20-891 **Agenda Date: 10/27/2020**

REPORT TO COUNCIL

SUBJECT
Action on an Agreement with Revel Environmental Manufacturing, Inc. for Maintenance, Data Collection and Reporting for Installed Full Trash Capture Devices

COUNCIL PILLAR
Deliver and Enhance High Quality Efficient Services and Infrastructure

BACKGROUND
The Municipal Regional Stormwater NPDES Permit (MRP) requires permittees to achieve no visual impact from trash (100 percent trashload reduction) in the stormwater system by the year 2022. In FY 2016/17, it was determined that the City had attained 85 percent trashload reduction through a combination of full trash capture netting systems at the Westside Retention Basin, 574 full trash capture devices installed in individual stormwater catch basins located in City streets, enhanced commercial/industrial street sweeping, and the implementation of single-use carryout bag and expanded polystyrene foam food serviceware ordinances. The intent of the trash capture devices is to trap all particles retained by a 5mm mesh screen such as cans, plastics, paper, cigarette butts and other debris from the stormwater system before they enter creeks and rivers in route to the San Francisco Bay.

The City of Santa Clara has been divided into 13 trash management areas (TMA) as shown in Attachment 1. Full trash capture devices have been installed in medium to high trashload generating portions of TMA 1, 2, 3, 4, 6, 7, 8, and 12 to achieve the current percent trashload reduction. Full trash capture devices will need to be installed in catch basin inlets in all of TMA 9 and portions of TMA 5, 10, 11, and 13 to achieve the 100 percent trashload reduction mandate by June 30, 2022.

The MRP requires that the full trash capture devices be cleaned at least two times per fiscal year and that data be collected for each service. The service report data includes items such as the inlet identification number, date of service, percentage of filter capacity taken up by debris, and estimated amount and characterization of debris removed. If a specific full trash capture device filter is over 50 percent filled with debris after two consecutive services, the cleaning frequency needs to be increased. The City had contracted with Revel Environmental Manufacturing, Inc. (REM) to provide, install, and maintain the 574 full trash capture devices; that agreement expired on April 30, 2020.

DISCUSSION
A formal Request for Proposals (RFP) procurement process was conducted in accordance with Santa Clara City Code Section 2.105.330 General Services - Contracting procedures to select a contractor to perform maintenance, data collection and reporting for full trash capture devices. The procurement was posted on BidSync from September 4 - September 25, 2020, and the City received two proposals to provide services.

Proposals were evaluated based on the proposal responsiveness, contractor experience, technical capability, and cost. Revel Environmental Manufacturing, Inc. (REM) was selected to provide maintenance, data collection and reporting services for installed full trash capture devices installed in the public right-of-way.

REM was determined to have the most experience and technical capability. As the manufacturer of the currently installed devices, REM has a unique knowledge of the devices and scope of services to provide the work required. Furthermore, the Contractor has maintained a good relationship with the City by providing high quality work and meeting City expectations in the current agreement. Finally, selecting REM is also the most cost-effective option for the City (see Full Trash Capture Summary Table, Attachment 2).

The term of the agreement (Attachment 3) with REM is five years and provides options for the City to increase the number of devices serviced and/or increase the maintenance frequency. This will allow the City the flexibility to service and monitor additional trash capture devices that get added in the future and increase the service interval for trash capture devices that need to be cleaned more often. It is estimated that over the course of five years, four hundred additional trash capture devices will need to be installed.

The City will need to purchase, install and maintain additional full trash capture devices in FY 2021/22 to achieve the 100 percent trashload reduction mandate by June 30, 2022. The primary reason for this is that the Regional Water Quality Control Board will eliminate source control credits the City is currently receiving for having ordinances banning single-use carryout bags and polystyrene food containers. This change to the calculation process will reduce the City's current trashload reduction by 14 percent (8 percent reduction for single-use carryout bag ordinance and 6 percent reduction for expanded polystyrene foam food serviceware ordinance). Additional full trash capture devices will need to be purchased, installed and maintained to return to the 100 percent trashload reduction level during the next MRP term.

