

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

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and AEMTEK, 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

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the Initial Term of this Agreement shall begin on July 1, 2020 and terminate on June 30, 2025.
- B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two additional one-year terms through June 30, 2027 ("Option Periods"). City shall provide Contractor with no less than thirty (30) days prior written notice of its intention to exercise its option to extend the term of this Agreement.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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." Based on the estimated annual cost to provide services, the maximum compensation of this Agreement shall not exceed one hundred sixty-two thousand dollars, six hundred and sixty dollars (\$162,660), during the Initial Term, 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: Water and Sewer Utilities
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at DAsuncion@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

AEMTEK, Inc.
466 Kato Terrace
Fremont, CA 94539
(510) 979-1979
and by e-mail at labdata@aemtek.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"

AEMTEK, INC.
A California corporation

Dated: April 27, 2020

By (Signature): _____

Name: Jessica Soslow

Title: Director of Marketing & Sales

Principal Place of
Business Address: 466 Kato Terrace, Fremont, CA 94539

Email Address: labdata@aemtek.com

Telephone: (510) 979-1979

Fax: (510) 668-1980

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

A. GENERAL

1. Contractor shall provide all labor, materials, tools, and equipment required to perform bacteriological water quality lab services.
2. Contractor shall maintain a valid State Water Resources Control Board (SWRCB) certification during the life of this Agreement. Contractor shall provide proof of current certification upon request by the City.
3. Contractor shall perform the required services in accordance with State and Federal Environmental Protection Agency (EPA) requirements, as well as all other applicable governmental regulations, customary quality standards and accepted best practices for the type of work being performed.
4. Contractor shall be responsible for transporting samples to and from destination sites; providing sample containers; and furnishing all equipment and facilities required for analysis, report preparation and Electronic Data Transfer (EDT includes City and various regulatory agencies as necessary, including, but not limited to the SWRCB and EPA).
5. Any additional analysis from non-routine sample collections relating to potable water, recycled water, storm water, and wastewater in accordance with the pre-determined schedule and procedures described herein are also included in this scope of services.

B. ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM (ELAP) CERTIFICATION

1. The Contractor shall possess and maintain ELAP accreditation for all required fields of testing per the contaminants specified in this Exhibit A.
2. The Contractor shall submit proof of accreditation to the City for all required fields of testing and shall also submit documentation of accreditation renewal when renewal takes place.
3. The Contractor shall notify the City within 24 hours of receiving State notification that any ELAP accreditation is revoked or expires.

C. DESCRIPTION OF REQUIRED SERVICES

Project Coordination

1. The Contractor shall coordinate with the City to ensure that all scheduling of sample pick up and analysis meets SWRCB requirements and regulatory deadlines.

2. The Contractor shall dedicate a project manager who will be directly responsible for the management of the Agreement and who is the primary contact for the City.
3. The Contractor shall also provide the City with designated contacts within the organization including emergency telephone numbers and email addresses.
4. The Contractor shall conduct testing and reporting of water samples according to the requirements contained herein.
5. Any additional analyses/services available by the Contractor (other than those specifically bid) and requested by the City shall be compensated in accordance with a quote provided by the Contractor prior to sample collection/services performed.
6. Special samples may be requested by the City at any time and the Contractor will conduct testing and reporting on special samples on weekends, holidays, and after normal business hours as needed.
7. The City reserves the right to change the number of samples collected for testing.

Sampling Materials

1. The Contractor shall supply all materials and equipment for collection and handling of samples at no additional charge (e.g., sample containers, coolers, synthetic ice, labels, chain of custody forms, etc.).
 - a. All sample coolers and synthetic ice shall be disinfected by the Contractor prior to City use.
 - b. The City will request the supplies from the Contractor to maintain an adequate inventory for planned and unplanned sampling.
 - c. The Contractor will provide the requested supplies within 2 business days of the request, unless otherwise specified by the City.

Sample Schedule and Process

1. Approximately 34 routine samples will be collected weekly by the City for analysis, and additional sample analysis may be required as needed. Rush samples may occasionally be required any day of the week.
 - a. Normal routine sample day for the City shall be on Tuesday of every week. This schedule may be adjusted in weeks during which a holiday falls on a weekday.

Sample Pick-up and Transport

1. The City will conduct sampling and provide samples to the lab courier at a designated City address. The Contractor shall be the courier service coordinator ensuring that samples are picked up in a timely manner when contacted by the City, adhering to all lab methods and regulatory requirements for sample holding time.
 - a. The Contractor shall provide courier service to pick up samples at a City location (either 1500 Warburton Avenue or 1715 Martin Avenue Santa Clara, CA) on the day the samples are taken.
 - i. Routine sample pickup shall be no earlier than 12:30 PM and no later than 2:30 PM
 - ii. Courier service shall be available for one afternoon pick-up time (Monday-Friday) at a City location for any special, rush and repeat samples taken that day
 - iii. Any special, rush and repeat samples available after the designated pick-up time above shall be picked up by the Contractor at the start of the following business day for direct service to the laboratory
2. The Contractor is responsible for the safe and secure handling of the samples after they have been relinquished by the City. The Contractor shall ship, receive, and analyze within hold time requirements of the analytical method.
3. Samples are to remain in separate City-designated coolers and not be consolidated with other Agencies' samples during transport. Samples are to be handled only by qualified Contractor personnel. Sample transport coolers will be separately designated for drinking water samples and non-drinking water samples.
4. Any other frequencies of pickup and delivery will be on an "as instructed basis" by the City. The Contractor shall be prepared to accept samples and transmit results 7 days/week.
5. The cost of transportation of samples shall be included in the quoted price.

