

**AGREEMENT FOR
MATERIALS TESTING AND SPECIAL INSPECTION SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
NINYO AND MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES
CONSULTANTS**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and **NINYO AND MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS**, a California corporation (Consultant). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Consultant agrees to provide professional consulting services in the area of Materials Testing and Special Inspection Services ("Services") on an on-call basis;
- B. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Consultant shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Rates and Charges

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Attachment 1 – Materials Testing Services

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

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 June 1, 2019 and terminate on June 1, 2022.

3. SCOPE OF SERVICES & SERVICE ORDERS

Consultant shall provide professional consulting services described in Exhibit A to the City on an as-needed basis pursuant to individual service orders ("Service Orders") issued in accordance with the Terms and Conditions of this Agreement.

1. City will initiate each Service Order by specifying and describing the services and deliverables (collectively "Work") requested, which the Consultant must respond to by providing proposals and estimates of the time limit(s) within which the Consultant must complete the Work, and the compensation for the Work. Exhibit A further describes the procedure for Service Orders.
2. The Consultant shall not perform any Work pursuant to a Service Order, and therefore will not be entitled to any compensation for any Work, until the City has approved and executed the service order for such Work ("Approved Service Order").
3. Each Approved Service Order incorporates the Terms and Conditions of this Agreement.
4. The City has no obligation to approve, issue, or execute any Service Orders under this Agreement, nor does it have any obligation to pay Consultant for any Work absent an Approved Service Order. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation defined in Section 6 below.

To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara

4. WARRANTY

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

5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

There is a maximum total compensation for this Agreement and a separate maximum compensation for each Approved Service Order.

- A. Maximum Total Compensation – Agreement: The maximum total, aggregate compensation the City will pay the Consultant for all professional fees for all Approved Service Orders issued under this Agreement shall not exceed Ninety Thousand Dollars (\$90,000) ("Maximum Total Compensation"). All work performed or materials provided in excess of the Total Maximum Compensation shall be at Consultant's expense. Consultant shall not be entitled to any payment above the Total Maximum Compensation under any circumstance.
- B. Maximum Compensation – Service Order: Each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall fully complete all Work required by the Approved Service Order for no more than that Maximum Service Order Compensation. Exhibit B sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Service Order.

7. TERMINATION

Termination for Convenience. City shall have the right to terminate this Agreement or any Service Order under this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Consultant.

Termination for Default. If Consultant fails to perform any of its material obligations under this Agreement or any Service Order under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Consultant.

Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Consultant will deliver to City all City information or material that Consultant has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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 to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City,

be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Consultant shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

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

14. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Consultant pursuant to this Agreement – including claims of any kind by Consultant's employees or persons contracting with Consultant to perform any portion of the

Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

Consultant's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Consultant, against City (either alone, or jointly with Consultant), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

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

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

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

City of Santa Clara
Attention: Department of Public Works
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at ctemple@santaclaraca.gov, and
manager@santaclaraca.gov

And to Consultant addressed as follows:

Ninyo & Moore Geotechnical and Environmental Sciences Consultants
Terence Wang, Principal Engineer
2149 O'Toole Avenue, Suite 30
San Jose, CA 95131
and by e-mail at twang@ninyoandmoore.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Consultant's attention is called to California Health and Safety Code section 26250, and regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST & ECONOMIC DISCLOSURE

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. Furthermore, due to the nature of the Services to be performed hereunder, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the Agreement in accordance with California Government Code section 87200.

20. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression,

gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager

"CITY"

**NINYO AND MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES
CONSULTANTS**

a California corporation

Dated: May 3, 2019

By (Signature):



Name: Terence K. Wang

Title: Principal Engineer

Principal Place of Business Address: 2149 O'Toole Avenue, Suite 30, San Jose, CA 95131

Email Address: twang@ninyoandmoore.com

Telephone: (408) 435-9000

Fax: (408) 435-9006

"CONSULTANT"

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall perform and furnish the following work and services:

1. SERVICE AREAS – SCOPE OF SERVICES

1.1 Materials Testing

- 1.1.1 Obtain samples of materials at construction sites or material supplier locations and transport materials to testing laboratory.
- 1.1.2 Sample materials in accordance with applicable standards.
- 1.1.3 Perform laboratory analysis and testing of materials (in accordance with applicable standards) to determine material characteristics.
- 1.1.4 Develop reports summarizing the results of laboratory analysis and testing.
- 1.1.5 Report on analysis of compliance of materials with relevant plans and specifications and conclude if material is compliant or non-compliant.
- 1.1.6 Review construction material submittals for conformance with plans and specifications.
- 1.1.7 Observe and verify materials at construction sites conform to plans and specifications.
- 1.1.8 Perform testing of in-place materials.
- 1.1.9 Conduct material plant inspections and review plant quality control procedures.
- 1.1.10 Perform material testing services as requested by the City. Work may include, but is not necessarily limited to, the tests as indicated in Attachment 1.

1.2 Special Inspections

- 1.2.1 Provide special inspections and testing per Chapter 17 of the 2016 California Building Code (CBC) or such other code version applicable to the project.
- 1.2.2 Observe the construction work for conformance with the approved design drawings and specifications, and applicable workmanship provisions of the CBC.
- 1.2.3 Perform special inspections on a continuous basis meaning that the special inspector shall be on site in the general area at all times observing the work requiring special inspection. Periodic

inspections may be approved by the City Building Division (Building Division) based on a separate written plan reviewed and approved by the City and/or Engineer-of-Record.

- 1.2.4 Coordinate and/or perform required testing. Ensure only approved testing agencies sample, transport and test materials.
- 1.2.5 Bring non-conforming items to the immediate attention of the contractor and note in daily report. If any such item is not resolved in a timely manner or is about to be incorporated into the work, notify the Building Division immediately by telephone or in person, the City's designated project inspector, and the Engineer or Architect.
- 1.2.6 Complete and sign the Special Inspection Record (yellow card) at the jobsite for each day's inspection and provide a daily handwritten report in a format acceptable to the Building Division. The report shall remain at the jobsite with the contractor for review by the Building Division's Inspector. Daily reports shall contain information as per 2.2.7 below.
- 1.2.7 Furnish weekly reports of inspections directly to the Building Division, Engineer and Architect of Record, City's designated project inspector, and others as designated. The weekly reports are to include the following:
 - 1.2.7.1 Description of inspections made with locations.
 - 1.2.7.2 List of all non-conforming items.
 - 1.2.7.3 Indication of how non-conforming items were resolved or indicate unresolved items as applicable.
 - 1.2.7.4 Itemize changes authorized by Architect, Engineer and Building Division if not included in non-conformance items.
- 1.2.8 Ensure that an adequate number of pre-qualified inspection personnel are on the project, based on the intensity of activities, quality of work being performed and the various operations occurring.
- 1.2.9 Submit a final signed report to the City project representative and/or Building Division stating that all items requiring special inspection were fulfilled and reported and, to the best of the inspector's knowledge, in conformance with the approved design drawings, specifications, approved change orders and the applicable workmanship provisions of the CBC. Items not in conformance, unresolved items or any discrepancies in inspection coverage (i.e.: missed inspections, period inspections when continuous was required, etc.) shall be specifically itemized in this

report. The report shall be stamped and signed by a licensed Civil Engineer.

- 1.2.10 Perform specific special inspections as identified by the designer-of-record or as required by the City.

