

**RESOLUTION NO. 21-9001**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
APPROVING AN AGREEMENT BETWEEN THE CITY OF SANTA  
CLARA AND EUGENE BURGER MANAGEMENT CORPORATION  
FOR PROPERTY MANAGEMENT SERVICES OF CITY-OWNED  
COMMERCIAL PROPERTIES INCLUDING 900 AND 1000  
LAFAYETTE STREET AND AUTHORIZING THE CITY MANAGER  
TO NEGOTIATE AND EXECUTE AGREEMENTS RELATED TO  
THE PROPERTIES LOCATED AT 900 AND 1000 LAFAYETTE  
STREET**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, the City of Santa Clara ("City") is the landowner of two downtown properties located at 1000 Lafayette Street, known as Peddler's Plaza, and 900 Lafayette Street, known as Commerce Plaza;

**WHEREAS**, in 1971, the City entered into long-term ground leases which are set to expire in the coming months;

**WHEREAS**, Peddler's Plaza is approximately a 1.3-acre site with a one-story retail commercial building. The retail commercial building has 10,300 square feet of leasable space with seven (7) units. The Peddler's Plaza Ground-Lease will expire on September 30, 2021;

**WHEREAS**, Commerce Plaza is approximately a 3.7-acre site with a seven-story office building. The office building has 90,000 square feet of leasable space with 60 units. The Commerce Plaza Ground Lease will expire on April 11, 2022;

**WHEREAS**, the City is in the process of developing a specific plan for the downtown area which includes both Peddler's Plaza and Commerce Plaza;

**WHEREAS**, in the interim, the City desires to maintain occupancy of both buildings, until the City determines how to develop the area and these properties;

**WHEREAS**, the City would like to enter into lease agreements with tenants to continue to use the property for a period not to exceed two year;

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**WHEREAS**, in 2021, a competitive Request for Proposal (RFP) was advertised on the City's bid notification system for a Contractor to provide property management services necessary to rent, lease, operate and manage Peddler's Plaza and Commerce Plaza that are owned by the City; and,

**WHEREAS**, as the Ground Lease is set to terminate, the Agreement for Services between the City of Santa Clara and Eugene Burger Management contemplates the provision of professional property management services to rent, lease, operate and manage Peddler's Plaza and Commerce Plaza. The initial term of the agreement will be two years. The City may extend the Agreement for three additional one-year options.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby approves and authorizes the City Manager to execute the Agreement for Services between the City of Santa Clara and Eugene Burger Management, substantially in the form attached hereto as Exhibit "Agreement," subject to clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.
3. That this Resolution, including the Agreement approval described in Section 2 above, is based on the findings set forth above.
4. That the City Manager and/or designee is hereby authorized and directed to do the following:

A. Negotiate and execute an Agreement with Eugene Burger Management Corporation to provide property management services for an initial two-year term beginning on or about September 28, 2021 and ending on or about September 30, 2023 with maximum compensation not-to-exceed \$328,284 and subject to the appropriation of funds;

B. Execute amendments to the Agreement, not to exceed \$29,844, for contingencies in the event there are unanticipated changes during the initial term of the Agreement, subject to the appropriation of funds; and,

C. Execute three one-year options to extend the term of the Agreement after the initial term through September 30, 2026 for property management services, subject to the appropriation of funds.

D. Execute amendments to each of the agreements to add funds as required in the event revenues collected exceed staff's estimates, subject to the appropriation of funds.

E. Negotiate and execute assignment and assumption agreements, commercial leases, and related amendments for the commercial spaces located at 900 and 1000 Lafayette Street for a term not to exceed 2 years on a form agreement subject to the approval of the City Attorney.

F. That the City Manager and/or designee is hereby authorized and directed to perform all acts to be performed by the City in the administration of the Agreement for Services between the City of Santa Clara and Eugene Burger Management pursuant to the terms of the submitted proposal. The City Manager and/or designee is further authorized and directed to perform all other acts, including to negotiate and execute all documents (including leases and amendments) necessary or convenient to carry out the purposes of this Resolution and the Agreement.