Analysis of Samples

1. Contractor shall analyze all samples immediately upon receipt.
2. Analysis of samples collected shall be performed only by qualified Contractor staff in accordance with current applicable provisions of the State of California Environmental Health Regulations, as set forth in Title 22 of the California Code of Regulations, and the regulations of the federal EPA, as set forth in Title 40 of the Code of Federal Regulations.

- a. Contractor shall analyze and provide data for total coliform bacteria, fecal coliform and Escherichia coli (E. coli) using Method SM 9223 (P/A).
 - b. Laboratory analysis for the specified contaminants shall be conducted in accordance with current methods approved by the EPA.
 - c. Methods shall be as described in the current version of 'Standard Methods for the Examination of Water and Wastewater', or as specified by the EPA or SWRCB, and must be reviewed and approved by the City prior to its use by the Contractor.
3. The Contractor shall provide immediate notification of any quality assurance/quality control failures.
4. The Contractor shall not release any data with anomalies until approved by the City.
5. The Contractor shall notify the City immediately of any non-compliant sample results.
6. No subcontracted companies may be used for sample analysis unless approved in advance by the City.
7. The City reserves the right to revise analysis parameters.

Preparation and Submittal of Required Reports

1. Reports shall be prepared and delivered to the City electronically via e-mail
 - a. The Contractor shall comply with all State and Federal regulations relating to notification of analysis results.
 - b. Reports should be delivered to the City within one working day of the finalized sample result, unless otherwise approved in advance by the City.
 - c. The laboratory shall notify the City immediately whenever the presence of total coliform, fecal coliforms or E. coli is demonstrated in a sample or if a sample is invalidated due to interference or other problems.
 - d. Results for "Rush" samples must be received within 26 hours of arranged lab courier sample pickup time.
2. The Contractor shall submit the required data to SWRCB via Electronic Data Transfer (EDT) at no additional charge. Verification of successful EDT shall be delivered to the City electronically via e-mail on upon receipt of verification.

3. The Contractor shall analyze and report constituents as indicated under the California Environmental Health Regulations, Title 22 of the California Code of Regulations, Division 4, Chapter 15. This shall include only the constituents listed and reported at the detection limit for purposes of reporting.
4. Additional reports, which are customary or required by applicable regulations, shall be included.
5. Analysis and reports provided to the City shall be prepared in a professional manner and suitable for review.

D. OPTIONAL SERVICES

City Staff Training: The Contractor shall administer training to City staff on as-needed basis and review of City Standard Operating Procedures. Training shall include information on: the proper handling and storage of sampling bottles, best management practice techniques for pulling water samples, preservation of samples waiting for transport, preparing water samples for transport to ensure the water sample arrives at the lab in good condition and at an adequate temperature for testing and proper chain of custody documentation.

Sampling Services: If requested by the City, the Contractor shall take specified samples from designated locations. All sampling shall be in accordance with water quality sampling best practices and any specific sampling requirements for the specific contaminant being analyzed. The Contractor is then responsible for sample transportation, analysis and reporting per the regular laboratory services.

EXHIBIT B
SCHEDULE OF FEES

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

Bacteriological Tests Required

Water Quality Tests

ITEM	METHOD	FREQ.	QTY. ¹	Est. Annual ²	Turnaround Time (days)	Price
Routine Bacteriological						
Weekly BacT	SM 9223 (P/A)	weekly	34	1768	1	\$14.00
Repeat Samples/Groundwater Rule	SM 9223 (P/A)	as-needed	25	125	1	\$14.00
Special Samples						
Weekday pickup during business hours	SM 9223 (P/A)	as-needed	1-5	165	1	\$25.00
Rush Samples						
Weekday after hours pick up	SM 9223 (P/A)	as-needed	1-5	15	26 hours ³	\$50.00
Weekend	SM 9223 (P/A)	as-needed	1-5	25	26 hours ³	\$33.00
Holiday	SM 9223 (P/A)	as-needed	1-5	10	26 hours ³	\$33.00

Notes:

Due to variable nature of water quality regulations, testing is subject to change

¹ Number of samples per occurrence

² Estimate based on 2019 scheduled and historic totals

³ Results for "Rush" samples must be received within 26 hours of arranged lab courier sample pickup time

Annual Bacteriological All-inclusive Contract Price as described above: \$32,532

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 during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of 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 (if any), non-owned and hired autos.

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

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of 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. PROFESSIONAL LIABILITY

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

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of 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 E of this Exhibit C, above.

F. 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.

G. 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.

H. 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 Water and Sewer Utilities

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for 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.