

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

PREAMBLE

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

RECITALS

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

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum

Exhibit E – 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 will govern and control.

2. TERM OF AGREEMENT

A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement will begin on September 1, 2022 and terminate on August 31, 2023.

B. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to four (4) additional one-year terms through August 31, 2027 ("Option Periods"), subject to the appropriation of funds. See Exhibit E for Notice of Exercise to Option to Extend Agreement Form.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor will 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 will be fit for the purpose intended, will be free from defect and will 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 will 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 will 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 **Two Hundred Forty-one Thousand Eight Hundred Ninety Four Dollars (\$241,894)**, 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 will be at Contractor's expense. Contractor will not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City will 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 will 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 will not be assigned or transferred without the prior written approval of City. Contractor will not hire subcontractors without express written permission from City.

Contractor will 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 will not be construed to be an agreement for the benefit of any third party or parties and no third party or parties will 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 will be held confidential by Contractor and will 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 will be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which will 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 will be the property of City but Contractor may retain and use copies thereof. City will not be limited in any way or at any time in its use of said material. However, Contractor will 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 will 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 will be disallowed by City. Contractor will 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 will 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 will expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify will 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, will 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 will 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 will 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

will 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 will, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Department of Public Works (Facilities Division)
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at kwinland@santaclaraca.gov

And to Contractor addressed as follows:

Banksia Landscape, Inc.
Attention: Kevin Pearson
1055 E. Brokaw Rd., Ste 30-348,
San Jose, CA 95131
and by e-mail at kpearson@banksialandscap.com

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

18. COMPLIANCE WITH LAWS

Contractor will 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 will 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 will 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 will 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 will 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 will, for any reason, be held invalid, illegal or unenforceable in any respect, it will not affect the validity of the other provisions, which will 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 will be deemed to be an original, but both of which will constitute one and the same instrument.

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

Office of the City Attorney
City of Santa Clara

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

"CITY"

BANKSIA LANDSCAPE, INC.
a California corporation

Dated: _____

By (Signature): _____

Name: Kevin Pearson

Title: President

Principal Place of Business Address: 1055 E. Brokaw Rd., Ste 30-348,
San Jose, CA 95131

Email Address: kpearson@banksialandscape.com

Telephone: (408) 617-5252

Fax: N/A

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

The following Scope of Services defines the services and responsibilities of Contractor and City to provide as-needed environmental inspection, testing and reporting services citywide.

The Scope of Services, including Exhibit A and Contractor's proposal response provide context, supplemental information, and are incorporated by reference to the extent not inconsistent with the Agreement.

1. General Service Requirements

- 1.1. Contractor shall provide landscaping services and as-needed repairs at the Santa Clara Convention Center Complex.
 - 1.1.1. The address for the site is 5001, 5101, and 5201 Great America Parkway, Santa Clara, CA 95054. The site includes the Santa Clara Convention Center, TechMart, and the Hyatt Hotel.
- 1.2. Contractor will furnish all supervision, material, labor, equipment and transportation required to provide landscaping services at the District as specified herein.
- 1.3. Contractor will, at his or her expense, obtain all necessary permits and licenses, etc. required for performance of this project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.
- 1.4. Contractor will be on site five (5) days a week, including holidays (except Thanksgiving and Christmas, New Year's Day).
- 1.5. Response Times: Contractor will respond to non-emergency and emergency service requests for times and days not onsite as specified below:
 - 1.5.1. Non-Emergency Response Time: Contractor will respond to non-emergency service requests by the next business day from receipt of request.
 - 1.5.2. Emergency Response Time: Contractor will respond to emergency service requests within two (hours) from receipt of request.
- 1.6. Mowing equipment assigned to the sites will remain onsite; mowing equipment from offsite is not allowed.
- 1.7. Contractor will notify the City's Representative at least one week prior to undertaking the following work:
 - 1.7.1. Broadleaf weed spraying within turf areas.

