

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

PREAMBLE

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

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Appendix A1 – Examples of Tools, Equipment, and Third-Party Services

Appendix A2 – Guidelines for Property Identification

Appendix A3 – Notice of Planned Clean-up and Order to Vacate City Property

Appendix A4 – Notice of Recovered Property

Appendix A5 – Inventory Sample

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

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 November 1, 2019 and terminate on June 30, 2023.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is One Million Dollars (\$1,000,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

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

11. CONFIDENTIALITY OF MATERIAL

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

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

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

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

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

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

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

And to Contractor addressed as follows:

Tucker Construction, Inc.
Attention: Mark Tucker
1725-D Little Orchard Street
San Jose, CA 95125
and by e-mail at tucker@tuckercon.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

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

"CITY"

TUCKER CONSTRUCTION, INC.
a California corporation

Dated: 11/6/2020
By (Signature): Mark Tucker
Name: Mark Tucker
Title: President, Secretary, and Treasurer
Principal Place of Business Address: 1725-D Little Orchard Street
San Jose, CA 95125
Email Address: tucker@tuckercon.com
Telephone: (408) 287-1424
Fax: (408) 287-1448
"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

1. INTRODUCTION

As directed by City, Contractor shall provide turnkey homeless encampment site cleanups as described herein, with the goal of keeping parks and public space free of encampments in order to protect the environment and provide safe use of public areas.

2. DOCUMENTS

This Exhibit contains the following Appendices:

- 2.1.** Appendix A1 – Examples of Tools, Equipment, and Third-Party Services
- 2.2.** Appendix A2 – Guidelines for Property Identification
- 2.3.** Appendix A3 – Notice of Planned Cleanup and Order to Vacate City Property
- 2.4.** Appendix A4 – Notice of Recovered Property
- 2.5.** Appendix A5 – Inventory Sample

3. CITY RESPONSIBILITIES

3.1. General

- 3.1.1.** City shall determine the location requiring clean up.
- 3.1.2.** The Department of Public Works (DPW) and the Santa Clara Police Department (PD) (collectively the "City") will coordinate with Contractor to determine the appropriate date and time for the anticipated cleanup activity.
- 3.1.3.** City shall issue a work order and provide a minimum one week notice to Contractor.
- 3.1.4.** City will provide a representative to serve as a point of contact to approve and issue work orders, to address any Contractor issues or questions that may arise during the course of a cleanup, and supervise Contractor's activities.

3.2. Initial Outreach

Prior to posting, and if reasonably possible, PD will contact individuals present at the location to:

- 3.2.1.** Advise of community, health, environmental concerns associated with storage and encampments.
- 3.2.2.** Advise of the City's intent to conduct cleanup activities at that location, and explain the process used (provide expected date, if known).
- 3.2.3.** Coordinate with, or provide information related to, agencies or other organizations that may provide supportive services such as medical services, shelter options, or housing assistance.
- 3.2.4.** Encourage individuals present to remove their property and provide free bags for their use.
- 3.2.5.** Document location, date of visit, description of conditions, number of individuals present, information provided, and any other pertinent information.

3.3. During Cleanup

- 3.3.1.** Upon first arrival, PD will conduct a site check to make sure that no individuals remain on site. If individuals are present at the site, PD will verbally inform them of the posted cleanup and give them thirty (30) minutes (or other reasonable period of time) to gather their belongings and vacate the site. PD will provide an officer present at the site until such time as all individuals present at the site have vacated it and, depending upon the expected length of the activity, remain on-call.
- 3.3.2.** If the individuals present are willing to voluntarily provide their names, PD will record such names so that returning stored items later is more efficient.

4. CONTRACTOR RESPONSIBILITIES

4.1. Notice of Planned Cleanup

- 4.1.1.** Contractor shall post notices at various locations denoting the approximate exterior perimeter of the site and place a copy at/on each tent, structure or other evidence of encampment. The notices will be placed in locations and in quantities sufficient to reasonably ensure visibility. Notices must be posted no less than seventy-two (72) hours, and not more than five (5) days, prior to the expected cleanup date. Contractor shall photograph posted notices to document time and location of posting.

4.2. 24 Hours Prior Cleanup

- 4.2.1.** Twenty-four hours prior to cleanup, Contractor shall check weather forecast for date of cleanup, through National Weather Service. If inclement weather is predicted (extreme cold or heat, greater than 50% chance of rain, etc.), then Contractor will cancel the cleanup. As soon as reasonably possible, Contractor will take down notices of the cleanup. PD will work with Contractor to reschedule the cleanup and re-notice.

