

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WOODARD AND CURRAN, INC.
FOR
SANITARY SEWER HYDRAULIC MODELING AS NEEDED SUPPORT**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between Woodard and Curran, Inc., a Maine corporation, with its principal place of business located at 41 Hutchins Drive, Portland, ME 04102 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Consultant shall furnish all technical and design professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2021. The City Manager shall have the option to extend the Agreement for up to two (2) additional terms of one (1) year each. The City Manager shall exercise each option by notifying Contractor in writing no later than sixty (60) days in advance of the then-current term.

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

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

4. QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP.

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

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

5. MONITORING OF SERVICES.

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

6. WARRANTY.

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

7. PERFORMANCE OF SERVICES.

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

8. BUSINESS TAX LICENSE REQUIRED.

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

9. RESPONSIBILITY OF CONSULTANT.

Consultant shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Consultant shall be and remain liable to City in accordance with applicable law for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

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

10. COMPENSATION AND PAYMENT.

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

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

11. PROGRESS SCHEDULE.

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

12. TERMINATION OF AGREEMENT.

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

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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

14. NO THIRD PARTY BENEFICIARY.

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

15. INDEPENDENT CONSULTANT.

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

16. NO PLEDGING OF CITY'S CREDIT.

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

17. CONFIDENTIALITY OF MATERIAL.

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

18. USE OF CITY NAME OR EMBLEM.

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

19. OWNERSHIP OF MATERIAL.

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

20. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT.

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

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

21. CORRECTION OF SERVICES.

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

22. FAIR EMPLOYMENT.

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

23. HOLD HARMLESS/INDEMNIFICATION.

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

24. INSURANCE REQUIREMENTS.

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

25. AMENDMENTS.

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

26. INTEGRATED DOCUMENT.

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

27. SEVERABILITY CLAUSE.

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

28. WAIVER.

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

29. NOTICES.

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

City of Santa Clara
Attention: Public Works Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 985-7936

And to Consultant addressed as follows:

Name: Gisa Ju, Vice President
Address: 100 W. San Fernando Street, Suite 320
San Jose, CA 95113
or by facsimile at (408) 831-4801

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

30. CAPTIONS.

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

31. LAW GOVERNING CONTRACT AND VENUE.

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

32. DISPUTE RESOLUTION.

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

33. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall:

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

34. AFFORDABLE CARE ACT OBLIGATIONS

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

35. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant is familiar with the provisions of California Government Code

Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Consultant will advise City if a conflict arises.

36. PREVAILING WAGES.

A. Labor Code Compliance. Contractor must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Section 16000 et seq. Contractor shall register with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5.

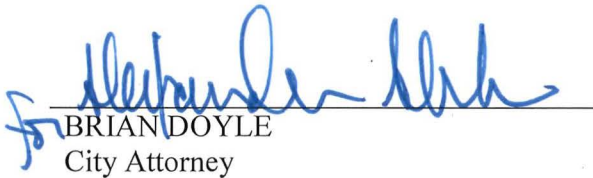
B. Requirements in Subcontracts. Prior to executing this Agreement, Contractor shall ensure that all of its subcontractors are registered with DIR, and Contractor shall include prevailing wage requirements in all subcontracts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation


APPROVED AS TO FORM:


BRIAN DOYLE
City Attorney

Dated: 6/28/18


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

ATTEST:


JENNIFER YAMAGUMA
Acting City Clerk

“CITY”

WOODARD AND CURRAN, INC.
a Maine corporation

Dated: 6/11/18

By: 

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

Name: Gisa Ju

Title: Vice President

Local Address: 100 W. San Fernando Street, Suite 320
San Jose, CA 95113

Email Address: gju@woodardcurran.com

Telephone: (925) 627-4100

Fax: (408) 831-4801

“CONSULTANT”

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EXHIBIT A

SCOPE OF SERVICES

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

I. GENERAL

The City desires to engage a Consultant to provide the professional services described in the SCOPE OF SERVICES

II. BACKGROUND AND PROJECT

The City's sanitary sewer collection system consists of approximately 270 miles of sewer pipelines, ranging in size from 4- to 48-inches in diameter, and seven sewage pump stations. The system collects wastewater generated within the City as well as flows from the major portion of the Cupertino Sanitary District via a connection at Homestead Road and Swallow Drive. Flow is conveyed eastward to the City of San Jose's interceptor sewer on Zanker Road and also northward to the Northside and Rabello Pump Stations, where the flow is pumped to the San Jose/Santa Clara Regional Wastewater Facility for treatment and disposal.

