

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WILSON, IHRIG & ASSOCIATES**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between Wilson, Ihrig & Associates, a California corporation, with its principal place of business located at 6001 Shellmound Street, Suite 400, Emeryville, CA 94608 ("Contractor"), 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 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 professional services more fully described in this Agreement, at Exhibit A, entitled "SCOPE OF SERVICES"; and
- 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 PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and 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. Contractor acknowledges that the execution of this Agreement by City is predicated upon representations made by Contractor in that certain document entitled "Proposal for Noise Monitoring System & Services for Levi's Stadium Revision 1" dated October 20, 2016, ("Proposal") set forth in Exhibit A, which constitutes the basis for this Agreement.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2017.

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

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by a 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 professional responsible for their preparation.

4. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor 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 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.

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 Contractor'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 Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

6. 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.

7. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by 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. Contractor 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 CONTRACTOR.

Contractor 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 Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor'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 Contractor shall not in any respect absolve Contractor from the responsibility Contractor 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 Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

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

11. 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, Contractor shall discontinue further services as of the effective date of

termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

12. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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.

13. 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.

14. 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, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

15. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor 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 Contractor under this Agreement.

16. 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.

17. 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.

18. 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 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.

19. 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 three (3) 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 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.

20. CORRECTION OF SERVICES.

Contractor 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 Contractor.

21. FAIR EMPLOYMENT.

Contractor 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.

22. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents (collectively, "Indemnitees") 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 therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement as mutually agreed to or awarded by a court or arbitrator.

Without affecting the rights of Indemnitees under any provision of this Agreement, Contractor shall not be required to protect, defend, indemnify and hold harmless Indemnitees for liability attributable to the active negligence or willful misconduct of Indemnitees, provided such active negligence or willful misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Indemnitees are shown to have been actively negligent or are shown to have committed willful misconduct, and where Indemnitees' active negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence or willful misconduct of Indemnitees. Contractor agrees to pay all attorney and court costs in determining said active negligence or willful misconduct of Indemnitees. The determination of any claim by Contractor that Indemnitees committed active negligence shall be deferred until after all third party claims have been adjudicated by a final judgment that is no longer subject to appeal, unless the City, in its sole discretion, shall consent to an earlier determination.

23. 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 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.

24. AMENDMENTS.

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

25. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. 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.

26. 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.

27. 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.

28. NOTICES.

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

City of Santa Clara
Attention: Planning Division
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 247-9857

And to Contractor addressed as follows:

Name: Wilson, Ihrig & Associates
Address: 6001 Shellmound Street, Suite 400
Emeryville, CA 94608
or by facsimile at (510) 652-4441

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.

29. 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.

30. 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.

31. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor 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. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

32. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS 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."

33. AFFORDABLE CARE ACT OBLIGATIONS

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.

34. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict 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.

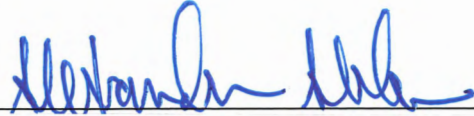
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

Signatures follow on next page.

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:

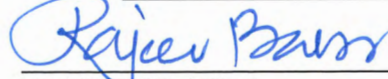


for BRIAN DOYLE
Interim City Attorney

ATTEST: 

ROD DIRIDON, JR.
City Clerk

Dated: 2.14.17



RAJEEV BATRA
Interim City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

WILSON, IHRIG & ASSOCIATES
a California corporation

Dated: 31 January 2017

By: 

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

Name: Derek L. Watry

Title: Principal

Local Address: 6001 Shellmound Street, Suite 400

Emeryville, CA 94608

Email Address: dwatry@wiai.com

Telephone: (510) 658-6719

Fax: (510) 652-4441

“CONTRACTOR”

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**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WILSON, IHRIG & ASSOCIATES**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "Proposal for Noise Monitoring System & Services for Levi's Stadium Revision 1" dated October 20, 2016, which is attached to this Exhibit A. In the event of any conflicts between the terms of the main Agreement and the terms of this Exhibit A, the terms of the main Agreement shall control.