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5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2021, BY THE FOLLOWING VOTE:

AYES: COUNCILORS: Hardy, Jain, Park, and Watanabe

NOES: COUNCILORS: Becker, and Chahal

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: Mayor Gillmor

ATTEST:

  
NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Agreement for Services

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
EUGENE BURGER MANAGEMENT CORPORATION**

**PREAMBLE**

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

**RECITALS**

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

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Notice of Exercise of Option to Extend Agreement

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

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

## **2. TERM OF AGREEMENT**

- A. **Initial Term.** 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 or about September 28, 2021 and terminate on September 30, 2023.
- B. **Options to Extend.** After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to three (3) additional one-year terms through September 30, 2026 ("Option Periods"), subject to the appropriation of funds. See Exhibit D for Notice of Exercise to Option to Extend Agreement Form.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

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

## **4. WARRANTY**

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

## **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

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

## **6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in

accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is **Three Hundred Sixty-Six Thousand Seven Hundred Eighty-Four Dollars (\$366,784)**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

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

## **8. ASSIGNMENT AND SUBCONTRACTING**

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

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

## **9. NO THIRD-PARTY BENEFICIARY**

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

## **10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do

not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

#### **11. CONFIDENTIALITY OF MATERIAL**

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

#### **12. OWNERSHIP OF MATERIAL**

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

#### **13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

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

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



#### **14. HOLD HARMLESS/INDEMNIFICATION**

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

#### **15. INSURANCE REQUIREMENTS**

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

#### **16. WAIVER**

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

## **17. NOTICES**

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

City of Santa Clara  
Attention: City Manager's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

Eugene Burger Management Corporation  
Attention: Jay Kacirk  
6600 Hunter Drive  
Rohnert Park, CA 94928  
and by e-mail at [jaykacirk@ebmc.com](mailto:jaykacirk@ebmc.com)

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

## **18. COMPLIANCE WITH LAWS**

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

## **19. CONFLICTS OF INTEREST**

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

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

**20. FAIR EMPLOYMENT**

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

**21. NO USE OF CITY NAME OR EMBLEM**

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

**22. GOVERNING LAW AND VENUE**

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

**23. SEVERABILITY CLAUSE**

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

**24. AMENDMENTS**

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


**25. COUNTERPARTS**

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

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

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

  
Office of the City Attorney  
City of Santa Clara

Dated:

10/1/2021  
  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**EUGENE BURGER MANAGEMENT CORPORATION**  
a California corporation

Dated:

By (Signature):

Name:

Title: ~~Executive Vice~~ President

Principal Place of 6600 Hunter Drive

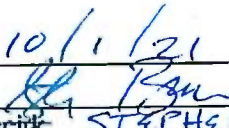
Business Address: Rohnert Park CA 94928

Email Address: jaykacirk@ebmc.com

Telephone: (707) 584-5123

Fax: (707) 584-5124

"CONTRACTOR"

  
~~Jay Kacirk~~ STEPHEN BURGER  
~~Executive Vice~~ President  
steveburger@ebmc.com

**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. DESCRIPTION OF WORK**

- 1.1. Under this Agreement, Contractor will provide property management services necessary to rent, lease, operate, and manage two properties owned by the City of Santa Clara ("City").
- 1.2. The property addresses are as follows:
  - 1.2.1. Commerce Plaza (Current Agreement Expires on April 11, 2022)  
900 Lafayette Street  
Santa Clara, CA 95050
  - 1.2.2. Peddler's Plaza (Current Agreement Expires on September 30, 2021)  
1000 Lafayette Street  
Santa Clara, CA 95050
- 1.3. To the extent not inconsistent with this Agreement between the City and Contractor including this Scope of Services, the City's RFP# 20-21-55 (including subsequent updates) and Contractor's proposal response dated June 8, 2021 are hereby incorporated by reference herein, and shall supplement this Scope of Services and be subject to the terms and conditions of the Agreement.

