19-937 **Agenda Date: 9/24/2019**

REPORT TO COUNCIL

SUBJECT
Action on an Agreement for Services with HouseKeys Inc. for Administration of the City's Affordable Rental Program

BACKGROUND
The City of Santa Clara is committed to ensuring availability of affordable housing to moderate, low, very-low and extremely-low income households. Adoption of the City's Affordable Housing Ordinance in 2018 provided a key tool to help achieve this objective. Along with other provisions, the Affordable Housing Ordinance establishes an inclusionary requirement for new rental residential development projects.

Specifically, the Affordable Housing Ordinance requires residential rental projects of ten (10) or more units to provide at least fifteen percent (15%) of the units at affordable rental prices to extremely low, very low, low- and moderate-income households. These units are required to remain a part of the City's Affordable Housing Rental Program for fifty-five (55) years.

The City also has an existing portfolio of designated affordable rental housing units. These units were developed through various means including use of former Redevelopment Agency (RDA) funds as well as Home Investment Partnerships Program (HOME) funds. The City will be implementing new policies and procedures to certify the eligibility of prospective tenants, as well as coordinating with project owners, developers and property management companies to ensure program compliance. The City also should conduct annual compliance review for consistency with the City's affordable housing program policies. On-going implementation of the Affordable Housing Ordinance inclusionary requirement, as well as the development of new affordable housing projects, will produce a continuous stream of new affordable rental units being added to the City's inventory.

Because the City does not currently have staff allocated to perform monitoring at this scale, the City decided to seek a consultant who could perform the necessary compliance monitoring. On April 29, 2019, the City issued a Request for Proposals (RFP) for administration of the City's Affordable Rental Program. Proposals were due on May 24, 2019.

DISCUSSION
Through the RFP process, the Housing Division staff selected HouseKeys, Inc. to administer the City's Affordable Rental Program. HouseKeys was created in April of 2015 in response to the void left by the closing of several Silicon Valley nonprofit housing, lending and counseling service providers. HouseKeys currently administers similar programs for the cities of Morgan Hill, Campbell, Burlingame and Gilroy and has a proven record of successfully developing and managing affordable rental housing programs. HouseKeys staff includes a diverse team of program administration specialists, software engineers, data scientists and real estate professionals with a focus on building a program

administration model driven by data, expertise, service, and technology. Over the last ten years, at various employers, HouseKeys staff has completed nearly 1,000 program for-sale transactions and managed a broad portfolio of multi-family rental units during initial new construction lease-up, annual compliance and tenant turnover. In addition to the primary entity, the HouseKeys team formed the nonprofit agency, HouseKeys Resource & Education Center Inc. (Tax I.D. 81-2880185) which obtained federal tax-exempt status in the summer of 2017. Based upon these qualifications, staff is proposing that the City enter into an Agreement with HouseKeys to administer compliance monitoring of the City's inventory of affordable rental housing units.

Under the proposed Agreement, HouseKeys will conduct day-to-day management of the program as well as introduce new program operation materials needed to strengthen the City's ability to administer and maintain its Affordable Rental Program. HouseKeys is also proposing to provide and utilize a technology solution that will allow for streamlined, web-based communication between the City, the administrator, existing and prospective tenants and property managers.

HouseKeys has demonstrated its ability to successfully deliver services as described in the Agreement for the delivery of this important City service. Therefore, staff recommends that the Council approve the proposed Agreement for Services with HouseKeys Inc for Administration of the City's Affordable Rental Program.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

The total cost of the Agreement for Services with HouseKeys Inc. for Administration of the City's Affordable Rental Program shall not exceed $211,000 over a one-year period subject to budget appropriations. This agreement provides for a one-time onboarding of $55,000 to organize, digitize and audit all the City's past affordable housing documents as well as an ongoing monthly fee of $13,000 for program administration of the new development pipeline.

Funding for this agreement was included as part of the Fiscal Year 2019/20 and 2020/21 Biennial Operating Budget in the City's Affordable Housing and Housing Successor Agency Funds. The amount included in the Budget was $150,000 - $75,000 in each fund. An additional $61,000 appropriation is needed to cover the one-time onboarding fee in FY 2019/20.

