and not replace it; Contractor shall be directed accordingly.

Contractor shall remove dead and dying plants and replace with plants of a size, condition and variety acceptable to the City to be paid for by the City, unless due to negligence of the Contractor. The Contractor shall gain approval from the City before any planting is done.

7. General Horticultural Requirements – It is the intent of this specification to provide for normal horticultural maintenance of all plant materials being maintained i.e. dead camellia blossoms shall be removed from the plant or ground, dead agapanthus blossoms shall be removed by cutting at the base of the plant.

H. Ground Cover Care & General Ground Maintenance

1. Weed Control – Control weeds, preferably with pre-emergent herbicides, but also with selective systemic herbicides. Any weed taller than 2” is to be hand pulled or mechanically removed to avoid unsightly brown stubble from using herbicides.
2. Fertilization – Apply four (4) lbs. of actual nitrogen per 1,000 square feet per year in two to four applications during the first year of a new planting or if ground cover is nitrogen starved. One application should be in early spring when growth begins. Reduce to three (3) lbs. actual nitrogen vigorous growth and good color. Complete fertilizers are not necessary unless soil test shows specific nutrient deficiencies.
3. Watering – Water enough that moisture penetrates throughout root zone, and only as frequently as necessary to maintain healthy growth.
4. Trash Removal – Remove trash daily.
5. Edging – Edge ground cover as necessary to keep in bounds and trim to growth as necessary to achieve an overall even appearance. Once every two years mow ivy to 2” above ground level in order to renew growth and improve density and attractiveness. Groundcover is to be kept a minimum of two (2) feet from the base of tree trunks. Any open areas are to be maintained in a weed free condition.
6. Pest/Insect Control – Control insects and diseases as necessary, using legally approved materials. Contractor will be required to follow City of Santa Clara’s Integrated Pest Management (IPM) Program Policy.
7. Plant Replacements – Replace dead and missing plants after obtaining the City’s agreement to pay for replacements. Damage due to Contractor’s negligence shall be made good without charge.
8. Rodent/Animal Control – Contractor is responsible for controlling various rodents and animals that may enter the Complex (i.e. gophers, rats, possums, ground squirrels, ducks, etc.) per Department of Agriculture

approved methods. Contractor is responsible to secure all necessary permits.

I. Annual Color

1. General - Color/design schemes will be cooperatively developed between Contractor and the City's Representative in advance of the planting schedules. Contractor will be responsible to purchase healthy plant material and properly install and maintain all annuals in a vigorous condition. Any plants that are lost due to pest/disease or improper maintenance practices will be replaced by Contractor at his/her expense. Once soil preparation is completed and the plants are installed, all drip irrigation tubes are to be immediately reinstalled to ensure property watering. Overhead watering is to be minimized or avoided to prevent disease outbreaks. When hand watering color bowls, a pressure breaker nozzle is to be used at the hose end to avoid plant/soil damage. Care should be exercised to place the watering wand between the plant materials close to the soil to minimize overhead water onto foliage. All annuals are to be inspected daily and deadheaded and sprayed, etc. as necessary to maintain health during the flowering season. Annual color beds are not to be mulched with bark chips, but rather with nitrified redwood compost.
2. Soil Preparation – At time of flower rotation, all existing annuals are to be removed and all debris raked and discarded. Soil is then cultivated to a depth of 12" and necessary soil amendment added. All annual planting beds are then to be treated with a soil drench using subdue per the manufacturer's recommendation prior to planting. A pre-plant fertilizer (i.e. 16-16-16) is then to be incorporated into the soil. Annual color plants are then installed per California Nurseryman standards. The average sizes of annual color that are purchased are jumbos and 4" pot material. On rare occasions where material is only available in cell packs, this size maybe used upon approval of the City's Representative.
3. Annual color areas are located throughout the complex in medians, tree wells, various color bowls, entrance sign planter beds, and courtyard patios. Contractor is responsible to be familiar with planting plan and change out frequencies. The average spacing is 6" on center. Bid prices should include plant replacement cost that may be expected during the growing season due to transplant shock, etc.

J. Turf Care

Turf shall be maintained in a healthy growing condition by furnishing necessary services, including the following:

1. Mowing and Edging –Turf shall be mowed at the minimum height of 2 inches during the year, except for the rainy season when it shall be mowed at 1.5 inches. Clippings shall be vacuumed off of all walkways or blown with a backpack blower into the street gutter but must be immediately swept or vacuumed up. At no time will Contractor blow debris into the City streets or storm drain catch basins. Clippings from mowing shall be caught unless otherwise approved.