2. PROCEDURE FOR SERVICE ORDERS

- 2.1 City will provide a description of the desired Work to be performed by Consultant.
- 2.2 Consultant will prepare a written service order proposal in accordance with the City's request. Consultant shall consider and incorporate into the proposal any City input regarding City staffing availability to participate in the delivery of the Work. The proposal must include, but is not limited to, the following:
 - 2.2.1 The proposed scope of Work;
 - 2.2.2 The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
 - 2.2.3 A time schedule and total cost for providing the Work; and
 - 2.2.4 Any other information requested by the City.
- 2.3 City will review and provide comments to Consultant. Or, City will accept Consultant's written proposal without comments.
- 2.4 If the City provides comments on Consultant's proposal, Consultant shall revise the proposal to address City's comments.
- 2.5 Once the Consultant and the City agree on the terms of the proposed Service Order, the City will prepare the final ("Approved Service Order").
- 2.6 Consultant will be authorized to proceed with the Work under the Approved Service Order upon notification by the City that the Approved Service Order has been executed by the City or at some later date as designated by the City in writing.

ATTACHMENT 1
MATERIALS TESTING SERVICES
LISTING

SOILS

- Moisture Content
- Unit Weight
- Maximum Density/Optimum Moisture
- Relative Compaction

Aggregates

- Sieve Analysis
- Unit Weight and Voids
- Soundness
- Abrasion Resistance
- Sand Equivalent
- Durability
- Cleanness

Asphalt Concrete

- Density
- Relative Compaction
- Stability and Flow
- Stabilometer
- Core Thickness
- Asphalt Extraction
- Asphalt Binder Content

Portland Cement Concrete

- Slump
- Unit Weight and Voids
- Air Content
- Compressive Strength (cylinders)
- Compressive Strength (cores)
- Flexural Strength (beams)

EXHIBIT B SCHEDULE OF RATES AND CHARGES

This Exhibit B sets forth Consultant's rates that apply to any services provided in an Approved Service Order. The rates shall remain fixed for the term of the Agreement.

The attached Schedule of Fees contains the Consultant rates to be used and is hereby incorporated into this Exhibit B.

Invoicing:

1. If an Approved Service Order requires invoicing to be generated in a timesheet format, Consultant shall provide information for each Consultant staff person including name and position title (i.e. relevant role with respect to work performed under the service order). Position hourly rates shall comply with the rates included in the table above.

In addition, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours) for each employee, the name of the employee and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Work shall then be determined by adding the value for the Work rendered by each employee for that particular month.

2. If an Approved Service Order requires invoicing to be generated in a progress or percent complete format, Consultant shall provide information describing in detail the services performed and how those services correlate to the percent complete. The detailed descriptions shall be for each category of services as identified in the Approved Service Order.
3. Within thirty (30) days of receipt of an itemized written invoice from the Consultant, City shall pay Consultant the amount billed for Work performed under the Approved Service Order during that billing period.

Schedule of Fees

Hourly Charges for Personnel

Principal Engineer/Geologist/Environmental Scientist	\$ 155
Senior Engineer/Geologist/Environmental Scientist	\$ 150
Senior Project Engineer/Geologist/Environmental Scientist	\$ 140
Project Engineer/Geologist/Environmental Scientist	\$ 133
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 120
Staff Engineer/Geologist/Environmental Scientist	\$ 110
GIS Analyst	\$ 105
Field Operations Manager	\$ 105
Supervisory Technician	\$ 100
Nondestructive Examination Technician, UT, MT, LP	\$ 95
ACI Concrete Technician	\$ 85
Concrete/Asphalt Batch Plant Inspector	\$ 85
Special Inspector (Concrete, Masonry, Steel, Welding, and Fireproofing)	\$ 85
Senior Field/Laboratory Technician	\$ 85
Field/Laboratory Technician	\$ 85
Technical Illustrator/CAD Operator	\$ 80
Information Specialist	\$ 80
Data Processing, Technical Editing, or Reproduction	\$ 85
Administrative Cost	8%
Final Affidavit	\$500/ea

Other Charges

Concrete Coring Equipment (includes one technician)	\$ 175/hr
PID/FID Usage	\$ 120/day
Anchor load test equipment (includes technician)	\$ 89/hr
Hand Auger Equipment	\$ 55/day
Inclinometer Usage	\$ 32/hr
Vapor Emission Kits	\$ 30/kit
Level D Personal Protective Equipment (per person per day)	\$ 25/p/d
Rebar Locator (Pachometer)	\$ 22/hr
Nuclear Density Gauge Usage	\$ 12/hr
Field Vehicle Usage	\$ 10/hr
Direct Project Expenses	Cost plus 15 %
Laboratory testing, geophysical equipment, and other special equipment provided upon request.	