**2. REQUIREMENTS**

- 2.1. Contractor must maintain a valid real estate broker's license for the term of this Agreement and be in good standing with the California Department of Consumer Affairs and the California Department of Real Estate.
- 2.2. Contractor has reasonable and working knowledge and understanding of the general principles and responsibilities of property management including, but not limited to, the laws concerning real estate licensing, contracts, tenant/landlord responsibilities, fair housing, employment, property protection and insurance.
- 2.3. Contractor has working knowledge of principles of business administration, accounting, insurance, repairs and maintenance, and public relations.

**3. SERVICE REQUIREMENTS**

- 3.1. Contractor will provide property management services necessary to rent, lease, operate and manage two properties owned by the City of Santa Clara ("City"). Services will include, but not limited to, the following services:

- 3.1.1. **Operation, Maintenance, and Repair Services.** Contractor will manage, coordinate, and inspect the exterior operation, maintenance, and repair activities at the City's properties identified herein to maintain properties in good repair in accordance with all local codes, and in a condition at all times acceptable to the City. Duties include, but not limited to, the oversight of the existing vendor base, and take actions necessary to ensure vendors are providing services as agreed upon in the vendor's contract with the City for landscape services, cleaning, painting, decorating, plumbing, carpentry, and other maintenance and repair work as may be necessary, subject to any limitations imposed by the City in addition to those contained herein. The following will apply:
- 3.1.1.1. All maintenance and/or repairs costing in excess of \$1,000 requires prior approval of the City, with the exception of emergency repairs involving imminent danger to persons or property. Contractor shall notify City of all relevant facts as soon as possible after the occurrence of the event(s) giving rise to the expenditure.
  - 3.1.1.2. The contracts for the vendors, including but not limited to landscapers, janitors, painters, shall be contracts entered into directly by the City with the vendor. The Contractor is not authorized to executing contracts on behalf of the City and these vendors are not the subcontractors of Contractor.
  - 3.1.1.3. City will provide Contractor with a list of city-approved vendors to be called on for repair and maintenance services. Subject to the approval process requirement in this Agreement, Contractor is authorized to engage, manage and oversee city-approved vendors that are providing services to the Property.
  - 3.1.1.4. Contractor will promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a twenty-four (24) hour basis and reported to the City by the next business day. Contractor shall respond to emergency requests within two (2) hours from receipt of call.
  - 3.1.1.5. Ensure no improvements or modifications are made to the property without City approval.
  - 3.1.1.6. Coordinate legal action against tenants and contractors as needed.
  - 3.1.1.7. Contractor will review and request City approval for payment

of vendor's invoices for services in a timely manner. Contractor, on behalf of the City, will pay invoices which are related to the Property from the City's "Operating" Account.

- 3.1.1.8. Contractor will be responsible for collection of all costs from lessee(s) for any maintenance and repairs on the properties herein that are the lessee's responsibility pursuant to the lease agreement.

### **3.1.2. Leasing Services**

- 3.1.2.1. Engage with tenants and coordinate with the City on negotiations and finalization with Lessee(s) for lease agreements.
  - 3.1.2.2. Ensure compliance with the lease agreement on behalf of the City.
  - 3.1.2.3. Address any tenant concerns related to the physical condition of the property.
  - 3.1.2.4. Maintain accurate records including procedures for enforcing the terms of lease agreements, and annual inspections to ensure compliance with Federal, State, and Local Housing Quality Standards and transmit said records and reports to the City on a monthly basis.
  - 3.1.2.5. Manage and resolve conflicts among tenants. Document and keep all record of communications with tenants on issues, complaints, and resolutions.
  - 3.1.2.6. **Collection of Rents and other Receipts.** Contractor will collect, when due, all rents, charges and other amounts receivable on the City's account in connection with the management and operation of City owned properties identified herein. Such receipts will be deposited in an Operating Account, separate from all other accounts and funds, with a bank whose deposits are insured by the Federal Deposit Insurance Corporation. This account will be setup as a Trust Account with the City's name and designated of record as "Eugene Burger Management Corporation Trust Account FBO City of Santa Clara".
- 3.1.3. **Records and Reports.** Contractor will have the following responsibilities with respect to records and reports:
- 3.1.3.1. Annual Management Plan. An annual management plan incorporating an annual budget is to be developed by the