The budget amendment below allocates funding from the City's Affordable Housing Fund Ending Fund balance and the Housing Successor Agency Fund Ending Fund Balance to the Contractual Services Account needed to cover the one-time onboarding fee as recommended in this memorandum.

Budget Amendment

FY 2019/20

	Current	Increase/ (Decrease)	Revised
City's Affordable Housing Fund			
Ending Fund Balance	$1,128,626	($30,500)	$1,098,126
Contractual Services	$805,921	$30,500	$836,421
Housing Successor Agency Fund			
Ending Fund Balance	$10,525,409	($30,500)	$10,494,909
Contractual Services	$571,000	$30,500	$601,500

COORDINATION
This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION
1. Approve and authorize the City Manager to execute the Agreement for Services with HouseKeys Inc for Administration of the City's Affordable Rental Program in an amount not to exceed $211,000, and all related documents for the provision of administrative services for the Affordable Purchase Program effective September 24, 2019; and
2. Approve and authorize an additional $61,000 appropriation to cover the one-time onboarding fee, which will be paid from Housing Special Revenue Funds.

Reviewed by: Andrew Crabtree, Director of Community Development
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS
1. Affordable Rental Program RFP
2. Agreement with HouseKeys

EBIX Insurance No. S200004354

AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND HOUSEKEYS INC. FOR AFFORDABLE RENTAL PROGRAM ADMINISTRATOR

PREAMBLE

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

RECITALS

A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";

B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

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

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

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

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 August 20, 2019 and terminate on August 20, 2020, with the option to renew for two (2) one-year periods. City shall provide Contractor at least thirty (30) days' notice of its intent to exercise its option to renew before the end of the term. Contractor shall deliver the agreed upon services to the City as specified in Exhibit A, unless otherwise amended in writing by the Parties.

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." All work performed or materials provided in excess of the Exhibit B shall be agreed upon, by and

between City and Contractor, before any work is performed. City and Contractor shall agree on the scope and cost of any "Special Projects" as identified in Exhibit B.

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

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: Housing and Community Services Division
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at EPhung@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

HouseKeys Inc.
358 Digital Drive
Morgan Hill, CA 95037
and by e-mail at julius@housekeys.org

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:

FOR

BRIAN DOYLE
City Attorney

Dated: 1-9-2020

FOR

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

"CITY"

HOUSEKEYS INC.
A CALIFORNIA CORPORATION

Dated: 12/20/19
By (Signature):
Name: Julius Nyanda
Title: CEO
Principal Place of Business Address: 358 Digital Drive, Morgan Hill, CA 95037
Email Address: julius@housekeys.org
Telephone: (415) 846-8004
Fax: (408) 850-7431

"CONTRACTOR"

EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

1. DESCRIPTION OF REQUIRED SERVICES

The Contractor shall provide the following services:

Scope of Services Item	Implementation Plans & Timelines
Administration Services • Contractor will review policies and procedures to ensure City requirements are considered in the setup of City's Affordable Housing Program. Provide City with policy/procedure revision recommendations, as appropriate. • Contractor will be the primary contact for the Affordable Housing Program and will handle all inquiries and correspondence from applicants, current renters, and property managers in buildings with units restricted under the Affordable Housing Program. • Contractor will utilize the City's procedures, ordinance(s), resolution(s), and guidelines in the implementation of the Affordable Housing Program. • Contractor will develop a report form in conjunction with the City Staff and submit quarterly activity reports. • In consultation with the City, Contractor will develop a customer service and program evaluation survey. • Contractor will provide suggestions to the City for potential modifications to the City's application process, procedures, and/or guidelines to ensure effective operation of the Affordable Housing Program.	**Program Setup** (90 Days) **Program Reporting** (Quarterly) **Program Evaluation Survey** (Quarterly)
Administration of Lease-Up and Marketing • After Developer and/or City notification of Affordable unit availability and unit details, Contractor will: o Coordinate Marketing kick-off meeting with Developer, Property Manager, and City Staff	**Developer Outreach** Within 60 Days HouseKeys will contact developers and