- 1.7.2. Aeration
- 1.7.3. Fertilization
- 1.7.4. Dethatching
- 1.8. **Materials:** All materials used will either conform to the specifications herein or will otherwise be approved by the City. Contractor will provide monthly record of all agricultural chemicals used to the Santa Clara County Agricultural Commissioner's Office. Contractor will provide the City a record of the submittal.
- 1.9. City will provide water for Contractor to provide services.
- 1.10. Contractor will provide and apply (if applicable) the following:
 - 1.10.1. Fertilizer
 - 1.10.2. Pesticides
 - 1.10.3. Replacement Shrubs and Ground Cover – Replacement plants of a size, condition and variety acceptable to the City's Representative are to be furnished by the Contractor if he/she has damaged the originals; otherwise the City will furnish these materials or reimburse the Contractor.
 - 1.10.4. Lawn Seed for Reseeding/Sod – A type, matching the variety at the site, will be furnished by the Contractor.
- 1.11. Storage of Equipment
 - 1.11.1. Contractor will be allowed to store equipment, parts, and material onsite within a City-owned maintenance facility located north of the parking garage structure.
 - 1.11.2. Contractor will be solely responsible for the maintenance of this structure and for any damage to it during its usage.
- 1.12. Storage Collection and Disposal of Refuse
 - 1.12.1. Contractor will dispose of all refuse collected during services at an approved waste disposal facility and will pay all costs involved. No City facilities, other than specified above, are available for disposal.
- 1.13. Watering
 - 1.13.1. Plants should not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball. A need for water should dictate the frequency of watering by an automatic or manual sprinkler system.
 - 1.13.2. Maintain a large enough water basin around plants so that enough water can be applied to establish moisture through the major root zone. When hand watering, use a water breaker to break the water force.

- 1.14. At the City's request, Contractor will work with the City or City's representative to review the current landscaping and develop a plan to institute more low water plants.
- 1.15. Any proposal for low water plants will follow guidelines by the California Native Plant Society and involvement with the California Native Plant Landscaper Certification Program is advisable. <https://calscape.org/>

2. Services During Drought Restrictions

- 2.1. When drought restrictions are in place Contractor will work with the City or City's Representative to develop a plan that ensures water usage is decreased while still maintaining the landscape at an acceptable level.

3. Shrub Care

- 3.1. Contractor will maintain shrubs in a healthy, growing condition by performing all necessary operations, including the following:
 - 3.1.1. Pruning – Shrubs will not be clipped into balled or boxed forms unless such is required by the design.
 - 3.1.1.1. All pruning cuts will be made to lateral branches, or buds, or to the branch bark ridge. "Stubbing" will not be permitted.
Contractor will deadhead all agapanthus during the flowering season (May-September) weekly to remove all spent flower stalks and seed heads. Stalks will be cut off cleanly at the base of the plant. Any brown foliage will also be removed.
 - 3.1.2. Rose Garden Pruning – Contractor will be responsible to prune all roses according to American Rose Society standards. This includes cutting out the old wood and keeping the new wood while retaining the symmetrical shape of the plant. Cut the remaining new wood back three quarter the length of growth made the previous season, cutting a quarter inch above an eye facing the outside. Weak wood will be removed as well as crossing branches. Moderate pruning of floribunda and grandiflora roses will produce a greater abundance of blooms. Complete pruning and removal of all foliage is to be done during the dormant season (January). Deadheading of flowers and minor corrective pruning will be done during the growing season (May thru November). Roses at the Complex area are a combination of floribunda and grandiflora roses (Show Biz, and carpet rose).
 - 3.1.3. Weed Control – Contractor will keep all landscape areas weed free at all times.
 - 3.1.3.1. Weed free will refer to the required condition of all landscaped areas and adjacent hard surfaces within the project area.
Surfaces will be judged to meet the following criteria, if the impression from a distance and at close hand is that the surface

is free of any or all plants which are foreign to the planted area and are therefore out of place and undesirable.

- 3.1.3.2. Should weed germination occur, Contractor will eradicate pursuant to approved maintenance plan and prior to weeds reaching one week of (top growth) age.
- 3.1.3.3. Any weed taller than 2" will be hand pulled or mechanically removed to avoid unsightly brown stubble from using herbicides.
- 3.1.3.4. Contractor will not spray in open areas with Roundup on weeds 2" or less.
- 3.1.3.5. Contractor will apply a pre-emergent herbicide (Prodiamine 4L) or approved equal on all planters (excluding annual color planters and beds) at least every three (3) months to control weeds. All herbicide applications are to be done by certified personnel who are trained and possess a Qualified Applicator Certificate (QAC or Qualified Applicators License QAL) with the Department of Agriculture. The applicator must also have in his/her possession at time of spraying a written recommendation from a Certified Pest Control Advisor (PCA). Contractor will use extreme caution when applying herbicides to assure no damage occurs to the site or to adjacent properties. Any damage to desirable plant material will be replaced at Contractor's expense. Contractor will spray as needed.
- 3.1.3.6. Avoid soil cultivation under camellias that destroys willow roots. Use mulches (small 1¼" fir chips) to help prevent weed seed germination. Mulches are to be applied 1" thick. Caution is to be exercised when applying mulches around roses so as not to bury the crown and cause rotting and dieback.
- 3.1.4. Insect and Disease Control – Maintain control with approved materials and integrated pest control management methods.
- 3.1.5. Fertilization – Contractor will fertilize all shrubbery at least three times per year (September, March, and June) with a balanced pelleted fertilizer.
 - 3.1.5.1. All plant material will be well watered two (2) days prior to fertilization to avoid any damage or burn to the plant. Contractor will exercise caution not to allow fertilizer pellets to accumulate onto foliage or sidewalks where damage may occur. All plants are to be immediately watered after fertilizer is spread at the recommended rate evenly around the base of the plant out to its drip line.
 - 3.1.5.2. For established roses, Contractor will fertilize with a balanced granular fertilizer according to the recommended label rate once every six weeks beginning March through September.