The City's hydraulic model was originally created as part of the City's 2007 Sanitary Sewer Capacity Assessment (SSCA) for developing wastewater flow projections and future capacity needs for the City's sanitary sewer system. The model underwent a major update and recalibration for the 2016 Sanitary Sewer Master Plan Update (Master Plan Update) to guide capacity improvements to the City's sanitary sewer system to accommodate current and future developments and ensure that the City continues to provide a high level of service to its customers.

Modeled Sewer Network: The modeled system consists of the trunk sewer network, primarily the 10-inch and larger sewers plus a portion of the smaller diameter pipes. The modeled system includes approximately 1,900 manholes and 2,000 pipe segments, plus 7 pump stations. (The entire collection system includes approximately 5,200 manholes and 5,600 pipe segments). Pipe network scenarios include both the existing system, as well as an upgraded system that includes the capital improvement projects identified in the Master Plan Update.

Flow Scenarios: The model includes two general planning scenarios: existing and future (2035). The existing scenario includes flows defined based on winter water use data (from approximately 30,000 parcels) and calibrated to flow monitoring data collected in the 2014/2015 winter season. The future scenario incorporates information on planned development per current General Plan and additional developments submitted to the City, including over 15,000 new residential dwelling units and over 20 million square feet of commercial and industrial building space. The scenarios are updated periodically as new developments are proposed, approved, and constructed. The model includes both dry weather flow and wet weather flow scenarios, with wet weather flow defined by a 10-year, 24-hour design storm.

The services of Consultant shall include professional services on sanitary sewer hydraulic model runs for development projects, on-going general model maintenance, and hydraulic modeling support for tasks related to capacity planning for the City's sanitary sewer system. Consultant shall provide equipment, software, materials, and experienced personnel to provide all professional services required to perform tasks necessary to complete the Project.

The Consultant currently has:

- Current InfoWorks ICM model of the trunk sewer network, including both the existing system network and an upgraded system network that includes the capital improvement projects identified in the City's 2016 Sanitary Sewer Master Plan Update. The model includes two general planning scenarios: existing and future (2035).
- Detailed excel file listing assumed existing and future loads by parcel
- Parcels GIS file ca. 2015 to correspond to excel file

III. SCOPE OF WORK

BASIC SERVICES

Task 1: Project Management

The Consultant will be responsible for on-going model maintenance as well as responding to as-needed modeling requests from City staff. Requests are irregular. Some months may pass with no requests, while other times several requests may occur in a short period.

- 1.1 Keep a log of development project review requests.
 - a. Track time spent on each individual review request.
 - b. Report to the City total time spent and fee charged for each request monthly.
 - c. Provide a fiscal year end summary of all review requests.
- 1.2 Keep a log of general model maintenance work
 - a. Track time spent on each type of model maintenance work, such as development project status update, modeled system update per as-built, or temporary discharge review or other support service.
- 1.3 Track Project Management time separately and invoice the City monthly according to the logs.

Task 2: As Needed Model Run and Update for Development Project

Conduct development reviews for proposed developments to assess available sewer capacity in City's sewer system. Each separate development review will be tracked as a subtask under Task 2.

As requested by the City, Consultant shall:

- a. Estimate sewer flows from the development based on proposed land use, number of units, square footage, or other information provided by the developer.
- b. Use professional knowledge and judgement to determine if the development's proposed flow is significant enough to require a sewer model run. Development projects that add negligible flow to the system only need to be added to the model. Model run and technical memo are not needed for development projects with negligible flow.
- c. Run the sewer model with the proposed development flow, if needed, to assess the impact of the proposed development flow on the sewer system.
- d. Potentially extend the model network to include smaller diameter existing pipes that would serve the development.
- e. Identify potential solutions to address capacity deficiencies, if requested by the City.
- f. Prepare a technical memorandum (one draft and one final, at a minimum), pipeline profiles documenting the hydraulic grade line results, and .kmz files of the latest model. The technical memorandum must include a detailed listing of the flow assumptions, including the flows added and removed (if applicable) for the development.
- g. The proposed development may include changes in land use, discharge entitlement per development agreement, pipe configuration, or lot line adjustment, etc. Update the model if City approves the changes. Update base flow scenarios based on tracked development status as provided by the City.
- h. Consultant shall meet with City staff in-person or over the phone as needed to review and explain results of model runs.