4.3. Cleanup

- 4.3.1.** Contractor shall cleanup encampment sites as assigned by City. Cleanup duties shall include surveying sites, collecting debris, dismantling temporary structures, removing trash, and disposing of all debris at a permitted solid waste disposal or Class III landfill facility.
- 4.3.2.** Contractor shall coordinate the disposal of materials excluded from solid waste disposal facilities found at abatement sites such as hazardous waste, universal waste, medical waste, and other such items at a site permitted to accept such material. Contractor may provide these services directly or through a licensed subcontractor.
- 4.3.3.** Contractor shall follow best practices and work procedures to safely manage any hazardous materials that may be found on the job site, including soiled personal hygiene items, syringes, and other materials which could pose a health threat.
- 4.3.4.** Contractor shall supply all labor, materials, tools, heavy machinery and equipment, vehicles, protective clothing, protective gear, portable bathroom facilities, and other supplies that may be required to remove all debris, litter, and waste as listed in Appendix A1. Such equipment, tools, and protective gear shall be sufficient for all conditions including jobsites that may be located in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks and rivers, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness.
- 4.3.5.** Contractor shall coordinate with the City on a project-by-project basis to determine the scope for each encampment cleanup. The scope will establish the project start date, period of work, size/scope of the job, work location, the name and title of the onsite Contractor representative, and the estimated not-to-exceed cost of the cleanup as provided in Exhibit B. Additional specific instructions will be given by the City at the work location.

- 4.3.6.** Contractor shall be responsible to provide an on-site supervisor/manager for abatement crews and ensure all necessary safety procedures are followed. This individual will also serve as the City contact for all projects. City will not pay for more than one (1) supervisor unless agreed upon in writing.
- 4.3.7.** Contractor shall photograph the encampment site and surrounding area identified by City staff before and after the cleanup to document the condition of the site and the date of the cleanup. Photographs of cleanup will be provided to PD electronically after completion of the cleanup.
- 4.3.8.** Contractor shall immediately contact PD in the event that weapons are found at the encampment.
- 4.3.9.** Contractor shall trim shrubs and vegetation as required in a work order issued by the City, provided that such abatement is consistent with any permits required to perform cleanups along watercourses, including but not limited to, any permits required by the California Regional Water Quality Control Board, the U.S. Army Corps of Engineers, or the California Department of Fish and Wildlife.
- 4.3.10.** Contractor shall be familiar with the areas and verify with the City designated representative that the abatement site is within the City's jurisdiction. Encampments may be located on properties shared by the City or other agencies. Contractor is expected to be familiar with the area and verify the jobsite is within the City's jurisdiction. In the event that access to the jobsite is restricted, Contractor shall coordinate entry with the City.
- 4.3.11.** Contractor shall notify the City when the work is complete and provide a cleanup report to City representative.
- 4.3.12.** In the event that an adjacent homeless encampment is discovered in the general area during the course of a project, Contractor shall immediately notify the City's designated representative. Contractor shall not perform any abatement on the adjacent site unless and until all procedural guidelines have been complied with for the adjacent site and the City has authorized the additional work.
- 4.3.13.** Contractor shall provide a representative, if requested by City, to attend regional encampment cleanup coordination meetings that involve multiple agencies, jurisdictions, and/or special interest organizations.
- 4.3.14.** City reserves the right to cancel any given project if the City deems, in its sole discretion, that unsafe conditions (such as inclement weather) exist at the site on the day of a planned event. The City will

attempt to provide Contractor with at least 24-hour notice of any project cancellation.

- 4.3.15.** Contractor shall perform work in a timely and efficient manner, and conduct themselves in a courteous and business-like fashion at all times.
- 4.3.16.** Contractor shall obtain, maintain, and comply with all permits required to perform cleanups along watercourses, including but not limited to, any permits required by the California Regional Water Quality Control Board, the U.S. Army Corps of Engineers, or the California Department of Fish and Wildlife.
- 4.3.17.** Contractor shall track data related to each encampment cleanup and provide detailed monthly reports to the City.
- 4.3.18.** The work shall be completed between Monday-Friday, and during normal business hours.