- 3.1.5.3. Acid Plants (i.e. camellias, azaleas, rhododendrons) – Apply fertilizer after blossoms have been shed in early Spring (March – September) for at least 7 consecutive months each year, using an acid fertilizer 8-4-12 or approved equal at the following rates along with liquid iron:

Shrub Size	Rate
2 Feet High or Wide	1/4 Cup
2 to 3 Feet High or Wide	1/3 Cup
3 to 4 Feet High or Wide	1/2 Cup
Above 4 Feet	1 Cup

- 3.1.5.4. Camellias will also receive one (1) cup of cottonseed meal at least every ninety (90) days to maintain plant health.

3.1.6. Plant Removal and Replacement

- 3.1.6.1. Contractor will notify the City's Representative of any damaged, destroyed or dead plant material within one working day of its discovery.
- 3.1.6.2. Plant material will be removed within one working day after the City's Representative directs action, except for damaged plant material posing a safety hazard, which must be removed immediately.
- 3.1.6.3. The City's Representative will make a final determination of the probable cause for the plant material loss and assign the cost responsibilities of replacement to the appropriate party. The City's Representative may elect to remove any plant material and not replace it; Contractor will be directed accordingly.
- 3.1.6.4. Contractor will remove dead and dying plants and replace with plants of a size, condition and variety acceptable to the City to be paid for by the City, unless due to negligence of the Contractor. The Contractor will gain approval from the City before any planting is done.
- 3.1.7. General Horticultural Requirements – It is the intent of this specification to provide for normal horticultural maintenance of all plant materials being maintained i.e. dead camellia blossoms will be removed from the plant or ground, dead agapanthus blossoms will be removed by cutting at the base of the plant.

4. Ground Cover Care and General Ground Maintenance Service Requirements

- 4.1. Weed Control – Control weeds, preferably with pre-emergent herbicides, but also with selective systemic herbicides. Any weed taller than 2” is to be hand pulled or mechanically removed to avoid unsightly brown stubble from using herbicides.
- 4.2. Fertilization – Apply four (4) lbs. of actual nitrogen per 1,000 square feet per year in two to four applications during the first year of a new planting or if ground cover is nitrogen starved. One application should be in early spring when growth begins. Reduce to three (3) lbs. actual nitrogen vigorous growth and good color. Complete fertilizers are not necessary unless soil test shows specific nutrient deficiencies.
- 4.3. Watering – Water enough that moisture penetrates throughout root zone, and only as frequently as necessary to maintain healthy growth.
- 4.4. Trash Removal – Remove trash daily.
- 4.5. Edging – Edge ground cover as necessary to keep in bounds and trim to growth as necessary to achieve an overall even appearance. Once every two years mow ivy to 2” above ground level in order to renew growth and improve density and attractiveness. Groundcover is to be kept a minimum of two (2) feet from the base of tree trunks. Any open areas are to be maintained in a weed free condition.
- 4.6. Pest/Insect Control – Control insects and diseases as necessary, using legally approved materials. Contractor will be required to follow City of Santa Clara’s Integrated Pest Management (IPM) Program Policy.
- 4.7. Plant Replacements – Replace dead and missing plants after obtaining the City’s or City’s Representative approval to pay for replacements. Contractor will replace plants damaged by Contractor at no cost to the City.
- 4.8. Rodent/Animal Control – Contractor is responsible for controlling various rodents and animals that may enter the Complex (i.e. gophers, rats, possums, ground squirrels, ducks, etc.) per Department of Agriculture approved methods. Contractor is responsible to secure all necessary permits.

5. Annual Color

- 5.1. The District has approximately 19 large pots that have approximately 6-8 plants in each pot. Contractor will change the plants in the pots twice a year based on the approved color/design scheme approved by the City or City’s Representative.
- 5.2. Color/design schemes will be cooperatively developed between Contractor and the City or City’s Representative in advance of the planting schedules.
- 5.3. Annual color areas are located throughout the complex in medians, tree wells,

various color bowls, entrance sign planter beds, and courtyard patios. Contractor is responsible to be familiar with planting plan and change out frequencies. The average spacing is 6" on center.