Notes

For field and laboratory technicians and special inspectors, regular hourly rates are charged during normal weekday construction hours. Overtime rates at 1.5 times the regular rates will be charged for work performed outside normal construction hours and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 24 hours. Field Technician rates are based on a 4-hour minimum. Special inspection rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours. Field personnel are charged portal to portal.

We understand that the Schedule of Fees will remain fixed for the three-year duration of the contract per the contract (Exhibit B).

Schedule of Fees for Laboratory Testing

Laboratory Test, Test Designation, and Price Per Test

SOILS

Atterberg Limits, D 4318, CT 204	\$ 180
California Bearing Ratio (CBR), D 1883	\$ 440
Chloride and Sulfate Content, CT 417 & CT 422	\$ 135
Consolidation, D 2435, CT 219	\$ 275
Consolidation - Time Rate, D 2435, CT 219	\$ 70
Direct Shear - Remolded, D 3080	\$ 290
Direct Shear - Undisturbed, D 3080	\$ 250
Durability Index, CT 229	\$ 150
Expansion Index, D 4829, UBC 18-2	\$ 240
Expansion Potential (Method A), D 4546	\$ 180
Expansive Pressure (Method C), D 4546	\$ 180
Geofabric Tensile and Elongation Test, D 4632	\$ 165
Hydraulic Conductivity, D 5084	\$ 300
Hydrometer Analysis, D 422, CT 203	\$ 190
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 110
Moisture Only, D 2216, CT 226	\$ 30
Moisture and Density, D 2937	\$ 50
Permeability, CH, D 2434, CT 220	\$ 290
pH and Resistivity, CT 643	\$ 160
Proctor Density D 1557, D 698, CT 216, & AASHTO T-180 (Rock corrections add \$80)	\$ 260
R-value, D 2844, CT 301	\$ 425
Sand Equivalent, D 2419, CT 217	\$ 110
Sieve Analysis, D 422, CT 202	\$ 110
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 90
Specific Gravity, D 854	\$ 200
Triaxial Shear, C.D, D 4767, T 297	\$ 390
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt.	\$ 330
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt.	\$ 190
Triaxial Shear, U.U., D 2850	\$ 140
Unconfined Compression, D 2166, T 208	\$ 100
Wax Density, D 1188	\$ 90

ROOFING

Built-up Roofing, cut-out samples, D 2829	\$ 165
Roofing Materials Analysis, D 2829	\$ 500
Roofing Tile Absorption, (set of 5), UBC 15-5	\$ 190
Roofing Tile Strength Test, (set of 5), UBC 15-5	\$ 190

MASONRY

Brick Absorption, 24-hour submersion, C 67	\$ 45
Brick Absorption, 5-hour boiling, C 67	\$ 55
Brick Absorption, 7-day, C 67	\$ 60
Brick Compression Test, C 67	\$ 45
Brick Efflorescence, C 67	\$ 45
Brick Modulus of Rupture, C 67	\$ 40
Brick Moisture as received, C 67	\$ 35
Brick Saturation Coefficient, C 67	\$ 50
Concrete Block Compression Test, 8x8x16, C 140	\$ 60
Concrete Block Conformance Package, C 90	\$ 1100
Concrete Block Linear Shrinkage, C 426	\$ 120
Concrete Block Unit Weight and Absorption, C 140	\$ 55
Cores, Compression or Shear Bond, CA Code	\$ 85
Masonry Grout, 3x3x6 prism compression, UBC 21-18	\$ 30
Masonry Mortar, 2x4 cylinder compression, UBC 21-16	\$ 30
Masonry Prism, half size, compression, UBC 21-17	\$ 180