The City will work with a consultant to determine the specific storm drain catch basin inlets for future full trash capture device installation this winter. A separate formal procurement will be conducted in 2021 to procure a vendor to provide and install the additional full trash capture devices. Funding for the purchase and installation of full trash capture devices is included in the Urban Runoff Pollution Prevention Program capital project in the FY 2020/21 and FY 2021/22 Adopted Biennial Capital Improvement Program Budget. The service of additional full trash capture devices that will be installed in the future will be covered under this agreement.

This agreement includes a section covering prevailing wage.

ENVIRONMENTAL REVIEW

The action being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301 "Existing Facilities," as the activity consists of the repair, maintenance or minor alteration of existing facilities involving no or negligible expansion of the use beyond that presently existing.

FISCAL IMPACT

The amount to be paid to Revel Environmental Manufacturing, Inc. over the five year term of the

agreement is estimated to be $596,068 (calculation based on 574 devices serviced two times per year, plus 200 additional services multiplied by five years, plus 200 future devices serviced two times per year beginning in FY 2021/22 multiplied by four years, plus the 200 future devices serviced two times per year in FY 2024/25, plus a 10 percent contingency). The FY 2020/21 Operating Budget for the General Fund - Storm Drain Nonpoint Source Program includes funding for this contract. Funding in future years will be incorporated into the budget development process.

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>.

RECOMMENDATION

1. Approve and authorize the City Manager to finalize and execute an agreement with Revel Environmental Manufacturing, Inc. to perform maintenance, data collection and reporting for full trash capture devices for an amount not-to-exceed $596,068 over the five year term of the agreement, subject to the appropriation of funds; and
2. Authorize the City Manager to make minor modifications to the agreement, including time extensions, as necessary.

Reviewed by: Craig Mobeck, Director of Public Works
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Map of City's Trash Management Areas
2. Full Trash Capture Summary Table
3. Agreement

EBIX Insurance No. *S200002071

AGREEMENT FOR SERVICES BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND REVEL ENVIRONMENTAL MANUFACTURING, INC.

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Revel Environmental Manufacturing, 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

Exhibit D – Labor Compliance Addendum (if applicable)

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 Effective Date of this Agreement and terminate on June 30, 2025.

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

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

4. WARRANTY

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

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

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

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is five hundred ninety-six thousand and sixty-eight dollars ($596,068.00), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at

Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.

B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

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

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

9. NO THIRD PARTY BENEFICIARY

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

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed

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

12. OWNERSHIP OF MATERIAL

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

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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

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

14. HOLD HARMLESS/INDEMNIFICATION

A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner

arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

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

15. INSURANCE REQUIREMENTS

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

16. WAIVER

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

17. NOTICES

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

City of Santa Clara
Attention: Department of Public Works - Street Division
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at Street@SantaClaraCA.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Revel Environmental Manufacturing, Inc.
960-B Detroit Avenue
Concord, CA 94518
and by e-mail at marcel@remfilters.com

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

18. COMPLIANCE WITH LAWS

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

19. CONFLICTS OF INTEREST

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

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

20. FAIR EMPLOYMENT

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

21. NO USE OF CITY NAME OR EMBLEM

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

22. GOVERNING LAW AND VENUE

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

23. SEVERABILITY CLAUSE

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

24. AMENDMENTS

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

25. COUNTERPARTS

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

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

for

BRIAN DOYLE
City Attorney

Dated: 11/23/2020

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

"CITY"

REVEL ENVIRONMENTAL MANUFACTURING, INC.
a California corporation

Dated: 10-29-20
By (Signature):
Name: Marcel Sloane
Title: Regional Manager
Principal Place of Business Address: 960-B Detroit Avenue
Concord, CA 94518
Email Address: marcel@remfilters.com
Telephone: (925) 676-4736
Fax: (925) 676-8676