- 5.4. Contractor will be responsible to purchase healthy plant material and properly install and maintain all annuals in a vigorous condition. Plants that are lost due to pest/disease or improper maintenance practices will be replaced by Contractor at no cost to the City.

5.5. Soil Preparation –

- 5.5.1. At time of flower rotation, all existing annuals are to be removed and all debris raked and discarded. Soil is then cultivated to a depth of 12" and necessary soil amendment added.
 - 5.5.2. All annual planting beds are then to be treated with a soil drench using subdue per the manufacturer's recommendation prior to planting.
 - 5.5.3. A pre-plant fertilizer (i.e. 16-16-16) is then to be incorporated into the soil. Annual color plants are then installed per California Nurseryman standards. The average sizes of annual color that are purchased are jumbos and 4" pot material. On rare occasions where material is only available in cell packs, this size may be used upon approval of the City or City's Representative.
- 5.6. Once soil preparation is completed and the plants are installed, all drip irrigation tubes are to be immediately reinstalled to ensure property watering. Overhead watering is to be minimized or avoided to prevent disease outbreaks. When hand watering color bowls, a pressure breaker nozzle is to be used at the hose end to avoid plant/soil damage. Care should be exercised to place the watering wand between the plant materials close to the soil to minimize overhead water onto foliage.
 - 5.7. All annuals will be inspected daily and deadheaded and sprayed, etc. as necessary to maintain health during the flowering season.
 - 5.8. Annual color beds are not to be mulched with bark chips, but rather with nitrified redwood compost.

6. Turf Care

- 6.1. Turf will be maintained in a healthy growing condition by furnishing necessary services, including the following:
 - 6.1.1. Mowing and Edging –
 - 6.1.1.1. Turf will be mowed at the minimum height of 2 inches during the year, except for the rainy season when it will be mowed at 1.5 inches.
 - 6.1.1.2. Clippings will be vacuumed off of all walkways or blown with a backpack blower into the street gutter but must be immediately swept or vacuumed up. At no time will Contractor blow debris

into the City streets or storm drain catch basins. Clippings from mowing will be caught unless otherwise approved.

- 6.1.1.3. Mowing will be done at a minimum once weekly. During the months of March thru September contractor will notify the City's Property Manager if additional moving is needed. Contractor will be required to have mowers sharp at all times in order to assure a clean cut.
- 6.1.1.4. Edging will be done weekly year round. Sprinkler heads must be trimmed around by hand weekly to provide good water coverage and avoid any obstructions. This may also be achieved by proper use of a gas powered string trimmer. Scalping of the turf around sprinkler heads and valve boxes etc. will not be tolerated. Contact weed spray around sprinkler heads will not be allowed.
- 6.1.2. Dethatching – Contractor will be responsible to measure the turf thatch layer thickness in late August. If the thatch layer is $\frac{3}{4}$ " or more in thickness, dethatching will be required (September) to improve water penetration and improve turf health. A gas powered dethatcher (i.e. self-propelled Ryan model or equivalent) will be used and all debris is to be raked and removed. If necessary, over-seeding may be required following dethatching as well as aerification.
- 6.1.3. Watering – Lawns will be watered at such frequency as weather conditions require to replenish soil moisture below root zone. Watering will be done at night if the irrigation system is electrically controlled, otherwise apply water early in the morning. Normally a total of 1.5 inches of water is needed weekly in hot weather, but not all at one time. Water run-off across pavements and into gutter will be avoided whenever possible.
- 6.1.4. Aerification – All turf areas will be aerified as needed but at least once per month during the months of March, June, September and December.
 - 6.1.4.1. Aerifier core depth will be a minimum of 2.5" deep. A fertilizer application will be applied one week later following each aerification process. In addition to this, during the September and March aerification, an application of pelleted gypsum is to be applied (along with the application of fertilizer) at a rate of 16 lbs. per 1,000 sq. ft.
- 6.1.5. Fertilization –
 - 6.1.5.1. All turf will be fertilized every six (6) to eight (8) weeks during the growing season (March through October).
 - 6.1.5.2. Fertilizer will be sulfur coated hydorprill 21-7-14, or approved equal, and will be applied at a rate of 5 lbs. material per 1,000sq. ft. Then in November, a time release fertilizer will be applied (i.e Sierra Chemical's controlled release fertilizer 21-8-8).