The City has elected to utilize four (4) monitoring stations for a term of up to 12 months. It is preferred that these stations have AC power; however, in the event that AC power is not available the solar power units may be used. Written correspondence between the City and Wilson, Ihrig & Associates will provide confirmation of which power system will ultimately be utilized.



20 October 2016

Mr. Juan Padilla
City of Santa Clara, Planning and Inspection
1500 Warburton Avenue
Santa Clara, CA 95050

Subject: Proposal for Noise Monitoring System & Services for Levi's Stadium
Revision 1

Dear Mr. Padilla,

Wilson Ihrig is pleased to present this proposal to provide noise monitoring systems and services to the City of Santa Clara to help investigate and document noises in the neighborhoods near Levi's Stadium. This is a somewhat complex noise environment with contributions from stadium activities, the adjacent San Francisco 49er's Training Facility, and jets taking off from San Jose Mineta International Airport. To help sort these out, the system we propose to use allows for some audio recording when levels reach pre-determined trigger levels and/or at pre-programmed times. All of the data, including both the audio recordings and the decibel levels, would be stored for future access, analysis, and documentation.

1 QUALIFICATIONS

Wilson Ihrig, founded in Berkeley in 1966, has extensive experience in monitoring, measuring, analyzing, predicting, and recommending controls for noise from all manner of sources. Derek Watry, the managing Principal for this proposal, is very familiar with the area around Levi's Stadium having assisted the City previously on noise issues associated with the Gold Striker Roller Coaster at Great America and currently working on the environmental study for the Great America Theme Park Master Plan.

Wilson Ihrig is a member firm of the National Council of Acoustical Consultants (NCAC) and is active with many technical organizations in the field of acoustics, noise and vibration control.

2 PROPOSED SYSTEM AND SERVICES

The following scope of work is based on our understanding of the project as discussed with you during the week of 3 October 2016. Our initial proposal included options for either two or three monitoring stations. At your request, this proposal also includes an option for four stations.

For this project, we recommend utilizing noise monitoring stations provided by Seti-Media. These stations monitor noise (decibel) levels continuously, make audio recordings as programmed, and

transmit all data wirelessly for real-time access. If desired, the system can send text and/or email alerts when sound levels exceed a specified threshold. The Seti-Media web site enable authorized users to view the data and hear the audio recordings easily. All data would be stored on servers for at least 5 years.

Wilson Ihrig would be primarily responsible for working with the City to determine where to deploy the stations, and subsequently installing and maintaining the equipment. To facilitate the City's understanding of the large quantities of data collected by the stations, Wilson Ihrig would prepare comprehensive reports on a monthly basis.

This proposal also includes budget allocation for Wilson Ihrig to advise the City on noise issues that arise near the stadium. This work would be billed on a time and materials basis, so the budget would only be expended if a need arises.

2.1 NOISE MONITORING PLAN

Wilson Ihrig will prepare a simple Noise Monitoring Plan that will describe the monitoring systems and procedures to be used, the web site for real-time access, and the monthly summary reports. It will show where the noise monitors will be located. If the City is interested in alerts, the plan would recommend preliminary notification thresholds, and would identify who will initially get the SMS/email alerts if noise levels approach or exceed the specific trigger levels. (The list may be altered at any time during the project.)

At this time, there are several unknowns regarding the system that will ultimately be deployed:

1. How many stations? At this time two to four are being considered.
2. Will AC line power be available or will the systems require solar power and batteries?
3. How long will the stations be deployed? At this time 6 to 12 months are being considered.

These outstanding issues along with the station locations will be resolved during formulation of the Noise Monitoring Plan. The Noise Monitoring Plan would be reviewed and approved by the City prior to the deployment of the noise monitoring stations.

2.2 NOISE MONITORING SYSTEM DEPLOYMENT

Physical Installation

For outdoor locations, a secure pole will be necessary and must be available. Following is a picture of an outdoor system mounted to a pole secured to a concrete block that was placed just for this purpose. The system shown has a solar panel attached for power, though AC line power is preferred.