Mowing shall be done twice weekly (Monday, and Thursday or Friday) during the months of March thru September and once weekly from October thru February each year. Contractor will be required to have mowers sharp at all times in order to assure a clean cut.

Edging shall be done weekly year round. Sprinkler heads must be trimmed around by hand weekly to provide good water coverage and avoid any obstructions. This may also be achieved by proper use of a gas powered string trimmer. Scalping of the turf around sprinkler heads and valve boxes etc. will not be tolerated. Contact weed spray around sprinkler heads will not be allowed.

2. Dethatching – Contractor shall be responsible to measure the turf thatch layer thickness in late August. If the thatch layer is $\frac{3}{4}$ " or more in thickness, dethatching will be required (September) to improve water penetration and improve turf health. A gas powered dethatcher (i.e. self-propelled Ryan model) shall be used and all debris is to be raked and removed. If necessary, over-seeding may be required following dethatching as well as aerification.
3. Watering – Lawns shall be watered at such frequency as weather conditions require to replenish soil moisture below root zone. Watering shall be done at night if the irrigation system is electrically controlled, otherwise apply water early in the morning. Normally a total of 1.5 inches of water is needed weekly in hot weather, but not all at one time. Water run-off across pavements and into gutter shall be avoided whenever possible.
4. Aerification – All turf areas shall be aerified as needed but at least once per month during the months of March, June, September and December.

Aerifier core depth shall be a minimum of 2.5" deep. A fertilizer application shall be applied one week later following each aerification process. In addition to this, during the September and March aerification, an application of pelleted gypsum is to be applied (along with the application of fertilizer) at a rate of 16 lbs. per 1,000 sq. ft.

5. Fertilization – All turf shall be fertilized every six (6) to (8) weeks during the growing season (March through October). The fertilizer shall be

sulfur coated hydorprill 21-7-14, or approved equal, and shall be applied at a rate of 5 lbs. material per 1,000sq. ft. Then in November, a time release fertilizer is to be applied (i.e Sierra Chemical's controlled release fertilizer 21-8-8). If improvement of turf color and health is necessary during winter, an application of an appropriate fertilizer shall be applied as necessary.

K. Weed Control

1. Broadleaf Weed Control with inTurf Areas – A minimum of two spray applications is required per year during the months of April and August. Applications shall be repeated in order to achieve 100% weed free condition. Formulation of herbicide must be approved by the City's Representative in advance of any application. Contractor must receive prior scheduling approval for applying any broadleaf herbicide from the Santa Clara Convention Center Complex Assessment District. Contractor must supply to the City's Representative all necessary MSDS sheets along with a notice of intent to spray.
2. General Weed Control – approved pre-emergent weed control will be applied in February and in September of each year for control of crab grass and annual blue grass, or by the manufacturer's recommendation. Control against Bermuda grass infestation is to be carried out as necessary.
3. Damage Prevention – Contractor shall use caution when applying broadleaf spray, as well as all pesticides, to assure no damage to site (especially annual color) or adjacent property owners' plant material.

L. Irrigation System

1. Any damages to the system caused by Contractor's operations shall be repaired without charge. Repairs shall be made within one watering period.
2. Accidental damages, not resulting from Contractor's negligence of operations, shall be reported promptly to the City together with an estimate of the cost to repair. This applies also to changes and additions needed. Faulty electrical controllers shall be reported to City and upon approval repairs shall be made at City's expense, or City will arrange for repair. Contractor shall be allowed a mark-up on all irrigation material (i.e. heads, valves, clocks and misc. parts). Contractor shall be responsible at his/her cost for all sprinkler repairs, including risers and damaged waterlines, caused by Contractor negligence. Contractor shall inspect daily for broken heads, pipes, valves or malfunctioning clocks.
3. In late winter of each year, Contractor shall check all systems for proper operation. Lateral lines shall be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads are to be

adjusted as necessary for unimpeded coverage. The irrigation systems shall be adjusted throughout the year to provide proper coverage. Any damage to plant and turf material due to improper coverage shall be made good without charge.

4. Set and program automatic controllers for seasonal water requirements.
5. Contractor shall perform a master water audit on all landscape areas and develop a water budget for each controller. The report shall be submitted to the City's Representative for approval within three (3) months of notice to proceed. The format shall be in cubic feet for each month of the year. The City, while desiring that quality is maintained at the highest possible standards, also recognizes that water consumption should be held to the lowest reasonable level consistent with the health of the plant material. Irrigation levels should be consistent with the climatic region in the Convention Center project areas, the plant material and the irrigation equipment.
6. Contractor shall be required to regularly report on compliance.
7. Contractor shall regularly inspect all Netafin drip irrigation to ensure no clogs are apparent and tubes are properly spaced for thorough coverage.