6.1.5.3. If improvement of turf color and health is necessary during winter, an application of an appropriate fertilizer will be applied as necessary.

6.1.6. Weed Control

6.1.6.1. Broadleaf Weed Control within Turf Areas

- A minimum of two spray applications is required per year during the months of April and August.
- Applications will be repeated in order to achieve 100% weed free condition.
- Formulation of herbicide must be approved by the City's Representative in advance of any application.
- Contractor will receive prior scheduling approval for applying any broadleaf herbicide from the Santa Clara Convention Center Complex Assessment District.
- Contractor must supply to the City's Representative all necessary MSDS sheets along with a notice of intent to spray.

6.1.6.2. General Weed Control

- Approved pre-emergent weed control will be applied in February and in September each year for control of crab grass and annual blue grass, or by the manufacturer's recommendation.
- Control against Bermuda grass infestation is to be carried out as necessary.

6.1.6.3. Damage Prevention – Contractor will use caution when applying broadleaf spray, as well as all pesticides, to assure no damage to site (especially annual color) or adjacent property owners' plant material.

7. Irrigation System Service Requirements

7.1. Any damages to the system caused by Contractor's operations will be repaired at no cost to the City. Repairs will be made within one watering period.

7.2. Accidental damages, not resulting from Contractor's negligence of operations, will be reported promptly to the City or City's Representative with an estimate of the cost to repair. This applies also to changes and additions needed.

7.3. Faulty electrical controllers will be reported to City or City's Representative and upon approval repairs will be made at City's expense, or City will arrange for repair.

7.4. Contractor will be responsible at his/her cost for all sprinkler repairs, including risers and damaged waterlines, caused by Contractor negligence.

- 7.5. Contractor will inspect sprinklers daily for broken heads, pipes, valves or malfunctioning clocks.
- 7.6. In late winter each year, Contractor will check all systems for proper operation.
 - 7.6.1. Lateral lines will be flushed out after removing the last sprinkler head or two at each end of the lateral.
 - 7.6.2. All heads are to be adjusted as necessary for unimpeded coverage.
 - 7.6.3. The irrigation systems will be adjusted throughout the year to provide proper coverage.
 - 7.6.4. Any damage to plant and turf material due to improper coverage will be replaced by Contractor at no cost to the City.
 - 7.6.5. Set and program automatic controllers for seasonal water requirements.
 - 7.6.6. Contractor will perform a master water audit on all landscape areas and develop a water budget for each controller. The report will be submitted to the City's Representative for approval within three (3) months of notice to proceed. The format will be in cubic feet for each month of the year. The City, while desiring that quality is maintained at the highest possible standards, also recognizes that water consumption should be held to the lowest reasonable level consistent with the health of the plant material. Irrigation levels should be consistent with the climatic region in the District project areas, the plant material and the irrigation equipment. Contractor will be required to regularly report on compliance to this requirement.
 - 7.6.7. Contractor will regularly inspect all drip irrigation to ensure no clogs are apparent and tubes are properly spaced for thorough coverage.

8. Sidewalk and Patio Cleaning Maintenance Service Requirements

- 8.1. Contractor will remove clippings and other refuse from sidewalk and pedestrian areas throughout the Convention Center Complex (i.e. includes all concrete and granite walkways, exposed aggregate patio behind hotel and cobblestone surfaces around all fountains) using approved mechanical methods. Removal of refuse from tree wells will be included.
- 8.2. Contractor must coordinate the work in this section with the City's sweeping and janitorial contractors to avoid any conflicts.
- 8.3. Sidewalk and patio cleaning will be performed as needed on a daily basis. The City's Representative reserves the right to add areas, delete areas, adjust frequencies, and adjust schedules.
- 8.4. Mechanical methods used to perform sidewalk cleaning include blowing and vacuuming in conjunction with miscellaneous hand tools such as brooms, rakes, shovels, etc. Blowing is the preferred method, however Contractor is responsible for ensuring that all work is performed in full compliance with city,

county, state and federal noise ordinances, permits and environmental clearances. Contractor will be responsible for minimizing noise or other environmental impacts upon the public resulting from the sidewalk cleaning operation.

- 8.4.1. No blowing will be allowed around the hotel prior to 8:00 a.m. and blowing will be completed prior to 5:00 pm.
- 8.4.2. Contractor will be responsible for development of alternative cleaning methods and schedules where noise or other environmental impacts upon the public are determined by the City's Representative to be unacceptable. Alternate methods could include utilizing vacuum type equipment or hand methods. No adjustment to unit price for this work will be permitted if alternative methods are permitted or required.