Each noise monitoring station will include a noise sensor, a digital noise logger, and a cellular modem for automatic remote data transmission (24/7). Additional information about the Seti-Media noise monitoring stations may be found in the appendix.

Wilson Ihrig will provide single-point responsibility for installing, maintaining, and reviewing all noise monitors regularly for proper working order. The monitoring stations will be automatically self-checked regularly for proper functioning.

Real-Time Monitoring System: Web Interface and Exceedance Notification

Real-time data obtained from the noise monitor stations will be available to the City and any other authorized users via a secure project website. Real-time data will be updated after every measurement interval (e.g., 1 minute) and designated personnel will be notified by email/SMS if/when measured levels exceed specific thresholds.

The website will have an interactive map of the project site showing exactly where each noise monitoring station is located.

The noise monitors will record audio samples when the level exceeds a specified limit. These samples will be streamed to the web site where they can be played back to help identify sources.

Environmental monitoring summaries will be available for all Project monitoring locations. The summary includes station details, alert trigger levels, and all exceedances observed. Users can subscribe to periodical email reports that include the monitoring summary information.

Written Noise Reports

Monthly, Wilson Ihrig would review the noise data and issue summary reports to the City. These reports would provide permanent documentation of Project noise levels and could be relied upon in the event any claims related to noise were made. In addition to providing an archival summary of the noise data, the reports would include cursory descriptions of the noise sources during the monitoring period.

2.3 NOISE CONSULTATION

Wilson Ihrig has extensive experience dealing with noise and related issues from all manner of sources. During the monitoring period, we would be available to consult with the City on any issues that arise. Because the extent of the need for this is unknown at this time, a place-holder budget has been included. This work would be billed on a Time and Materials basis, as needed.

3 Proposed Budget

The cost of the systems and services being proposed depend in part on the duration of the monitoring, the availability of line (AC) power, and the number of stations deployed and maintained. Many of the pricing factors are not linear with time or number of units, i.e., the unit cost declines over longer periods. Below, we present the constituent costs for each of these factors, then, at the bottom, provide a summary table for the various combinations. If the City provides us with additional direction on its needs, we could revise and simplify this proposal.

TASK	COST
Noise Monitoring Plan	\$ 3,000
Station Mobilization & Demobilization	
Two (2) stations	8,000
Three (3) stations	10,000
Four (4) stations	11,000



Noise Monitoring Station Rent (costs for entire period, per station)

6 months, AC power	5,700
12 months, AC power	10,500
6 months, Solar power	6,000
12 months, Solar power	11,500

Monthly Reporting (per month)

2 stations	1,400
3 stations	1,800
4 stations	2,000

Shipping & Other ODCs

AC power	1,500
Solar power	3,000

Noise Consultation (T&M, as/if needed) 10,000

Putting the constituent components together in various combinations, the proposed all-inclusive budgets are as follows:

	6 Months		12 Months	
	AC Power	Solar Power	AC Power	Solar Power
Two (2) Stations	\$ 43,440	\$ 45,600	\$ 62,400	\$ 65,220
Three (3) Stations	\$ 54,110	\$ 56,600	\$ 80,750	\$ 84,230
Four (4) Stations	\$ 62,580	\$ 65,400	\$ 95,700	\$ 99,840

Work would be billed on a time and material basis in accordance with the following rate table:

Title	Rate
Principal	\$250 / hour
Associate Principal	\$200 / hour
Senior Consultant	\$175 / hour
Associate	\$150 / hour
Assistant	\$120 / hour
Technician/Field Assistant	\$80 / hour
ODCs (rental equip., travel, copying, telecom, etc.)	Cost + 10%

GENERAL TERMS AND CONDITIONS

DIRECT EXPENSES

Authorized direct expenses, such as those for mileage, travel, photo developing, and long distance telephone, will be billed at cost plus 10%. Fees and expenses will be invoiced monthly unless specifically agreed otherwise.