4.4. Sorting and Tagging Personal Property

- 4.4.1.** Contractor shall provide industrial grade bags and tags and, with City supervision, sort items that may include litter, debris and waste at the site and identify and tag certain items as "personal property". Refer to Appendix A2 for Guidelines for Property Identification.
- 4.4.2.** In the sorting process, Contractor will: (a) open any bag, purse, backpack, or suitcase to verify the contents, but will not sort each item inside, (b) cut open or disassemble any structure or tent in order to verify the contents, but will not sort each item inside and (c) consider trash any structure or tent that required cutting or disassembling in order to inspect the inside without entry.
- 4.4.3.** Once a site is sorted the Contractor will photograph the personal property to document what is being placed in storage (the "photo inventory"). A sign or board indicating the date, location of the containers will be placed in the photograph with the property. Contractor will then place all personal property in clear plastic tubs or bags marked with the date and location of abatement. Contractor will load the personal property into a truck to be transported for storage at Contractor's facility. Appendix A5 shows a sample inventory list.

4.5. Claims on Property During the Cleanup

- 4.5.1.** If individuals are present and request immediate return of key personal effects (such as ID, medications, etc.), Contractor shall be reasonable. Individuals should not be allowed to interfere with the cleanup, but Contractor may return these types of basic or critical personal items.

- 4.5.2. Contractor will request the name of any individual claiming property. Any returned item will be photographed and noted on the photo inventory list with the name of the individual who collected it.

4.6. Posting Notice After Cleanup

- 4.6.1. Once the site is safe for individuals to return to it, Contractor shall post and photograph a notice stating the retrieval storage location. See Appendix A4 for the template of the required notice.

4.7. Guidelines for return of property

- 4.7.1. Upon receipt of a phone call or email regarding an item collected at an abatement, Contractor will review the photo inventory list for the date and location of the abatement for the reported item. If the item can be located, Contractor shall retrieve the item from storage and drop off the item(s) with staff at the Boccardo Regional Reception Center (2011 Little Orchard Street) for collection by the caller.
- 4.7.2. If an individual cannot locate his/her items, and disputes the City's/Contractor's disposal of it, Contractor may direct the individual to file a claim with the City Clerk's Office.
- 4.7.3. It is understood and expected that many stored items will not contain identifying information; therefore, if a claimant reasonably describes an item to be retrieved (and that item has no ownership identifier on it), then the item can be released to the claimant. To a certain extent, the process operates on the "honor system."

4.8. Disposal after Storage Period

- 4.8.1. Contractor shall store items for ninety (90) days after the cleanup date.
- 4.8.2. If property is unclaimed after 90 days, PD may dispose of it as unclaimed surplus property in accordance with the City Code (SCCC 2.105.350).
- 4.8.3. Contractor shall provide PD copies of all documents (photographs, notices, logs, etc.,) at the conclusion of the 90-day storage period. City's record retention period for all documents related to the cleanup is a minimum of three (3) years.

4.9. Safety and Training

- 4.9.1. Safety and appropriate training/licensing are critical requirements for the Contractor.

- 4.9.2.** Contractor shall comply with all safety rules, protocols, and licensing requirements mandated by the State of California.
- 4.9.3.** Jobsites can be in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks and lakes, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness. Contractor shall perform a hazard assessment and provide all training and supplies necessary.
- 4.9.4.** Contractor shall be OSHA certified to operate any heavy equipment required to complete the encampment cleanup work, including trash compactors, bulldozers, graders, or other ground moving equipment.
- 4.9.5.** Contractor shall conform to all applicable occupational safety and health standards, rules, regulations, and orders established by the State of California. Contractor shall provide all safety equipment, materials, and training to its employees as required. Contractor shall provide its employees with appropriate safety apparel. This apparel shall include hardhats, safety glasses, vests, gloves, and leather (or adequately puncture resistant) boots.
- 4.9.6.** Contractor shall be trained annually in OSHA's Bloodborne Pathogen Standard 1910.1030. This training must be supplemented with precautions regarding West Nile Virus, hanta virus, Hepatitis A, and histoplasmosis. Employees must have work procedures to be able to safely manage urine, feces, soiled personal hygiene items, syringes, and other materials which could pose a health threat. Wearing Personal Protective Equipment (PPE) and following other protocols established for this situation must be followed. Contractor will coordinate disposal of these wastes and syringes with the City.
- 4.9.7.** Contractor shall provide copies of any training records and licenses required by the City.