Deliverables:

1. Technical memorandum (TM) summarizing model results for each model run including model inputs. TM shall include flows in the downstream model trunk, pipe profiles, and required larger trunk sewer sizes if needed to accommodate additional flows.
2. .KMZ files of updated model for each model run.

Task 3: Provide As Needed Model Support

Consultant shall provide as-needed modeling support in response to specific requests by the City. This task is intended for discrete requests that address a question or need for a specific part of the system. Specific requests will be tracked as sub-tasks under Task 3.

The work shall include, but is not limited to the following:

- a. Provide model-predicted flows for given pipes.

- b. Evaluate available pipe capacity to accommodate temporary flows in dry season or wet season.
- c. Provide model runs and analysis in support of City design projects.
- d. Other as-needed requests from City, not related to development reviews.

Deliverables:

- 1. Results of model-predicted flow for given pipes.
- 2. Pipe capacity evaluation to accommodate temporary flows.
- 3. Figures, TMs, or other documentation as necessary to support analysis or conclusions.

Task 4: Provide General Model Maintenance and Updates

Consultant shall provide on-going modeling maintenance and updates. This task is intended for system-wide updates and general model maintenance. General model maintenance work that is necessary for keeping the model organized and the scenarios consistent shall be performed as-needed at the discretion of the Consultant or for addressing specific requests by City. The Consultant shall provide clear and detailed documentation of general model maintenance work performed in monthly invoices. System-wide updates shall be conducted at the request of the City. Model maintenance and update activities shall be tracked as different subtasks under Task 4.

The work shall include, but is not limited to the following:

- a. Provide on-going model maintenance, including periodic QA/QC reviews for consistent documentation in model files, maintaining model network and scenario organization, and maintaining consistent archiving of completed requests.
- b. Update the model per record drawings for newly constructed sanitary sewer system improvements.
- c. Periodically update base flow scenarios based on tracked development status (proposed, approved, constructed, etc.) as provided by City staff.
- d. If requested by City, review current water consumption data and update existing model flows.
- e. Other model update activities as needed, as requested and discussed with City staff.

Deliverables:

- 1. Model files and/or files and results exported from the model, as requested by City.
- 2. TMs or other documentation as-needed to describe requested updates and methodologies used.

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EXHIBIT B

SCHEDULE OF FEES

I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$299,500, plus any authorized Reimbursable Expenses, which shall not exceed \$500. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$300,000, subject to budget appropriations.

Billing shall be on a monthly basis and itemized based on the services performed for each development project as subtask under Task 2 and each request as subtask under Task 3. The invoice shall describe the Task invoiced, time and materials expended by Task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period.

II. BASIC SERVICES

The total payment to Consultant for all work necessary for performing all Tasks, as stated in Exhibit A, shall be based on a time and material basis.

Figures in table below include subconsultants' costs and their markups. City may re-allocate budget between tasks with written notice to the Consultant.

| | | |
|--------|--|------------|
| Task 1 | Project Management | \$ 29,500 |
| Task 2 | As-needed Model Run and Update for Development Project | \$ 120,000 |
| Task 3 | As-needed Model Support | \$ 70,000 |
| Task 4 | General Model Maintenance and Updates | \$ 80,000 |
| | Total | \$ 299,500 |

In no event shall the amount billed to the City by Consultant for Basic Services under this Agreement exceed two hundred ninety nine thousand five hundred dollars (\$299,500), subject to budget appropriations.

III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not exceed \$500 without prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

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

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

Reimbursable Cost may include:

- Outside Duplicating Cost for Plans and Reports as specified in Section III, Scope of Work, of Exhibit A
- Presentation Materials
- Overnight Delivery Services when requested by City
- Courier Services when requested by City

All reimbursable costs, other than those listed above, shall be approved in advance by City. City may re-allocate remaining budget from reimbursable expenses to basic services. All reimbursable costs, other than those listed above, shall be approved in advance by City in writing.

