

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
KIMLEY-HORN AND ASSOCIATES, INC.
FOR THE
BOWERS AVENUE TRAFFIC SIGNAL INTERCONNECT
AND COORDINATION PROJECT**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between Kimley-Horn and Associates, Inc., a North Carolina corporation, with its principal place of business located at 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 ("Consultant"), 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 Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Consultant shall furnish all technical and design 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.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on **December 31, 2020**.

3. CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED DESIGN PROFESSIONAL.

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

4. QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP.

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

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. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Consultant'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 Consultant constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

6. WARRANTY.

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

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

7. PERFORMANCE OF SERVICES.

Consultant shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Consultant 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 Consultant is for the acts and omissions of persons directly employed by it. Consultant will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

8. 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.

9. RESPONSIBILITY OF CONSULTANT.

Consultant 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 Consultant shall be and remain liable to City in accordance with applicable law for all damages to City caused by Consultant's 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 Consultant shall not in any respect absolve Consultant from the responsibility Consultant 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.

10. COMPENSATION AND PAYMENT.

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

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

11. PROGRESS SCHEDULE.

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

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, Consultant shall discontinue further services as of the effective date of termination, and City shall pay Consultant for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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

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

16. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of City or incur any obligation in the name of City. Consultant 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 Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not,

without the prior written consent of City, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

18. USE OF CITY NAME OR EMBLEM.

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

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 Consultant may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT.

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

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

21. CORRECTION OF SERVICES.

Consultant 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 Consultant.

22. FAIR EMPLOYMENT.

Consultant 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, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subcontractors, or agents in the performance, or non-performance, of services under this Agreement.

24. INSURANCE REQUIREMENTS.

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

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

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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: Craig Mobeck, Director of Public Works
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 985-7936

And to Consultant addressed as follows:

Kimley-Horn and Associates, Inc.
Attention: Kevin Aguigui
1300 Clay Street, Suite 325
Oakland, CA 94612
or by facsimile at 1-(714) 938-0488

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 Consultant 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.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall comply with the City's Ethical Standards, a copy of which is set forth in Exhibit D, attached hereto and incorporated into this Agreement.

34. AFFORDABLE CARE ACT OBLIGATIONS

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

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

36. PREVAILING WAGES

- A. 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, section 16000 et seq. Contractor shall register with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5.
- B. Requirements in Subcontracts. Prior to executing this Agreement, Contractor shall ensure that all of its subcontractors are registered with DIR, and Contractor shall include prevailing wage requirements in all subcontracts.

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:

Dated: _____

BRIAN DOYLE
City Attorney

ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

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

“CITY”

KIMLEY-HORN AND ASSOCIATES, INC.
a North Carolina corporation

Dated: _____

By: _____

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

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONSULTANT”

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EXHIBIT A

SCOPE OF SERVICES

THE FOLLOWING SCOPE OF SERVICES IS TO BE PROVIDED TO THE CITY BY CONSULTANT UNDER THIS AGREEMENT:

I. GENERAL

The City desires to engage a professional Consultant for the services described in the below BASIC SERVICES.

The Consultant shall be expected to provide a complete, professional, high-quality services and products; to provide consultation and work with the City staff and others who are involved with the Project; and, to provide the expertise, guidance, advice, assistance in accomplishing the work.

II. BACKGROUND AND PROJECT

B. Background:

As part of City-wide improvements on City's traffic systems and its coordination, the City is in various phases of several Traffic Signal Interconnect and Coordination Projects, and one of the segments is Bowers Avenue from Highway 101 to El Camino Real (Corridor).