"CONTRACTOR"

EXHIBIT A
SCOPE OF SERVICES

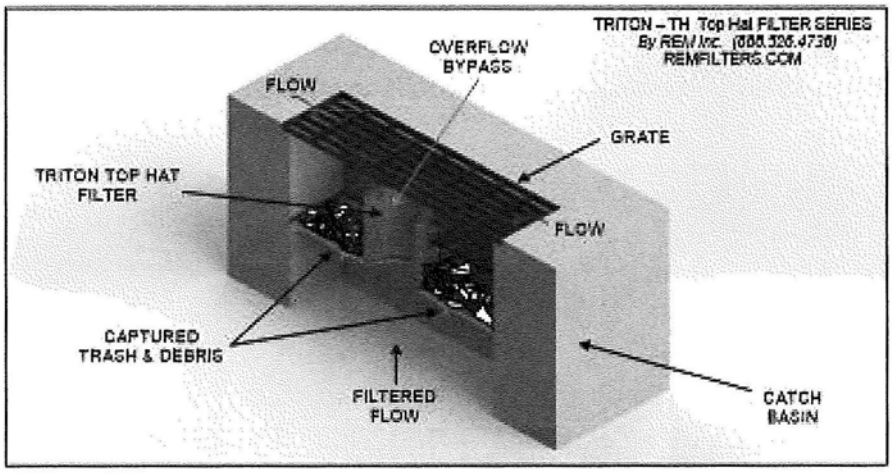
The Services to be performed for the City by the Contractor under this Agreement are set forth below.

1. BACKGROUND

There are two types of Full Trash Capture (FTC) devices installed

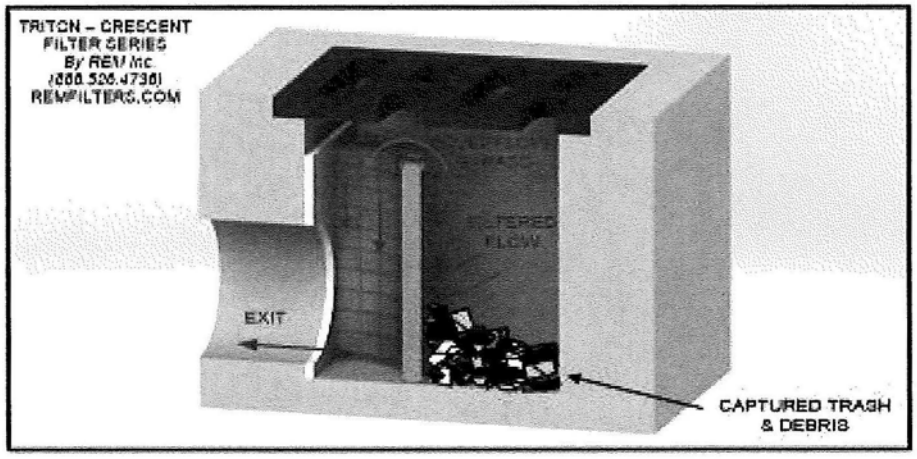
1. Revel Environmental Manufacturing (REM)Top Hat (TH) (Figure 1) style allowing for lateral pipe free-flow with minimum municipality wide flow degradation

Figure 1 REM Top Hat (TH)



2. REM Crescent style (Figure 2) for exit pipe screen applications

Figure 2 REM Crescent



Both models utilize REM TRITON Bioflex Trash Guard (BFTG) Filters. These are catch basin filter inserts designed to meet the specifications defined as a standalone Full Trash Capture (FTC) Device by the San Francisco Regional Water Control Board.

Initial plan is to service all installed FTC devices two times yearly; once in the August/September timeframe and once in the January/February timeframe. This schedule may be increased to three times per year.