Contractor for the project each year beginning with the project's next fiscal year, which begins on July 1<sup>st</sup> each year. An interim plan, including an interim budget is to be developed, if necessary, to provide guidance from the beginning of this contract to the beginning of the next fiscal year. The annual management plan and budget shall set forth the financial, physical and operational goals to be achieved by the project in the succeeding fiscal year as well as any other special goals or interests set forth by the City. The annual budget shall include the estimated costs of management services, utilities, maintenance services, repair services, janitorial services, landscape services, supplies and materials, misc. taxes and fees, insurance and capital costs, if any. The annual management plan and budget is due to the City for approval on or before March 1<sup>st</sup> of each operating year as part of the City's annual budget process.

- 3.1.3.2. Contractor will establish and maintain a comprehensive system of records, books, and accounts in a manner satisfactory to the City, which shall be kept on an individual property basis.
- 3.1.3.3. With respect to each fiscal year ending during the term of this Agreement, the Contractor will, upon the specific direction of the City, have an annual financial report prepared by a Certified Public Accountant or other person acceptable to the City. The report will be certified by the preparer and the Contractor and will be submitted to the City within sixty (60) days after the end of the fiscal year, for the City's further certification. Compensation for the preparer's services will be paid out of the Operating Account as an expense of the Project.
- 3.1.3.4. Contractor will prepare a monthly report comparing actual and budgeted figures for receipts and disbursements and will submit each such report to the City on or about ten (10) days after the end of the month covered.
- 3.1.3.5. Contractor will furnish such information (including occupancy reports) as may be requested by the City from time to time with respect to the financial, physical or operational conditions of the City owned properties.
- 3.1.3.6. On or about the tenth (10th) day of each month, the Contractor will furnish the City with a statement of receipts and disbursements during the previous month, and with a schedule of accounts receivable and payable, and reconciled bank



statements for the Operating Account and Security Account (if any) as of the end of the previous month.

3.1.3.7. On or about the tenth (10th) day of each month, the Contractor will furnish the owner with an itemized list of all delinquent accounts, including rental accounts as of the end of the previous month.

#### **3.1.4. Accounting Services**

3.1.4.1. Fidelity Bond. The Contractor will furnish, at its own expense, an insurance coverage policy for misappropriation in a principal sum which is at least equal to the gross potential income for two months and is conditioned to protect the City against misappropriation of Project funds by the Contractor and its employees.

3.1.4.2. Annual operating budgets for the City owned properties identified herein will be as approved by the City and incorporated in the Annual Management Plan.

**3.2. Disbursements from Operating Account.** Contractor shall pay all items of expense for the operation, maintenance and supervision and management of the properties with the funds in the Operating Account. Operating expenses include but are not limited to management fees, utilities, maintenance services, repair services, janitorial services, landscape services, supplies and materials, misc. taxes and fees, insurance, etc. To ensure sufficient funds are available in the Operating Account, City will deposit in the Operating Account, beginning on or before the Effective Date, at the amount equal to the budgeted or otherwise approved expenses for the two (2) months period. City shall thereafter maintain an amount of at least the budgeted or otherwise approved expenses for the next two rolling months, leaving at all times an average of two extra months of funding in the Operating Account.

3.2.1. As stated in 3.1.3.4, Contractor shall remit the rent collected, less any operating expenses, in the Operating Account to the City on or about the tenth (10th) day of each month following. Contractor shall provide a statement of receipts and disbursements during the previous month, and with a schedule of accounts receivable and payable, and reconciled bank statements for the Operating Account at the time of remittance.

#### **3.3. Other Services**

3.3.1. Perform, record, and submit to the City a bi-annual visual inspection.

3.3.2. Provide a detailed monthly management report to the City to include:

- 3.3.2.1. Monthly maintenance, preventative maintenance, and tenant requested maintenance.
- 3.3.2.2. Onsite property visits, inspections, and complaint logs.
- 3.3.2.3. Lease agreement enforcement issues.
- 3.3.2.4. Legal matters.
- 3.3.3. Provide annual operating budget for both properties to the City for review and approval.