The following signalized intersections along the project Corridor include:

1. Bowers Avenue & Highway 101 SB off-ramp (State signal, City maintained);
2. Bowers Avenue & Augustine Drive (City maintained);
3. Bowers Avenue & Scott Boulevard (City maintained);
4. Bowers Avenue & Central Expressway (County maintained);
5. Bowers Avenue & Walsh Avenue/Kifer Road (City maintained);
6. Bowers Avenue & Mead Avenue (City maintained);
7. Bowers Avenue & Chromite Drive (City maintained);
8. Bowers Avenue & Monroe Street (City maintained);
9. Bowers Avenue & Cabrillo Avenue (City maintained);
10. Bowers Avenue & Barkley Avenue (City maintained); and;
11. Bowers Avenue & Warburton Avenue (City-maintained).

C. Project:

Consultant shall provide complete traffic engineering analysis and design services for this Project encompassing the following elements:

- 1) Field visits, topographic surveys and traffic counts;
- 2) Design plans for upgrade and installation of new traffic signal controller cabinets, new service pedestals, and other traffic signal infrastructure such as PTZ cameras, pullboxes, and conduits;
- 3) Design plans of new 288-strand Single-Mode Fiber Optic (SMFO) interconnect for Corridor's signalized intersections on Bowers Avenue;
- 4) Develop, implement, fine-tune signal timings and coordination plans for said Corridor;
- 5) Conversion, integration, and implementation of Corridor's intersections onto City's "NAZTEC ATMS.now" system, or new Traffic Signal Management/Control system;
- 6) Perform "before" and "after" travel time and delay study;
- 7) Develop Project Contract Documents - Plans, Specifications, and Estimates (PS&E) – for bid phase; and,
- 8) Provide Construction and Post-Construction Support services.

III. BASIC SCOPE OF SERVICES

A general description of the services, tasks, and responsibilities required for the Project are as follows:

A. RESPONSIBILITIES OF CITY:

City to provide the following:

- A.1 City's latest AutoCAD Standard Plan template, Standard Specifications, Standard Details, Benchmark, and Design Criteria.
- A.2 Utility block book maps and available record drawings.
- A.3 Available existing traffic signal timing sheets of Project's signalized intersections.
- A.4 Available most recent ADT traffic volume counts.

B. PREAMBLE TO BASIC SERVICES:

- B.1 The Consultant shall provide approved personnel, including sub-consultants, to perform the services described in the paragraphs below:
 - a) Upgrading seven (7) existing Traconex 390 traffic controllers to 2070 2NZ controllers and seven (7) existing traffic signal controller cabinets

to NEMA TS2 – Type 1 and replacement of five (5) existing Type II services with Type III services.

- b) Evaluate the existing interconnect conduit system for reuse with new fiber optic cable.
- c) Preparation of design plans for the installation of new 288-strand Single Mode Fiber Optic (SMFO) cable interconnect for the signalized intersections on Bowers Avenue (Highway 101 to El Camino Real).
- d) Preparation of design plans for the installation of new traffic signal infrastructure (cabinets, controllers, pull boxes, conduits, and PTZ cameras) at each City's nine (9) signalized intersections.
- e) Coordinate with, and prepare documents to obtain approval from the County of Santa Clara for project work in the County right-of-way.
- f) Collecting weekday and weekend turning movement counts at all signalized intersections, as well as collecting 24-hour machine counts.
- g) Update basic signal timing parameters (minimum green, yellow clearance, and flashing –don't-walk times) at the City's four signalized intersections.
- h) Developing, implementing, and fine-tuning traffic signal coordination plans for the signalized intersections on Bowers Avenue, including working with County of Santa Clara on implementing cross-jurisdictional coordination via a Virtual Private Network (VPN) connection and traffic responsive timings.
- i) Conversion, integration and implementation of the new traffic signal controllers and intersection mapping into the City's existing Naztec ATMS.now traffic signal system.
- j) Conducting a topographic survey to obtain survey data to be used as background for the construction plans.
- k) Develop Project plans, specifications, and estimates (PS&E) at 30%, 70%, and 100% submittals for City review. Develop bid-ready Project Contract Documents (Bid Set).
- l) Provide construction support services Provide Construction support services, including attending the pre-construction meeting (if needed), respond to Contractor's submittals, Request for Information (RFI), Request for Substitution (RFS), and assisting in preparing Supplemental Instructions (SI) and Change Order (CO).
- m) Provide Post-Construction services, including assisting City in determining if the Project is ready for the stage of completion as requested by the Contractor, walk-through inspection of the Project site and review Contractor's punch list items, and preparation of Project Record Drawings.