Contractor shall absorb any and all costs for any replacement parts and/or filters associated with maintenance and repairs. All replacement parts and filters must be purchased through REM due to the proprietary nature of these products.

2. FTC Device Maintenance Plan Scope of Work

1. Contractor shall inspect each FTC device for system operation.
2. Contractor shall remove all captured debris and material utilizing a vacuum truck and equipment each service visit.
3. Contractor shall replace and recharge filter media as necessary using proprietary REM Bioflex Trash Guard (BTGF) filters.
4. Contractor shall attach a dated service lock-out tag to each catch basin after the maintenance is completed. The "date" will correspond with the Maintenance Report.
5. Contractor shall dispose of all captured debris and material in accordance with all laws and regulations.
6. Contractor shall provide City a FTC Maintenance Report after each service cycle providing the following information:
    - Jurisdiction
    - Service date
    - Name of person(s) performing service
    - Location of FTC device serviced
    - Detail of services performed
    - Specify filter storage capacity condition by indicating % full
    - Provide an estimated amount of debris removed by catch basin in gallons or cubic feet
    - Provide an estimated amount of total debris removed

- Include a trash characterization (i.e., % trash and dominant types of trash)
- Report any special problems such as flooding, debris causing overflow, etc.
- Provide estimate to repair and/or replace any damaged devices

3. REM FTC Device Maintenance Procedures for each FTC location

1. Contractor shall secure area (proceed with traffic and pedestrian control plan).
2. Contractor shall clean surface area immediately around each storm drain utilizing a stiff bristled push-broom, flat shovel or industrial vacuum.
3. Contractor shall proceed with confined space procedures as necessary.
4. Contractor shall remove grate or manhole cover and set aside.
5. Contractor shall inspect perimeter filter flange gasket. Confirm media cartridge is secure in the filter basin.
6. Contractor shall remove debris trapped in grate slot openings
7. Contractor shall utilize an industrial vacuum to remove debris from within filter basin.
8. Contractor shall pressure wash media pack through the stainless-steel cartridge. (Avoid discharge by utilizing an industrial vacuum to remove excess water while pressure washing).
9. Contractor shall inspect media housed inside stainless steel cartridge.
10. Contractor shall place grate or manhole cover back on catch basin grate frame.
11. Contractor shall secure dated service lock-out tag on grate lid.
12. Contractor shall identify catch basin on site map for tracking and reporting.
13. Contractor shall note observations, concerns or recommendation regarding specific filter on maintenance report.
14. Contractor shall do all repairs using REM specified parts and materials.
15. Contractor shall remove pedestrian and/or traffic control barricades.

EXHIBIT B
SCHEDULE OF FEES

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

Item	Total Costs
2X/year Maintenance Services Cost of Existing Devices (574 units)	$ 355,880.00 (over 5 years)
200 Additional Services	$ 62,000.00 (over 5 years)
200 Additional FTC Devices Serviced 2X/year in FY 21-22; FY 22-23; FY 23-24 and FY 24-25	$ 99,200.00 (over 4 years)
200 Additional FTC Devices Serviced 2X/year in FY 24-25	$ 24,800.00 (over 1 year)
10% Contingency	$ 54,188.00
TOTAL	**$ 596,068.00 (NTE)**

In no event shall the amount billed to City by Contractor for services under this Agreement exceed five hundred ninety-six thousand and sixty-eight dollars ($596,068.00), subject to budget appropriations.

EXHIBIT C
INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

   $2,000,000 Each occurrence
   $2,000,000 General aggregate
   $2,000,000 Products/Completed Operations aggregate
   $2,000,000 Personal Injury

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

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

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

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

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);

4. 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.

5. 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.

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 shall 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 shall 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 shall 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" shall 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 shall 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 shall 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 you fail to register and maintain their status as a public works contractor shall 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 shall 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 shall 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 shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

K. Enforcement

1. City shall 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 shall 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.