## EXHIBIT B COMPENSATION

### 1. MAXIMUM COMPENSATION

- 1.1. The maximum amount payable for property management services provided under this Agreement and as set forth below shall not exceed **Three Hundred Sixty-Six Thousand Seven Hundred Eighty-Four Dollars (\$366,784)**, during the Initial Term of the Agreement. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in an Amendment to the Agreement. No additional services will be performed unless both Parties execute an Amendment outlining the services requested and the compensation agreed for such services.

### 2. FEES

- 2.1. In consideration of the property management services rendered to City by Contractor under this Agreement the City shall pay the following fees:

Management Services Fee				
Description	Monthly Rate Initial Term Year 1 of 2	Initial Term Year 1 of 2	Monthly Rate Initial Term Year 2 of 2	Initial Term Year 2 of 2
Commerce Plaza*	\$8,000	\$40,000	\$8,150	\$97,800
Peddler's Plaza	\$1,500	\$18,000	\$1,525	\$18,300
Total for Annual Management Services for Each Property		\$58,000		\$116,100
TOTAL FOR ANNUAL MANAGEMENT SERVICES FOR INITIAL TERM				\$174,100
Other Service Fees				
Description	Initial Term Year 1 of 2 Fees		Initial Term Year 2 of 2 Fees	
Accounting Services				
Commerce Plaza	\$700/Month		\$715/Month	
Peddler's Plaza	\$300/Month		\$305/Month	
TOTAL FOR ACCOUNTING SERVICES FOR INITIAL TERM			\$19,340	
Construction Management Fees			10% of Improvement Costs	
Leasing Services				

For vacant space new tenants:

- 6% of the fixed annual minimum rent payable under the terms of the original lease during the first three (3) years of the lease
- 5% of the fixed annual minimum rent payable during the next two years (2) of the original lease
- 4% of all rent payable thereafter during the sixth and subsequent years of the original lease

For existing tenants:

- Renewal expansion rates for existing tenants will be 50% of the leasing fee for new tenants identified above.

<b>TOTAL ESTIMATE FOR LEASING SERVICES FOR INITIAL TERM</b>	<b>\$140,000</b>
<b>CONTINGENCY (10%)</b>	<b>\$33,344</b>
<b>MAXIMUM COMPENSATION NOT-TO-EXCEED FOR INITIAL TERM</b>	<b>\$366,784</b>

\*Property Management Services for Commerce Plaza will not begin until April 2022, the amount noted for the management service fee for this location is for only five months for year 1 of 2.

- 2.2. Contractor is entitled to the leasing fee specified in the above table when (i) the lease is fully executed with tenant (ii) the first month's rent and security deposit (if applicable) is paid to the City.

### 3. PRICING AND OPTION RENEWALS

- 3.1. Pricing is firm fixed for the Initial Term of the Agreement.

- 3.2. Price Adjustments: Contractor may request adjustments to rates prior to any one-year option to renew the Agreement after the Initial Term. Price increase requests must be tied to CPI, PPI, or relevant industry specific index. Requests for increase must be fully documented by Contractor. Price adjustments are subject to City's approval.

### 4. INVOICING

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

## EXHIBIT C INSURANCE REQUIREMENTS

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

### A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

### B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

C. WORKERS' COMPENSATION

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

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

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

F. **EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies,

satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

**G. EVIDENCE OF COMPLIANCE**

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

[ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

or mailed to:

EBIX Inc.  
City of Santa Clara Electric Department  
P.O. Box 100085 – S2  
Duluth, GA 30096  
Telephone number: 951-766-2280  
Fax number: 770-325-0409

**H. QUALIFYING INSURERS**

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



**EXHIBIT D**  
**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE:</b>	
<b>CONTRACTOR:</b>	
<b>DATE:</b>	

Pursuant to Section \_\_\_ of the Agreement referenced above, the City of Santa Clara hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	<b># of #</b>
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**NEW OPTION TERM**

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Section \_\_\_ of the Agreement the rates of compensation are hereby adjusted as follows:  
(use attachment if necessary)

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Santa Clara hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

Dated: \_\_\_\_\_

Approved as to Form: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney  
City of Santa Clara

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