APPENDIX A1 TO EXHIBIT A

EXAMPLES OF TOOLS, EQUIPMENT, AND THIRD-PARTY SERVICES

Examples of tools and equipment provided by Contractor (and included in Contractor's hourly labor rate):

Clothing supplied by workers

- Boots – high top leather uppers
- Long sleeve shirts
- Longs pants

Maintenance items

- Identifying shirts or vests
- First aid kit
- Drinking water
- Toilet provisions

Personal Protection Items

- Gloves
- Hardhats
- Dust masks
- Goggles
- Sunscreen
- Insect Repellant
- Bite treatment cream
- Poison oak exposure cream

Hand tools

- Rakes
- Shovels
- Pitch forks
- Tarps
- Garbage cans

- Plastic bags
- Hammers
- Pry-bars
- Knives
- Weed trimmer
- Weed mower
- Chainsaw
- Brooms

Bio Supplies

- PPE clothing
- Eye protection
- Face protection
- Red bags
- Hazard notices
- Red second containment for transport
- Cleaning materials including bleach
- Shovels

Heavy equipment, if needed

- Small skid steer tractor
- Backhoe loader
- Dump trucks
- Other vehicles

Examples of additional equipment, materials, and third-party services at Contractor's actual cost plus 20%:

Boom rental

Dumpsters

Portable toilet

Disposal

APPENDIX A2 TO EXHIBIT A

GUIDELINES FOR PROPERTY IDENTIFICATION

Unless an item is trash or poses an immediate threat to public health or safety, it should be retained for storage as potential personal property.

Items that are arranged in a manner that suggests ownership (e.g., items that are neatly folded or stacked, stored off the ground, hung, or clearly on display or packed in bag or box) should be retained for storage.

If there is any uncertainty regarding whether an item should be thrown away or stored, it should be stored.

Prescription medication and similar usable medical items (that appear to be safe to handle) are not waste and should be stored or given to the individual.

Examples of personal property of apparent value that should be stored may include clothing, shoes, jackets, tents, sleeping bags, bed rolls, blankets, backpacks/bags, bicycles, tools, watches/jewelry, electronics, toiletries, eyeglasses, purses, personal papers/identification documents, photographs, books and baby strollers.

Examples of items that are trash or pose a threat to public health or safety and will not be stored: *The following are examples of conditions that will cause an item (including those examples listed above) to be immediately disposed of:*

- **Dirty or Soiled:** items that smell of bodily waste or other contaminants or other hazardous materials, are stained with urine or other bodily waste, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable:** open food or personal products that will spoil or rot in storage
- **Contaminated:** items used for hygiene or that present a risk of biohazard (i.e. sharps or other medical/pharmaceutical materials, used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazardous or Explosive:** items that could corrode or burn in storage (i.e. car batteries, gasoline tanks, and propane tanks)
- **Broken or Disassembled:** items that are broken, damaged, or stripped of parts and have no apparent utility in their present condition (i.e. electronics stripped for copper, bike parts, flat tires, torn up clothes)
- **Weapons:** weapons, drugs or other contraband will be given to the PD
- **Obvious Trash:** Food/beverage wrappers, tissue/paper napkins, etc.

ATTENTION!

NOTICE OF PLANNED CLEAN-UP AND ORDER TO VACATE CITY PROPERTY

PLEASE TAKE NOTICE:

The City of Santa Clara will be performing a cleanup of **[LOCATION]** on **[DATE]** from **[START TIME]** to **[END TIME]**. The cleanup work is expected to last for **[NUMBER OF HOURS OR DAYS]**.

Pursuant to Santa Clara City Code Section 9.30.020, the City has determined that this cleanup activity is necessary for the protection or preservation of the public peace, health and safety, or to avoid personal injury or property damage. Any individuals residing at, or storing personal property on, this location, are hereby **ORDERED TO VACATE THE SITE** prior to the date listed above.

Any personal property not removed by its owner may be classified as refuse and thrown away. Personal property not classified as refuse shall be stored for ninety (90) days.

Individuals wishing to reclaim personal property collected by the City as part of the clean-up project may do so by contacting **[NAME & TITLE]** at **[PHONE NUMBER]** or **[ADDRESS]** between the hours of 9:00am to 5:00pm. After ninety (90) days, any unclaimed property will be disposed of.