8.5. Equipment

- 8.5.1. Equipment not suitable to produce the quality of work specified herein, as determined by the City's Representative, will not be permitted to operate. All equipment will be subject to the City's Representative's approval prior to use.
- 8.5.2. Equipment used to perform work in Section 8 will include environmentally acceptable backpack blowers, hand tools (i.e. brooms, scoops, shovels, hoses, etc.) and hand power vacuums.
- 8.5.3. Contractor will utilize the quietest equipment that is reasonably commercially available. Contractor will be responsible for keeping informed of technological advances in sidewalk cleaning equipment and for utilizing the latest equipment to mitigate noise.
- 8.5.4. Contractor will properly maintain back-up equipment at all times for the contractual work. The back-up equipment will be of the same condition and appearance as specified above for the regularly used equipment. The cost to maintain the specified equipment will be the sole responsibility of Contractor.

8.6. Schedule of Cleaning

- 8.6.1. All scheduled sidewalk cleaning will be performed between the hours of 8:00 a.m. to 5:00 p.m., unless directed otherwise by the City's Representative five days a week including holidays except for Thanksgiving, Christmas, and New Year's Day, and as acceptable by the City's Representative.
- 8.6.2. Sidewalk cleaning will be performed year-round.

9. Other Maintenance Requirements

- 9.1. Keep pavement joints weed free by either spraying or removing by hand.

- 9.2. Do not blow debris into City streets. Material may be blown into the street gutter but must be immediately swept or vacuumed up.
- 9.3. Apply snail bait to all planters as necessary to achieve control.
- 9.4. Contractor will carry out operations with due regard for public safety. The City's Representative will direct Contractor to rectify matters affecting public safety as required, and directions of this nature are to be treated with the highest priority.
- 9.5. Contractor will be responsible for maintaining all applicable traffic sign visibility standards with regard to groundcover and shrubs. Contractor will remove foliage as necessary to provide for these standards.
- 9.6. Contractor will remove all debris created during field operations progressively over the workday. Under no circumstances will Contractor leave any debris overnight.
- 9.7. Contractor is responsible for the removal of storm or weather related debris.

10. Repair and Renovation Work

- 10.1. In addition to the preceding tasks, the City's Representative may request work to be done that is not part of the scheduled scope of work. An example of supplemental work follows:
 - 10.1.1. Turf Renovation – Removal of old sod, soil preparation and installation of new sod. This may also include removing sod and replacing with California Native Plants (<https://calscape.org/>).
 - 10.1.2. Irrigation Installation – Valves, quick couplers, sprinkler heads and complete installations.
 - 10.1.3. Plant Material Installation – 1 and 5 gallon shrubs and ground cover.
- 10.2. Prior to performing any repair and renovation work, Contractor will prepare and submit a written description of the work with an estimate of labor, materials, tools, equipment, and time to complete. The only exception will be when a condition exists wherein there is imminent danger of injury to the public or damage to property, in which case verbal estimate and authorization may be used. Within twenty-four (24) hours after verbal authorization, Contractor will prepare a written estimate for the City's or City Representative's approval.
- 10.3. When the City's Representative and Contractor determine that the repair and renovation work cannot be performed by the Contractor, the Contractor may be directed to find a subcontractor that meets the City's approval.

11. Work Force Requirements

- 11.1. Contractor will assign a Site Superintendent who is experienced in landscape maintenance and preferably has an education in ornamental horticulture.
 - 11.1.1. The Site Superintendent as required will attend one (1) Convention Center Complex Assessment District meeting (one to one and one-half hours in length) each month.
 - 11.1.2. Contractor will be responsible to have adequately maintained backup equipment and relief workforce. Any personnel staffing level changes will require justification as to how the level of service will be maintained and written approval of the City's Representative must be obtained.
 - 11.1.3. Contractor's staff providing services on weekdays (Monday – Friday) must include one (1) supervisory level employee typically classified by title as follows:
 - 11.1.3.1. Supervisory Level
 - Site Superintendent
 - Field Representative/Foreman
 - Pest Management Coordinator/Grounds Maintenance Worker III
 - 11.1.3.2. Grounds Maintenance Worker Level
 - Irrigation Specialist/Grounds Maintenance Worker II
 - Grounds Maintenance Worker I
 - 11.1.4. Site Superintendent will coordinate with the City's Representative regarding special projects and weekly status reports, etc.
- 11.2. Contractor's personnel providing work under the contract will project a positive public image. Contractor's employees are to be personably presentable at all times. All personnel will be courteous and responsive to the general public.
- 11.3. Contractor will provide City Representative a list of all employees (names and titles) who work on the site which includes work schedules. Contractor will at all times ensure the City Representative have a current employee list.
- 11.4. Contractor will designate employees that are assigned to the site fulltime.
- 11.5. Contractor will be responsible for training and educating employees assigned for the work for the City at Contractor's expense. All employees assigned to the City contract will be thoroughly familiar with the methods, equipment, schedules, and quality of work required.
- 11.6. Contractor's employees will be required to comply with the following requirements:
 - 11.6.1. Observe and report deficiencies to onsite Supervisor.