B.2 The Consultant's Basic Services shall consist of services described in Sub-paragraph "III.C. BASIC SERVICES" as outlined below:

C. BASIC SERVICES:

Basic Services shall include all professional services required to perform tasks necessary to complete the Project and are as follows:

TASK 1.0: DATA COLLECTION AND STUDIES

Consultant shall perform the following:

- 1.1 Attend a kick-off meeting with City staff to review the Project's goals, scope, schedule, costs, team coordination, City process, and plans.
- 1.2 Conduct a detailed field review/investigation to gather critical information for the study and design. Such information shall include, but not limited to, existing lane geometry, physical roadway features and roadway conditions such as on-street parking locations, bus stop locations, truck traffic, saturation flow rates for typical movements, travel speeds between intersections and along the Corridor, travel patterns, particularly near interchanges and major cross streets. Gather information on visible utilities, including existing equipment in place such as traffic signal controller cabinets, signal poles, pullboxes, and other traffic signal furniture that are located behind the face-of-curb. Evaluate potential pedestrian pathway accessibility issues such as sidewalk, crosswalks, and curb ramps. Identify and examine the existing underground interconnect conduit system along the project Corridor to determine available space for new fiber optic cable interconnect.
- 1.3 Collect existing utility information from private utility service providers like AT&T and PG&E and incorporate their utility information in the design plans.
- 1.4 Perform topographic survey for the entire project corridor and shall include, but not limited to, Bowers Avenue street prism from back-of-walk to back-of-walk, end of curb returns of side streets at all intersections, surface utilities, such as manholes, valves, vaults, handhole boxes and any other visible utilities within the project area's roadway segment. The topographic survey shall reference the City's monument benchmark(s) and shall be included in the plans.
- 1.5 Collect new traffic data manually for the Project as detailed below. Traffic counts shall **not** be collected on holidays, on school breaks, or periods of scheduled lane or street closures for construction and/or special event activities, or during abnormal weather condition.

- 1.5.1 Weekday Traffic Counts: Traffic counts shall be manually collected on a Tuesday, Wednesday, or Thursday. Turning movement counts shall include vehicular, pedestrian, and bicycle counts, and shall be collected during the weekday AM, Mid-day, and PM peak periods for Corridor's signalized intersections.
- 1.5.2 Weekend Traffic Counts: Traffic counts shall be manually collected on Saturday only. Turning movement counts shall include vehicular, pedestrian, and bicycle counts, and shall be collected during the Saturday peak period, not exceeding three (3) hours for Corridor's signalized intersections on Bowers Avenue. Based on the Saturday counts and the 24-hour hose counts, Consultant shall estimate Sunday peak volumes.
- 1.5.3 Machine Counts: Consultant shall perform 24-hour hose counts for five (5) consecutive days (Wednesday through Sunday) to establish daily and weekly traffic patterns for the Corridor.
- 1.5.4 Before/After Study: Conduct a floating car "before" and "after" travel time study for the entire Corridor. Minimum runs for the study shall be six (6) runs in each direction during the weekday and weekend (Saturday only) peak periods. Consultant shall summarize the results in a technical memorandum to be submitted to the City.

Deliverables:

1. Complete new traffic count data – one (1) PDF copy.
2. Topographic survey – AutoCAD files
3. Evaluation summary of existing interconnect infrastructure (with photo logs) – one (1) PDF copy.
4. Before/After Technical Memorandum – one (1) PDF copy.
5. Kick-off Meeting minutes with action items – one (1) PDF

TASK 2.0: TRAFFIC SIGNAL TIMING AND IMPLEMENTATION

Consultant shall perform the following:

- 2.1. Develop traffic signal coordination plans during the weekday (AM, mid-day, and PM) and weekend peak periods for the Project Corridor. Coordination plans shall include cycle length analyses, lead/lag phasing review, offset and phase split evaluations. Synchro version 10.0 software shall be utilized for the signal timing model.