IV. PAY RATE SCHEDULE

Services shall be compensated according to the rates shown below. The effective rate change for the following year shall be computed using the percentage difference between the CPI in October of the previous year and the CPI in October of the current year. The percentage increase shall be capped at 3%, and shall be no more than Woodard & Curran's published rate schedule for said year.

Consultant shall request City's approval in writing prior to hiring subconsultants for this project. Subconsultants will be billed as actual cost plus 10%. Total markup on the subconsultants' cost is capped at 10%.

Consultant shall request City's approval in writing prior to assigning staff whose position is not listed in the classification table to this project.

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Woodward & Curran 2018 Standard Rates:

| Classification | Hourly Billing Rate |
|---|---------------------|
| Engineer 1 (E1) Scientist 1 (S1) Geologist 1 (G1) Planner 1 (P1) Technical Specialist 1 (TS1) | \$157 |
| Engineer 2 (E2) Scientist 2 (S2) Geologist 2 (G2) Planner 2 (P2) Technical Specialist 2 (TS2) | \$182 |
| Engineer 3 (E3) Scientist 3 (S3) Geologist 3 (G3) Planner 3 (P3) Technical Specialist 3 (TS3) | \$206 |
| Project Engineer 1 (PE1) Project Specialist 1 (PS1) Project Geologist 1 (PG1) Project Planner 1 (PP1) Project Technical Specialist 1 (PTS1) | \$215 |
| Project Engineer 2 (PE2) Project Specialist 2 (PS2) Project Geologist 2 (PG2) Project Planner 2 (PP2) Project Technical Specialist 2 (TS2)) | \$229 |
| Project Manager 1 (PM1) Technical Manager 1 (TM1) | \$244 |
| Project Manager 2 (PM2) Technical Manger 2 (TM2) | \$258 |
| Senior Project Manager (SPM) Senior Technical Manager (STM) | \$274 |
| Senior Technical Practice Leader (STPL) | \$301 |
| National Practice Leader (NPL) Strategic Business Unit Leader (SBUL) | \$315 |
| Software Engineer 1 (SE1) | \$140 |
| Designer 1 (D1) | \$145 |
| Designer 2 (D2) | \$153 |
| Designer 3 (D3) Senior Software Developer (SSD) | \$158 |
| Senior Designer (SD) | \$165 |
| Project Assistant (PA) | \$108 |
| Marketing Assistant (MA) Graphic Artist (GA) | \$115 |
| Senior Accountant (SA) Billing Manager (BM) | \$125 |
| Marketing Manager (MM) Graphics Manager (GM) | \$145 |

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WOODARD AND CURRAN, INC.
FOR
SANITARY SEWER HYDRAULIC MODELING AS NEEDED SUPPORT**

EXHIBIT C

INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

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

E. COMPLIANCE WITH REQUIREMENTS

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

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

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

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

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

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

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.

City of Santa Clara Public Works Department

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantacalara@ebix.com

I. QUALIFYING INSURERS

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

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES
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EXHIBIT D

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

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Consultant¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City consultant or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

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

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

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

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

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

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

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EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

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

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

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

WOODARD AND CURRAN, INC.

a Maine corporation

By: 
Signature of Authorized Person or Representative

Name: Gisa Ju

Title: Vice President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

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

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EXHIBIT F

MILESTONE SCHEDULE

| | <i>DURATION</i> | <i>START</i> | <i>FINISH</i> |
|---|----------------------------|--------------|---------------|
| Notice to Proceed | 1 day | 7/2/2018 | 7/2/2018 |
| TASK 1: Project Management and Coordination | Term of the agreement | | |
| TASK 2: As Needed Model Run and Update for Development Project | 4 weeks for each model run | | |
| Task 3: Provide As Needed General Model Support | 2 weeks for each request | | |

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

On 6.12.18 before me, Lisa M. Salvetti, Notary Public, personally
appeared Corisa Ju

 LISA M. SALVETTI
Commission # 2072221
Notary Public - California
Contra Costa County
My Comm. Expires Jul 19, 2019

(Seal)

May County, Oregon
County Public - California
Commissioner & 2012-2013
1000 1st St. N.E.