PAYMENT

The invoice will indicate the fees and expenses expended on the assignment during the invoice period. Payment is expected within 30 days of receipt. Client agrees to pay a finance charge of one and one half percent (1-1/2%) per month, or the maximum rate allowed by law on fees 60 days past due or longer. Wilson Ihrig reserves the right to terminate all services on any accounts in arrears more than 90 days from the date of invoice. For work away from our office, staff travel time is charged at fee rate for portal to portal.

RETAINER

For new clients, it is our policy to require a retainer equal to 50-100% of the estimated fees and expenses before work commences. Thus, for this project, we require a \$WAIVED retainer prior to starting work. The retainer will be applied to *our final invoice or progress invoices*. Please be advised that Wilson Ihrig reserves the right to assert a Mechanic's Lien, Design Professional's Lien or a Stop Notice if payments are not made according to our agreement.

DELAYS

Delays not under Wilson Ihrig control, such as access denied due to owner absence, will be charged in addition to the proposed fees on a Time & Materials basis at the schedule of fees listed above.

STANDARD OF CARE

Wilson Ihrig will strive to perform services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made.

*

*

*

Please do not hesitate to contact us with questions or should you require additional information.

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WILSON, IHRIG & ASSOCIATES**

EXHIBIT B

FEE SCHEDULE

<u>TASK</u>	<u>COST</u>
Noise Monitoring Plan	\$ 3,000
Station Mobilization & Demobilization	
Two (2) stations	\$ 8,000
Three (3) stations	\$10,000
Four (4) stations	\$11,000
Noise Monitoring Station Rent (costs for entire period, per station)	
6 months, AC power	\$ 5,700
12 months, AC power	\$10,500
6 months, Solar power	\$ 6,000
12 months, Solar power	\$11,500
Monthly Reporting (per month)	
2 stations	\$ 1,400
3 stations	\$ 1,800
4 stations	\$ 2,000
Shipping & Other ODCs	
AC power	\$ 1,500
Solar power	\$ 3,000
Noise Consultation (T&M, as/if needed)	\$10,000

Work would be billed on a time and material basis in accordance with the following rate table:

Title	Rate
Principal	\$250 / hour
Associate Principal	\$200 / hour
Senior Consultant	\$175 / hour
Associate	\$150 / hour
Assistant	\$120 / hour
Technician/Field Assistant	\$80 / hour
<i>ODCs (rental equip., travel, copying, telecom, etc.) Cost + 10%</i>	

In no event shall the amount billed to City by Contractor for services under this Agreement exceed ninety-nine thousand eight-hundred forty dollars (\$99,840), subject to budget appropriations.

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BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
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EXHIBIT C

INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

C. WORKERS' COMPENSATION

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

D. PROFESSIONAL LIABILITY

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

E. COMPLIANCE WITH REQUIREMENTS

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

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

F. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

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

G. EVIDENCE OF COVERAGE

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

H. EVIDENCE OF COMPLIANCE

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

EBIX Inc.	
City of Santa Clara – Planning Division	
P.O. Box 100085 – S2	or 1 Ebix Way
Duluth, GA 30096	John's Creek, GA 30097
Telephone number: 951-766-2280	
Fax number:	770-325-0409
Email address:	ctsantaclara@ebix.com

I. QUALIFYING INSURERS

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

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WILSON, IHRIG & ASSOCIATES**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS 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 Contractor¹ 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 contractor 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 Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor'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 Contractor 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 Contractor 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, Contractor'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 Contractor 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 Contractor.

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

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
WILSON, IHRIG & ASSOCIATES**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

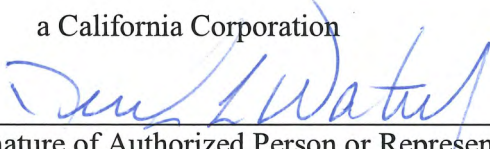
I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate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

WILSON, IHRIG & ASSOCIATES

a California Corporation

By: 
Signature of Authorized Person or Representative

Name: DEREK L. WATRY

Title: CEO/PRINCIPAL

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.