- 2.2. Submit draft signal timing coordination plans for City's review and comment. Based on comments received on the draft signal timing and traffic responsive plans, Consultant shall revise the proposed timing plans for implementation.
- 2.3. Integrate all signalized intersection of Project Corridor into the City's current "NAZTEC ATMS.now" system, or new Traffic Signal Management/Control system. The integration shall consist of:
 - 2.3.1. Converting existing traffic controller databases into new databases.
 - 2.3.2. Preparing and entering the new controller timings, including base timings and coordinated timings into the ATMS.now system or new Traffic Signal Management/Control system.
 - 2.3.3. Setting up the graphic interface in the ATMS.now system or new Traffic Signal Management/Control system for real-time status of each project signalized intersection (mapping).
 - 2.3.4. Establishing the communication connection between the ATMS.now system or new Traffic Signal Management/Control system and each new controller for both on a bench and when the traffic controllers are installed in the field. Database information shall be entered into the controller in the field and uploaded into the ATMS.now system or new Traffic Signal Management/Control system.
 - 2.3.5. Field fine-tuning of the traffic controller timings, including base and coordination timings once ATMS.now connection has been established.
- 2.4. Cross-street Coordination: During completion of the traffic signal coordination along the Project Corridor, Consultant shall cross-coordinate the Project Corridor with the existing timing on so all corridors run in coordination simultaneously.
- 2.5. County Traffic Responsive Operations: Consultant shall collaborate or coordinate with the County of Santa Clara to evaluate cross-jurisdictional coordination of the County's expressway and Bowers Avenue corridor. Using the existing VPN connection, Consultant shall integrate the traffic systems and traffic responsive operations between agencies' corridors. Consultant shall summarize the results of the traffic analyses, including the coordination of the implementation of the traffic responsive timings between the City and the County for this Project in a technical memorandum to be submitted for City review.

Deliverables:

1. Traffic Signal Coordination Plans (AM, MD, PM and weekends)
2. Traffic Signal Coordination Technical Memorandum – one (1) PDF.
3. Electronic Synchro ver. 10.0 model output

TASK 3.0: DESIGN PHASE PACKAGE

Consultant shall prepare a set of biddable and constructible construction contract documents – plans, specifications, and probable construction cost estimates (PS&E). Plans and specifications shall follow the City's Design Criteria and City standard specifications.

3.1. 30% PS&E Design Package

3.1.1. Prepare 30% plans in AutoCAD format incorporating the topographic survey as background. At a minimum, the 30% plans shall include existing and proposed improvements to be used or impacted by the Project. Plans shall include, but not limited to:

- a. Existing and proposed items to be used or impacted by the Project that includes traffic signal interconnect conduit, monitoring cameras, pull boxes, traffic signal controller cabinets, service cabinets, poles, and loop detectors.
- b. Existing improvements such as curb, gutter, sidewalk, curb ramps, median islands, pork-chop islands at intersections, etc.
- c. Existing traffic striping, pavement markings, and messages.
- d. Proposed civil construction to upgrade existing curb ramps to ADA compliance or installation of new ADA curb ramps, if applicable.
- e. Existing underground utilities such as water lines/laterals, meters/valve boxes, fire hydrants, electric lines/vaults, poles and pull boxes, sanitary sewer, storm drain systems, gas, and communications.

3.1.2. Coordinate with Silicon Valley Power (SVP) regarding service applications for power disconnect/reconnect into new

Type II service cabinets, complete with required applications for City signature and submittal.