- 11.6.2. Communicate effectively with the public. Contractor will make every effort to hire bilingual (English/Spanish) personnel for the work under the contract.
- 11.6.3. Understand written and oral instructions, schedules, and procedures.
- 11.6.4. Contractor will remove any employee from work under the contract at the request of the City's Representative.
- 11.6.5. Contractor's personnel will wear a company uniform with Contractor's name and insignia at all times while performing work under the contract within the boundaries of the Complex. Uniforms will consist of shirts, pants, jackets, and rainwear, in summer and winter versions. Uniform will be approved by the City's Representative. Contractor will procure uniforms at Contractor's sole expense.
- 11.6.6. All employees must attend Contractor's training program to educate employees on the Complex facilities, unique features, public relations etiquette, complaint procedures, care and use of uniforms, etc. Employees who have not received this training will not be permitted to work under this contract.
- 11.6.7. U.S. citizenship or valid U.S. work permit.
- 11.6.8. At least eighteen (18) years of age.
- 11.6.9. Free of felony or major misdemeanor criminal record, and multiple DUI's.
- 11.6.10. Valid California driver's license or valid State of California identification card.
- 11.6.11. Successfully pass Contractor's required Drug and Alcohol Pre-employment test and ongoing Drug and Alcohol Abuse Prevention and Testing program. Contractor is to provide a copy of the program to the City.
- 11.6.12. Pass Contractor's pre-employment background checks, previous employment check, and reference check, conducted at Contractor's expense.
- 11.6.13. Physically able to accomplish various tasks required.

12. Workmanship and Quality Level

- 12.1. It is the intention of the City that a first-class standard of maintenance be applied in the area covered by this contract. The Contractor's actions will always be in accordance with this primary concern for quality.
- 12.2. All work will be performed by experienced personnel directly employed and supervised by Contractor. Contractor will provide management and technical supervision as required to provide work specified herein.
- 12.3. Contractor will accompany the City's Representative on an inspection tour

once weekly or more frequently as requested by the City's Representative at no additional cost to the City.

- 12.4. Contractor will be responsible for the skills, methods, and actions of Contractor's employees and for all work done.
- 12.5. Contractor will perform the work herein provided to the satisfaction of the City's Representative. The City's Representative will make inspections on a regular basis to determine the Contractor's conformity with these specifications and the adequacy of the work being performed. The Contractor will be available for consultation with the City as needed.
- 12.6. Asset Management:
 - 12.6.1. Contractor will be held accountable for any and all City assets (i.e. maintenance building) which are part of the work being provided.
 - 12.6.2. Upon verification of equipment quantities, the Contractor will maintain City assets in a healthy, operable, and safe condition throughout the life of the contract.
 - 12.6.3. If any City-owned asset is damaged or destroyed by others, the Contractor will report said damage and the causes for it within a maximum of five (5) working days. The City will verify the cause and loss based on the Contractor's report. If the Contractor is unable to substantiate the cause or neglects to report such occurrences, the cost of replacement will be borne by the Contractor.
- 12.7. Maintenance Deficiencies:
 - 12.7.1. Contractor will be notified by phone or email when work has not been completed as per specifications herein.
 - 12.7.2. If Contractor has not responded to make required corrections within one business day, the City's Representative will have the authority to take action to perform the work necessary to bring the facility to a proper condition and the Contractor will be charged for the cost of these services, as follows:
 - 12.7.2.1. These charges will be deducted from the following monthly bill.

13. Preservation of Property

- 13.1. Contractor will exercise due care to avoid injury to existing facilities, adjacent property and real or personal property in the performance of work under this contract.

14. Protection of General Public (i.e. barricades and cones)

- 14.1. Wherever it is necessary, Contractor will be required to keep and maintain at Contractor's sole cost and expense during the course of operations on this project, such warnings, signs, and barriers as maybe required to protect the

public. The provisions of the preceding sentence will not impose any liability upon the City and are for the express benefit of the general public.

EXHIBIT B SCHEDULE OF FEES

1. MAXIMUM COMPENSATION

The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Hundred Forty-one Thousand Eight Hundred Ninety Four Dollars (\$241,894)** during the Initial One-Year Term. No additional services will be performed unless both parties execute an Amendment outlining the services requested and the compensation agreed for such services.