CONCRETE

Cement Analysis Chemical and Physical, C 109	\$ 1,650
Compression Tests, 6x12 Cylinder, C 39	\$ 30
Concrete Mix Design Review, Job Spec	\$ 140
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 750
Concrete Cores, Compression (excludes sampling), C 42	\$ 55
Drying Shrinkage, C 157	\$ 250
Flexural Test, C 78	\$ 100
Flexural Test, C 293	\$ 55
Flexural Test, CT 523	\$ 100
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 250
Jobsite Testing Laboratory	Quote
Lightweight Concrete Fill, Compression, C 495	\$ 55
Petrographic Analysis, C 856	\$ 1,100
Splitting Tensile Strength, C 496	\$ 80

REINFORCING AND STRUCTURAL STEEL

Fireproofing Density Test, UBC 7-6	\$ 70
Hardness Test, Rockwell, A-370	\$ 80
High Strength Bolt, Nut & Washer Conformance, set, A-32	\$ 205
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 95
Pre-Stress Strand (7 wire), A 416	\$ 140
Chemical Analysis, A-36, A-615	\$ 120
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	
No. 8 Rebar	\$ 55
No. 11 Rebar	\$ 75
No. 18 Rebar	\$ 150
Structural Steel Tensile Test: Up to 200,000 lbs. (machining extra), A 370	\$ 105
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80
Tensile Test for Fiberwrap (ASTM D-3039)	\$ 675

ASPHALT CONCRETE

Asphalt Mix Design, Caltrans	\$ 2,200
Asphalt Mix Design Review, Job Spec	\$ 150
Extraction, % Asphalt, including Gradation, D 2172, CT 310	\$ 215
Film Stripping, CT 302	\$ 100
Hveem Stability and Unit Weight CTM or ASTM, CT 366	\$ 195
Marshall Stability, Flow and Unit Weight, T-245	\$ 215
Maximum Theoretical Unit Weight, D 2041	\$ 120
Swell, CT 305	\$ 165
Unit Weight sample or core, D 2726, CT 308	\$ 90

AGGREGATES

Absorption, Coarse, C 127	\$ 35
Absorption, Fine, C 128	\$ 35
Clay Lumps and Friable Particles, C 142	\$ 100
Cleaness Value, CT 227	\$ 160
Crushed Particles, CT 205	\$ 140
Durability, Coarse, CT 229	\$ 165
Durability, Fine, CT 229	\$ 165
Los Angeles Abrasion, C 131 or C 535	\$ 180
Mortar making properties of fine aggregate, C 87	\$ 275
Organic Impurities, C 40	\$ 55
Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 390
Sand Equivalent, CT 217	\$ 90
Sieve Analysis, Coarse Aggregate, C 136	\$ 125
Sieve Analysis, Fine Aggregate (including wash), C 136	\$ 125
Sodium Sulfate Soundness (per size fraction), C 88	\$ 160
Specific Gravity, Coarse, C 127	\$ 75
Specific Gravity, Fine, C 128	\$ 110

Special preparation of standard test specimens will be charged at the technician's hourly rate.
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

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, 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 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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Consultant and/or its subconsultants involved in such activities shall provide coverage with a limit of 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 Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any subconsultant under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

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

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

F. EVIDENCE OF COVERAGE

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

G. 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 [*insert City department name here]

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

H. QUALIFYING INSURERS

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

EXHIBIT D
LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

A. Prevailing Wage Requirements

1. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which shall be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, consultants are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Consultants and subconsultants are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Consultant agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subconsultants) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation

requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Consultant and all subconsultants shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No consultant or subconsultant may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No consultant or subconsultant may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Consultants MUST be a registered "public works consultant" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All consultants/subconsultants and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a "public works contractor". Those who fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any consultant or subconsultants not be a registered public works contractor and perform work on the project, Consultant agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney's fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at

any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon consultants and subconsultants for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.