M. Hardscape Maintenance

1. Sidewalk and Patio Cleaning – Contractor shall remove clippings and other refuse from sidewalk and pedestrian areas throughout the Convention Center Complex (i.e. includes all concrete and granite walkways, exposed aggregate patio behind hotel and cobblestone surfaces around all fountains) using approved mechanical methods. Removal of refuse from tree wells is included.

Contractor must coordinate the work in this section with the site's sweeping and custodial contractors' operations to avoid any conflicts. Sidewalk and patio cleaning will be performed as needed on a daily basis. The City's Representative reserves the right to add areas, delete areas, adjust frequencies and adjust schedules.

Mechanical methods used to perform sidewalk cleaning include blowing and vacuuming in conjunction with miscellaneous hand tools such as brooms, rakes, shovels, etc. Blowing is the preferred method however. Contractor is responsible for ensuring that all work is performed in full compliance with city, county, state and federal noise ordinances, permits and environmental clearances. Contractor shall be responsible for minimizing noise or other environmental impacts upon the public resulting from the sidewalk cleaning operation. No blowing will be allowed around the hotel prior to 6:00a.m. Caution should also be exercised to minimize noise from 6:00 a.m. to 8:00 a.m. at the hotel main entrance and hotel

restaurant entrance. Contractor is responsible for development of alternative cleaning methods and schedules where noise or other environmental impacts upon the public are determined by the City's Representative to be unacceptable. Alternate methods could include utilizing vacuum type equipment or hand methods. No adjustment to unit price for this work shall be permitted if alternative methods are permitted or required.

2. Equipment – Equipment not suitable to produce the quality of work specified herein, as determined by the City's Representative, shall not be permitted to operate on the contractual work. All equipment shall be subject to the City's Representative's approval prior to use.

Equipment needed to perform this work may include environmentally acceptable backpack blowers, hand tools (i.e. brooms, scoops, shovels, hoses, etc.) and hand power vacuums.

Contractor shall utilize the quietest equipment that is reasonably commercially available. Contractor shall be responsible for keeping informed of technological advances in sidewalk cleaning equipment and for utilizing the latest equipment to mitigate noise.

Contractor shall properly maintain back-up equipment at all times for the contractual work. The back-up equipment shall be of the same condition and appearance as specified above for the regularly used equipment. The cost to maintain the specified equipment shall be the sole responsibility of Contractor.

3. Schedule of Cleaning – All scheduled sidewalk cleaning shall be performed between the hours of 8:00 a.m. to 8:00 p.m., unless directed otherwise by the City's Representative. Scheduling of this activity shall be adjusted such that work is performed as required, which may include each and every day of the week including Saturdays, Sundays and holidays, and as acceptable to the City's Representative. Sidewalk cleaning shall be performed year-round.

N. Other Maintenance Requirements

1. Keep pavement joints weed free by either spraying or removing by hand.
2. Do not blow debris into City streets. Material maybe blown into the street gutter but must be immediately swept or vacuumed up.
3. Apply snail bait to all planters as necessary to achieve control.
4. Contractor shall carry out operations with due regard for public safety. The City's Representative shall direct Contractor to rectify matters

affecting public safety as required, and directions of this nature are to be treated with the highest priority.

5. Contractor is responsible for maintaining all applicable traffic sign visibility standards with regard to groundcover, shrubs or trees.
6. Contractor shall remove foliage as necessary to provide for these standards.
7. Contractor shall remove all debris created during field operations progressively over the work day. Under no circumstances shall Contractor leave any debris overnight.
8. Contractor is responsible for the removal of storm or weather related debris.

O. Tasks Not Included

1. Repairs or replacement of losses and damages beyond Contractor's control, except with City's approval and agreement to purchase.
2. New planting and other special services, except with City's approval and agreement to pay, unless required due to Contractor's negligence, in which case Contractor shall be responsible for such new planting and other special services.