3.1.3. Provide preliminary Engineer's Probable Cost Estimate.

Deliverables:

1. 30% complete Plans (D-size, 24"x36") – PDF
2. Preliminary Engineer's Probable Cost Estimate – PDF
3. SVP Service Application package

3.2. 70% PS&E Design Package

Based on the comments on the 30% complete design plans, Consultant shall:

3.2.1. Revise 30% design documents.

3.2.2. Prepare and submit a 70% complete design documents with supporting information, including but not limited to, Plans, Specifications, Engineer's Probable Cost Estimate to City for review and comments. Project Plans shall include the following major design components, but not limited to:

1. Cover Sheet
2. General Notes
3. Interconnect & Coordination Plan Sheets with construction notes
4. Fiber Optic Splice Diagrams
5. Equipment Schedule(s)
6. Detail Sheets

3.2.3. Prepare the Technical Provisions (Division 3) and required input on City's boilerplate Standard Specifications General Provisions (Division 0).

3.2.4. Plan, coordinate and assist City to obtain approval and permit from City's Community Development for the new traffic controller cabinet.

Deliverables:

1. 70% complete Plans (true-scaled plotted to D-size, 24"x36") – PDF
2. 70% complete Specifications – PDF and MS Word file

3. 70% complete Engineer's Probable Cost Estimate
4. Response matrix of comments from City

3.3. 100% Design Package and Final Bid Documents

Based on the comments on the 70% complete PS&E, Consultant shall:

- 3.3.1. Revise 70% design documents.
- 3.3.2. Prepare and submit 100% complete biddable PS&E, Engineer's Probable Cost Estimate, and updated Project Schedule. All outstanding comments from the previous submittal shall be incorporated into the final Bid Documents.
- 3.3.3. Bid Documents: Consultant shall make any necessary revisions to the 100% PS&E to develop the Bid Documents. Bid Documents shall require wet-stamp and signature by Consultant's Responsible Engineer.

Deliverables:

1. Stamped, signed, dated Final Plans for City signatures – original hardcopies in good quality bond, PDF and AutoCAD 2014 or later version plus related xref and plot styles.
2. Stamped, signed, and dated Final Specifications and supporting documents meeting City requirements for bidding purposes – (1) original set and electronic copies in PDF and MS Word formats.
3. 100% Engineer's Probable Cost Estimate – PDF and MS Excel files.

TASK 4.0 CONSTRUCTION PHASE SERVICES

Consultant shall perform the following:

- 4.1. Bid and Award Phase Support:
 - 4.1.1. Provide bid-phase support to provide information and assistance, answering questions from bidders, assist City in outreaching to obtain qualified bidders, and prepare addendum when necessary.
 - 4.1.2. If the Bidding Phase has not commenced within ninety (90) days after the Consultant submits the Construction Documents to the City, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between

the date of submission of the Construction Documents to the City and the date on which proposals are sought.

- 4.1.3. Should the lowest responsive and responsible bid for the construction of the Project exceed the last approved Consultant's estimate by more than 10%, and changes are directed by City for the purpose of reducing the Project cost, Consultant shall make said changes with no increase in fee. If the Project is then re-advertised for bid, Consultant shall provide these same Task 4.1 services at no extra cost.
- 4.1.4. Should City, after receipt of bids, determine that it is not in its best interests to award the construction contract, City may terminate this Agreement in accordance with Provision 12, TERMINATION OF AGREEMENT, page 4 of this Agreement.
- 4.1.5. Within fourteen (14) days of the bid opening date, Consultant shall prepare and submit a conformed set of contract documents (Plans and Specifications) incorporating any and all addenda (if needed).
- 4.1.6. Deliverables:
 1. Written response to bidder's inquiries and clarifications – PDF copy.
 2. Addenda – PDF and (1) original for City printing.
 3. Conformed set of Contract Documents incorporating any and all addenda (if needed) – electronic copies in PDF, MS Word and/or MS Excel; AutoCAD files of plans.