○ Oversee, collect and review application and required rental documents to ensure application completeness ○ Oversee execution of Lease Agreement between property manager and selected tenants ○ Facilitate and oversee lease-up with Developer, Property Manager, and City Staff ○ Ensure notice is provided to ineligible applicants and reason for ineligibility • As necessary, Contractor will provide access to translation in other languages.	complete project timelines
Existing Affordable Housing Portfolio • Contractor will review all City data related to the existing housing portfolio and review all project files. • Contractor will digitize existing housing portfolio loan and compliance docs and provide electronic access to files and data. • Contractor will present the City with data and analysis of the existing portfolio, along with a proposal to ensure the full portfolio complies with existing covenants and restrictions. • Contractor will work with property owner / manager to establish protocols and procedures to annual compliance and tenant income certifications. • Contractor will contact existing renters via letter notifying of new agency contact for annual occupancy and income verification (where applicable) • Contractor will present the City with data and analysis related to the portfolio's risk of loss of affordability due to expiration of restrictions. • Contractor will produce pro-active proposals to preserve affordability. • Contractor will review and revise forms to meet program requirements, as necessary.	**Onboarding of Existing Affordable Housing Portfolio** Within 120 Days of contract start, HouseKeys will provide a full assessment of records and work with Staff to determine timeline of completion of Portfolio Database
New Developments and Inclusionary Program Services • Contractor will work with City to establish protocols and procedures for initial lease up, new move-in and annual compliance certifications.	**See Developer Outreach above**

• Contractor will maintain marketing content for the Inclusionary Program, including flyers, website, and other material as needed. • Contractor will provide the property owner / manager of projects containing City Inclusionary units with the most current income and rent guidelines upon issuance by HCD/HUD each year. • Contractor will monitor Inclusionary unit rents annually to ensure compliance with the required affordable rent levels under Inclusionary Program. • Contractor will verify the eligibility of prospective tenants qualified by the property manager. • Contractor will coordinate with property manager on an annual basis to ensure that units are occupied by tenants who continue to meet income requirements. Contractor will also ensure that the appropriate rent is being charged.	**Staff-Driven Monitoring and Certification** While the Program Records are being migrated to the HouseKeys System, the Program Administration Team will be connecting with existing landlords and tenants to onboard files. The team will engage with the first selection of projects within 60 days of contract start.
Technology Solutions • Contractor will create, maintain and host a webpage on Contractor website to announce City Rental Program activities, applications forms, and information. • Contractor will create, maintain and host a webpage and/or database that is accessible to Property Managers, the City, and tenants to submit and review relevant affordable housing information and documents. • Contractor will work towards creating and formatting a database for application intake and processing to meet City requirements.	**Technology Timeline** Initial Program Web Presence will be live within 90 days of contract start Completion of the Web Interface and Database with City Program Records will be available for City within 6 months of contract start.

EXHIBIT B

SCHEDULE OF FEES

In no event shall the amount billed to City by Contractor for services provided pursuant to this agreement exceed TWO HUNDRED ELEVEN THOUSAND DOLLARS ($211,000), subject to budget appropriations.

The FY 2019-2020 schedule of rates and fees which includes all billing amounts and costs are as follows:

Program Administration Fees:

September 1, 2019 to June 30, 2020 — $13,000 per month

PROGRAM TRANSFER AND INITIAL SET UP	**$55,000**

	Rate	Hours
JULIUS NYANDA	**$200/HR**	**100**
CHRISTINA ENRIQUEZ	**$100/HR**	**100**
KATARINA MARUSIC	**$100/HR**	**100**
KATHIE WELLS	**$100/HR**	**100**
MANDY ISRADE	**$100/HR**	**50**

PROGRAM ADMINISTRATION (FIXED MONTHLY FEE) **Collective Team Rate: $150/hour** **Minimum 20 Hours Per Week**	**$156,000** **$13,000/month**

Variable Transaction Rates

#	Transaction Type	Fee	Billed to:
1	Application Fee for Rental Applicants if Contractor is the lead marketing agent	$75.00	Applicant
2	Special Project Billing (Subject to City Approval)	$250/hour	City or Project

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:

   $1,000,000 Each Occurrence
   $2,000,000 General Aggregate
   $2,000,000 Products/Completed Operations Aggregate
   $1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated

wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

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

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 mailed to:

EBIX Inc.
City of Santa Clara [*insert City department name here]
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

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

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.