P. Supplemental Work

In addition to the preceding tasks, the City's Representative may authorize other work to be performed after obtaining a cost estimate from Contractor. All work over \$200.00 must be approved in writing by the City's Representative before job commences. An example of supplemental work follows:

1. Renovation – Removal of old sod, soil preparation and installation of new sod.
2. Irrigation Installation –Valves, quick couplers, sprinkler heads and complete installations.
3. Plant Material Installation – 24" box trees, 15 gallon trees, 1 and 5 gallon shrubs and ground cover

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRIGHTVIEW LANDSCAPE SERVICE, INC.
FOR 2017-2022 LANDSCAPING SERVICES AT THE SANTA CLARA CONVENTION
CENTER COMPLEX**

EXHIBIT B

FEE SCHEDULE

In no event shall the amount billed to City by the Contractor for services under this Agreement shall not exceed \$190,054 in FY 2017-2018; \$190,054 in FY 2018-2019; \$197,866 in FY 2019-2020, which include a 10% contingency or \$52,543 for repairs over the initial term. The City Manager has the option to extend this Agreement for up to two (2), one (1) year extended terms, which shall not exceed \$197,866 in FY 2020-2021, and \$203,961 in FY 2021-2022, if approved, for a total of not-to-exceed amount of \$979,801, which includes a 10% contingency or \$89,072, for repairs over the 5 years of the agreement, subject to annual budget appropriations.

1. Rates and Fees – Basic Service

Superintendent	\$65 per hour
Foreman	\$50 per hour
Groundsman Level 1	\$45 per hour
Groundsman Level 2	\$45 per hour

(Turf Maintenance, Annual Color, Shrub Maintenance & Tree Care-Excluding Palms)

Year	Term	Yearly	Yearly with contingency
1	July 1, 2017 - June 30, 2018	\$172,776	\$190,054
2	July 1, 2018 - June 30, 2019	\$172,776	\$190,054
3	July 1, 2019 – June 30, 2020	\$179,879	\$197,866
4	July 1, 2020 – June 30, 2021	\$179,879	\$197,866
5	July 1, 2021 – June 30, 2022	\$185,419	\$203,961

2. Mark Up Rate

(Supplemental rental, materials, and approved Subcontractor services)

- i. Mark up rate for invoiced purchase materials: 15% over cost
- ii. Mark up rate for invoiced equipment rentals: 15% over cost

- iii. Mark up rate for full coordination, supervision, and payment of approved subcontractor work: 10%
- iv. Mark up rate for limited involvement and coordination, and payment of approved subcontractor work: 5%

3. Pricing

Supplemental Work:

New Irrigation Installation (inclusive of all labor and equipment to install).
Irrigation equipment cost plus markup separate).

- a. One (1") Inch diameter vales of less \$275 per each
- b. Quick coupler \$235 each
- c. Irrigation head 6" "pop up" \$ 42 per each

4. Turf Renovation (inclusive of removal of old sod, soil preparation, and
Installation of new sod):

- a. \$1.80 per square foot

5. Plant Material Installation (inclusive of all labor, materials, and equipment to
install plant material. Plant material cost plus mark- up separate).

- b. One (1) gallon shrub or ground cover \$15-20 per each
- c. Five (5) gallon shrub or tree \$34-50 per each
- d. Fifteen (15) gallon tree \$ 175-200 per each
- e. Twenty-four (24") inch box tree \$ 375-425 per each
- f. Thirty-six (36") inch box tree \$ 1250-1500 per each
- g. Forty-eight (48") inch diameter planter annual color replanting – Market
value based on type and caliber

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EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance

as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with

these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara Building Maintenance

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

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

S:\Attorney\INSURANCE\CITY\EXHIBIT C-02 Contract over \$50,000 limited exposure.doc

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EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

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BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

BRIGHTVIEW LANDSCAPE SERVICES, INC.

FOR 2017-2022 AT THE SANTA CLARA CONVENTION CENTER COMPLEX

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Brightview Landscape Services, Inc.

a California corporation

By: Mike Carter
Signature of Authorized Person or Representative

Name: MIKE CARTER

Title: VICE PRESIDENT GENERAL MANAGER

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

California Compliant
Notary Certificate
Attached

California General All-Purpose ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Santa Clara

On May 31, 2017 before me, Sheila Meinecke, Notary Public,

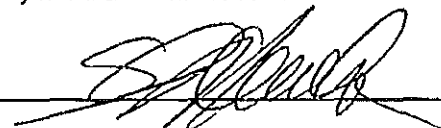
Personally appeared Mike Carter

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

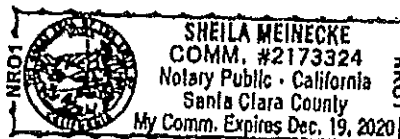


(NOTARY SEAL)

Sheila Meinecke

My Commission expires December 19, 2020

Commission #2173324



ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO

THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type

Exhibit E - Affidavit of

Number of Pages

One

Date of Document

5/31/17

Compliance with
external standards

Signer(s) Other Than Named Above

NONE