4.2. Construction Phase Support:

- 4.2.1. Consultant's responsibility to provide Basic Services for the Construction Phase under this Agreement shall commence with the "Notice to Proceed" (NTP) of the Contract for Construction and terminates on the date the City Council approves the Certificate of Completion. Consultant shall at all times have access to the work wherever it is in preparation or progress.
- 4.2.2. Consultant shall assist the City and the Project Manager or City Inspector in providing Administration of the Contract for Construction. Duties, responsibilities and limitation of authority of the Consultant shall not be restricted, modified or extended without written agreement of the City and Consultant.

- 4.2.3. Consultant shall attend the Pre-Construction Meeting.
- 4.2.4. The Consultant shall visit the site up to three (3) times as requested by the City for the benefit of the Project during this phase. During these site visits, the Consultant shall attend job progress meetings, pre-submittal meetings, pre-installation meetings, and other meetings as requested by the City. When visiting the site, the Consultant and its sub-consultant shall prepare a written field report noting their observations and specifically documenting action that should be taken by the City regarding such items, such as, but not limited to, contract deficiencies, change orders, and Contractor requests for information.
- 4.2.5. Consultant shall review Contractor's submittals, including Shop Drawings, Product Data, and Samples. The Consultant's action shall be taken with such reasonable promptness so as to cause no delay in the work, while allowing sufficient time in the Consultant's judgment to permit adequate review unless otherwise agreed to. The Consultant will be allowed a maximum of fourteen (14) calendar days for submittals per review. The Consultant's review shall not constitute review of safety precautions, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques, sequences or procedures. The Consultant's review of specific items shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
- 4.2.6. Consultant shall respond to Contractor's Request for Information (RFIs) and Request for Substitution (RFSs). Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Consultant shall be allowed a maximum of seven (7) calendar days to respond to RFIs and RFSs that impact the Project schedule or a maximum of fourteen (14) calendar days to respond to RFIs and RFSs that do not impact the Project schedule.
- 4.2.7. The Consultant shall prepare the Scope of Work, including sketches, for Field Instructions (FIs) issued to the Contractor. Consultant shall be allowed a maximum of seven (7) calendar

days to respond to FIs that impact the Project schedule or a maximum of fourteen (14) calendar days to respond to FIs that do not impact the Project schedule.

4.2.8. When requested by the City, Consultant shall review proposed Change Order (CO) from Contractor, including its pricing, and provide written responses for the City's review and finalizing said CO.

4.2.9. Deliverables: in electronic and hard copy format

1. Responses to RFIs, RFSs, and FIs.
2. COs recommendations
3. Field Reports

4.3. Post Construction Phase Support:

4.3.1. Upon request by Contractor, in accordance with contract Specifications, for Substantial Completion and later Final Completion, Consultant shall assist City in determining if the Project is ready for the stage of completion requested by the Contractor. Consultant shall provide City with a written recommendation.

4.3.2. Consultant shall perform a walk-through of the Project site, review Contractor Punch List, and provide written response with status and action of items on the Punch List. Consultant shall attend final walk-through of the Project site with the City, verify Punch List completion, and provide written response with recommendation regarding Project acceptance and close-out.

4.3.3. Consultant shall, at completion of the Project, provide City with one set of reproducible Record Drawings (RDs) bond paper that reflect the changes to the work during construction based upon marked up prints, drawings and other data furnished by the Contractor and City. Consultant shall use the original Title sheet for the RDs set. If Consultant adds additional sheets to the Plans, these shall be properly numbered, properly referenced on other affected drawings and included in the drawing index. Consultant shall also provide one complete set of RDs (24" x 36") in electronic format (PDFs) and complete AutoCAD files on a CD/DVD. Consultant may, at its own expense, prepare and retain a copy of each drawing for its permanent file.

- 4.3.4. During all one-year periods of guarantee of the Work provided for in the Contracts with the Contractor, Consultant shall act as City's advisor for the purpose of securing correction of any and all defects and deficiencies covered by guarantees. Consultant shall assist City by providing interpretations of the Plans and Specifications when requested.

Deliverables:

1. Record Drawings – one (1) complete set of D-size reproducible bond, PDF copy, and complete AutoCAD files on CD/DVD or USB flashdrive.