NOTICE OF RECOVERED PROPERTY

PLEASE TAKE NOTICE:

On [date], the City of Santa Clara conducted a clean-up of [LOCATION]. Items deemed to be refuse were disposed of. Certain items of personal property not deemed refuse were collected and are being stored pending retrieval by the rightful owners.

Individuals wishing to reclaim personal property collected by the City as part of the clean-up project may do so by contacting

[person and title]

[address]

phone number]

Personal property collected by the City will be stored, without charge, for ninety (90) days following [date of clean-up]. After ninety (90) days, any unclaimed property will be disposed of.

APPENDIX A5 TO EXHIBIT A
INVENTORY SAMPLE

Location:

DPW Project Manager:

Date Noticed:

Date Clean Up Started/Completed:

End of 90-Day Storage:

Bag or Box #	Specific Location (if applicable)	Item Description (and/or cross reference to clean up photo inventory)	Owner Info. (if applicable, include as much detail as possible)	Claimed Date (if applicable)	Claimant Signature (if applicable)	Date of Disposal (if applicable; retain all documentation)

EXHIBIT B SCHEDULE OF FEES

1. MAXIMUM COMPENSATION

The maximum amount payable for all products and services provided under this Agreement shall not exceed **One Million Dollars (\$1,000,000)**. No additional services will be performed unless both Parties execute amendment outlining the services requested and the compensation agreed for such services.

2. PRICING

- 2.1. Compensation shall be paid to Contractor on a time and material basis as listed below.

Category	Hourly Rate ¹
Pre-Cleanup Rate:	
Post notices, take pictures for documentation, etc.	\$111
Cleanup Rates:	
Supervisor	\$127
Laborer (non-hazardous)	\$117
Laborer (hazardous)	\$147
Trucker	\$111
Landscape Cleanup	\$85
Post-Cleanup	
Take personal items to storage, coordinate return of personal items, etc.	\$111
Additional equipment/materials/third-party services	%
Markup on Actual Cost	20%

¹See Section 4 below for hourly rate adjustments.

- 2.2. Prior to the commencement of work, Contractor shall provide City with a not to exceed estimated cost of the clean-up. Contractor shall notify City, with as much advanced notice as possible, if it is determined that the estimate will be exceeded.
- 2.3. The hourly labor rates are fully loaded and include wages, overhead costs, general and administrative costs, and profit. Overhead costs shall include all hand tools, power tools, consumables, and related items that may be required to perform each clean-up. Refer to Appendix A1 for examples of tools and equipment.

- 2.4. In the event that additional tools, equipment, and/or third-party services are required for a clean-up, Contractor shall obtain pre-approval from the City describing the additional requirement and the associated cost. City shall reimburse Contractor for any pre-approved additional charge at Contractor's actual cost, plus a maximum of 20% markup.

3. INVOICING PROCEDURE

- 3.1. At the conclusion of each encampment clean-up, the City shall pay Contractor in arrears within thirty (30) days of a properly completed invoice in a form acceptable to the City.
- 3.2. The invoice shall itemize the number of employees assigned to the clean-up, the actual hours worked for each employee, and the hourly rate as quoted above, and the extend cost which is the hourly labor rate times the total hours worked. Actual hours worked shall only include clean-up work at the encampment, and shall not include time for travel to the job-site, or any incidental time that is not directly related to the clean-up. If any additional tools, equipment, and/or third-party services were required for the clean-up, then supporting documentation must be provided with the invoice to document the cost to the vendor.

4. COMPENSATION ADJUSTMENT

- 4.1. Contractor may request adjustments to the hourly labor rates effective July 1 of each year during the term of the agreement. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not exceed 3%, except to reflect an increase to the prevailing wage that is greater. Contractor must provide wages and benefits information to establish the amount paid to their workers to justify an adjustment that is greater than 3%. In no event will an adjustment greater than 3% be allowed for general and administrative expenses, overhead expenses, and profit.

EXHIBIT C INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

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

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

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

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

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

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

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

F. EVIDENCE OF COVERAGE

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

G. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

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

**EXHIBIT D
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.

I. Prevailing Wage Requirements

1. Contractor 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. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors 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. Contractors and subcontractors 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, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) 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, Contractor and all subcontractors 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 contractor or subcontractor 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 contractor or subcontractor 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. Contractors MUST be a registered "public works contractor" 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 contractors/subcontractors 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 contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor 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.

J. 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 Contractor's address indicated for receipt of notices in this Agreement.

K. 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 Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor'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 contractors and subcontractors 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.