2. RATES

Compensation shall be paid to Contractor for the Initial Term in accordance with the rates listed below:

SECTION A. LANDSCAPE MAINTENANCE SERVICES				
Location	Annual Qty	UOM	Unit Price	Extended Price
Maintenance of Landscaped Areas	12	Month	\$15,994	\$ 191,928
Irrigation Maintenance	12	Month	\$ 623	\$ 7,476
Landscape Maintenance Total				\$ 199,404
SECTION B. SUPPLEMENTAL SERVICES: REPAIR AND RENOVATION WORK				
Description	Estimated Annual Hours	UOM	Hourly Rate	Extended Price
Hourly Rate for Supplemental Services	100	Hourly	\$ 85	\$ 8,500
SECTION C. MISCELLANEOUS PARTS AND MATERIALS EQUIPMENT AT COST PLUS % MARKUP				
Description	Estimated Annual Spend	% Markup	Extended Estimated Annual Spend	
Miscellaneous parts and materials @ Cost Plus % Markup.	\$10,000	20%	\$ 12,000	
Initial One-Year Term Total				\$ 219,904
Contingency				\$ 21,990
INITIAL ONE-YEAR TERM MAXMUM NOT-TO-EXCEED COMPENSATION				\$ 241,894

3. INVOICING REQUIREMENTS

- 3.1. Contractor will invoice the city on a monthly basis for services provided by contractor during the preceding month on an invoice and in a format approved

by the city and subject to verification and approval by the city. City will pay contractor within thirty (30) days of city's receipt of an approved invoice.

- 3.2. Contractor will submit the invoice(s) via email to the city's representative.
- 3.3. The city will incur no obligation for out of scope work that is not authorized in advance in writing. These monthly invoices will provide a breakdown of cost of the work performed and will have an attachment itemizing the work completed. Invoices will include at a minimum the following:
 - 3.3.1. Date of Service;
 - 3.3.2. Description of Service;
 - 3.3.3. Unit Pricing;
 - 3.3.4. Quantities or hours;
 - 3.3.5. Extended Price and Total; and
 - 3.3.6. Any other pertinent information.

4. PRICING AND OPTION RENEWALS

- 4.1. All pricing is firm fixed for the Initial One-Year term of this Agreement.
- 4.2. After the Initial Term, the City reserves the right to extend this Agreement for four (4) one year options pursuant to Section 2.B. of this Agreement, subject to the appropriation of funds.
- 4.3. Contractor may request adjustments to the compensation rates prior to any one-year option to renew this Agreement after the Initial Term. Contractor will notify the City of any requested changes to the compensation rates for any Option Period at least sixty (60) days prior to the start of the option term. Contractor must demonstrate to the satisfaction of the City that a price increase is warranted and must be supported by the appropriate price index e.g. PPI, CPI, etc. Price adjustments are subject to the City's approval.
- 4.4. City shall provide Contractor prior written notice in the Form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term

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 will 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 will 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 will be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits will be at least as broad as the underlying coverage and will otherwise follow form.
3. The following provisions will 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 will be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There will be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage will 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 will 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 will 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 will 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 will be considered excess insurance only and will not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy will contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums will 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 will be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy will 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 will 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 will 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 will 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) will, 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 will be maintained with insurers, and under forms of policies,

satisfactory to City and as described in this Agreement. Contractor will 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 will 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 will be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor will 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 will be emailed to:

ctsantaclara@ebix.com

Or mailed to:

EBIX Inc.
City of Santa Clara Department of Public Works
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 will have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or will be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT D LABOR COMPLIANCE ADDENDUM

This Agreement is subject to the requirements of California Labor Code section 1720 *et seq.* requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

I. Prevailing Wage Requirements

1. Contractor will be obligated to pay not less than the General Prevailing Wage Rate, which can be found at www.dir.ca.gov and are on file with the City Clerk's office, which will be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at www.dir.ca.gov.
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio will be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" will include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq.*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll,

fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors will be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters will also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors **MUST** be a registered “public works contractor” with the DIR **AT THE TIME OF BID**. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a “public works contractor”. Those who fail to register and maintain their status as a public works contractor will not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney’s fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

J. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum will be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents will be provided to City for audit at City Hall when it is

practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents will be made available at Contractor's address indicated for receipt of notices in this Agreement.

K. Enforcement

1. City will withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions will not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR:	
DATE:	

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:

OPTION NO.	# of #
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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)

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City will 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.

Approved as to Form:

Dated:

Office of the City Attorney
City of Santa Clara

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