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EXHIBIT B

SCHEDULE OF FEES

I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A, Scope of Services**, shall not exceed \$96,590.00, plus any authorized Reimbursable Expenses. Reimbursable Expenses shall not exceed \$210.00. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$9,700.00. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$106,500.00.

Billing shall be on a monthly basis based on the services performed for each task. Consultant shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the Task invoiced, percent completed of the Task, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period.

II. BASIC SERVICES

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A, Scope of Services**, shall be in proportion to services rendered and on a time and materials basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. Consultant may reallocate remaining budget from completed Task to other Tasks.

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The amount of each Task and the total amount of all the Tasks are as itemized below:

Description	Cost
Task 1.0: Data Collection and Studies	\$ 39,310.00
Task 2.0: Traffic Signal Timing and Implementation	\$ 13,035.00
Task 3.0: Design Phase Package	\$ 38,235.00
Task 4.0: Construction Phase Support	\$ 6,010.00
TOTAL BASIC SERVICES	\$ 96,590.00

In no event shall the billed amount to the City by Consultant for Basic Services under this Agreement exceed ninety-six thousand five hundred ninety (**\$96,590.00**) dollars, subject to budget appropriations.

III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not exceed **\$210.00** without prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance)
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Reproduction Cost for Plans and Reports as specified in Section III, BASIC SCOPE OF SERVICES, of Exhibit A.

- Presentation Materials, when requested by City
- Overnight Delivery Services, when requested by City
- Courier Services, when requested by City

All reimbursable costs, other than those listed above, shall be approved in advance by City.

IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the term set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed **\$9,700.00**, subject to budget appropriations.

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V. RATE SCHEDULE

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual workhours directly chargeable to the Project. Current rates by classification are listed below:

<u>Firm/Classification</u>	<u>Rate per hour</u>
Kimley-Horn and Associates, Inc. – Design Consultant, Project Management	
Kevin Aguigui, Project Manager	\$240
Brian Sowers, Signal Timing Designer	\$220
Kwasi Akwabi, Technical Reviewer/QC	\$185
Monique Fuhrman, Lead Designer	\$155
Tanya Welch, Assistant Engineer	\$125
Administration	\$95
PLS Surveys, Inc. – Surveyors	
Land Survey Manager	\$150
Two Person Field Crew	\$210
Right-of-Way Determination	\$120
Analyst/CAD Drafter	\$90
National Data & Surveying Services – Traffic Data Collection	
Description	
2-Hrs. Manual Vehicle Turning Movement, Bicycles & Pedestrian Counts	\$265
2-Hrs. AM & 2-Hrs. PM Manual Vehicle Turning Movement, Bicycles, & Pedestrian Counts	\$490
2-Hrs. AM, 2-Hrs. Mid-Day & 2-Hrs. PM Manual Vehicle Turning Movement, Bicycles & Pedestrian Counts	\$720
3-Hrs. Weekend Manual Vehicle Turning Movement, Bicycles, & Pedestrian Counts	\$430
24-Hrs. ADT Machine Counts – One Day (per location)	\$85
24-Hrs. ADT Machine Counts – Three Days (per location)	\$155
24-Hrs. ADT Machine Counts – Five Days (per location)	\$225
24-Hrs. ADT Machine Counts – Seven Days (per location)	\$260

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EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of

Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every 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. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara – Public Works Department

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

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

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EXHIBIT D

**ETHICAL STANDARDS FOR CONSULTANTS 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 Consultant¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² 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 consultant or subcontractor; and/or,

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.

- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 - 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant'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 Consultant 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 Consultant 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, Consultant'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 Consultant 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 Consultant.

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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EXHIBIT E

MILESTONE SCHEDULE

Consultant shall perform its services to conform to the schedule set forth herein, except as mutually agreed by the Parties. In the event the schedule of work is so modified, Consultant shall prepare a revised schedule to be submitted herein upon approval by the City.

