



DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) **WITH BIGGS CARDOSA ASSOCIATES, INC.**

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and Biggs Cardosa Associates, Inc. (“Consultant”), a Coporation for Engineering and Environmental Services for the Stevens Creek Bridge Repair Project (“Project”), and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Basic Services. Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant’s written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Additional Services. City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal (“Additional Services”). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to “Services” in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant’s Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

2.3 Consultant’s duties and services under this agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by consultant pursuant to this agreement.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on June 30, 2030, unless terminated earlier as provided herein (“Contract Time”). The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

3.2 Schedule of Performance. All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin work on each separate task upon receiving City’s Notice to Proceed (“NTP”), and must complete each task within the time specified in **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$625,000 (“Contract Price”), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant’s actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

4.2 Basic Services. City will pay Consultant \$625,000 (“Price”) for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants’ costs, materials, supplies, equipment, travel, taxes, overhead, and profit. Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge (“Reimbursable Expenses”). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

4.3 Additional Services. City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$N/A. Additional Services provided to City’s reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for Reimbursable Expenses only. Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

4.4 Invoices and Payments. Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any

disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing rate or Sub- Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.
- b. Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

5. INDEPENDENT CONTRACTOR

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

5.3 Permits and Licenses. Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

5.4 Sub-Consultants. Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

5.5 Tools, Materials, and Equipment. Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off,

overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and actual attorney's fees incurred by City in connection with the above.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time, Consultant may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to a third-party without prior written approval by City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

7.3 Patents and Licenses. Consultant must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

7.5 Deliverables and Format. Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

8. RECORDS

8.1 Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

8.2 Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

8.3 Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

9. ASSIGNMENT

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

a. Indemnity for Design Professional Liability: With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation.

c. Claims for Other Liability. Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers

(collectively and/or individually “City”) from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys’ fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant’s duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

11.2 Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant’s duties herein are not limited to or subject to the Contract Price, to Workers’ Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

11.3 Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant’s indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant’s payments to cover moneys due to City.

11.4 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.5 This Section 11 shall survive expiration or termination of this Agreement.

12. INSURANCE

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant’s expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Consultant shall comply with all laws and regulations applicable to this Agreement. Consultant will promptly notify City of changes in the law or other conditions that may affect the Project or Consultant’s ability to perform. Consultant is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act, or other federal or state law, rule or regulation.

13.2 Labor Laws. Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a “public works” component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City’s Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

13.3 Discrimination Laws. Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City’s rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

14. PROJECT COORDINATION

14.1 City Project Manager. The City’s Project Manager for all purposes under this Agreement will be Jason Wong, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City’s reasonable approval, Consultant’s Project Manager for all purposes under this Agreement will be John Alciati, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City’s Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant will be compensated for satisfactory Services performed through the date of abandonment and will be given reasonable time to assemble the work and close out the Services. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 18 survives the expiration/termination of this Agreement.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of this main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. INSERTED PROVISIONS

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

26. NOTICES

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino: Department of Public Works 10300 Torre Ave., Cupertino CA 95014 Attention: Jason Wong Email: jasonw@cupertino.gov	To Consultant: Biggs Cardosa Associates, Inc. 865 The Alameda San Jose, CA 95126 Attention: John Alciati Email: jalcianti@biggscardosa.com
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27. FEDERALLY FUNDED PROJECT

This Project is funded in whole or in part by federal funds and subject to the federal requirements set forth in **Exhibit E**.

28. EXECUTION

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

CITY OF CUPERTINO

A Municipal Corporation

BIGGS CARDOSA ASSOCIATES, INC.

By_____

Name_____

Title_____

Date_____

By_____

Name_____

Title_____

Date_____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date_____

EXHIBIT A

SCOPE OF SERVICES

Biggs Cardosa (“CONSULTANT” or “Biggs Cardosa”) shall perform professional services which include but are not limited to tasks detailed in Section 2 related to the 2024-02 Stevens Creek Boulevard Bridge Repair Project (“PROJECT”) located on Stevens Creek Boulevard.

For each phase of the PROJECT, CONSULTANT will submit a written proposal that includes a specific Scope of Services, Schedule of Performance, and Compensation for the CITY’s review, CONSULTANT shall not proceed with any phase until it receives written authorization from the Director of Public Works or his Designee via a Service Order using the Service Order Form in Attachment 1. Each Service Order will specify the scope of services, deliverables, schedule of performance, compensation, and any other applicable terms. CONSULTANT will not be compensated for Services performed without a duly executed Service Order.

SECTION 1. GENERAL

A. General Performance Requirements:

1. The performance of all services by CONSULTANT shall be to the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services, Service Order and the standard of care provisions contained in this AGREEMENT.
2. The CITY’s Department of Public Works shall manage the PROJECT and this AGREEMENT. CONSULTANT shall receive final direction from the CITY’s Director of Public Works or his/her authorized designee (hereinafter collectively “CITY”) only.
3. CONSULTANT shall coordinate this scope of services with the CITY as well as with other CITY consultants and contractors, as needed or as directed by the CITY. CONSULTANT shall schedule meeting and prepare meeting agendas and minutes for all PROJECT meetings during the design phase under the scope of work. All minutes of meetings are due to the CITY within five (5) working days after the meeting. CONSULTANT shall provide copies of such documentation to the CITY, and as directed by the CITY, to other appropriate agencies and entities. CONSULTANT shall coordinate all responses to comments through the CITY.
4. CONSULTANT shall designate and provide to the CITY the names of their team members for the PROJECT. The team members shall be satisfactory to the CITY. CONSULTANT shall not substitute any team members without the prior approval of the CITY.
5. CONSULTANT’s services shall be performed as expeditiously as is consistent with professional skill and care as set forth in the agreement and the orderly

process of the work. The schedule for the performance included in EXHIBIT B, may be adjusted by mutual agreement.

6. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. CONSULTANT shall consult with the CITY, research applicable design criteria, and communicate with members of the PROJECT team.

SECTION 2. TASKS

****CONSULTANT MUST RECEIVE AN EXECUTED SERVICE ORDER FROM THE CITY PRIOR TO BEGINNING ANY TASK****

Phase 1: PRELIMINARY ENGINEERING AND TECHNICAL STUDIES

TASK 1: PROJECT MANAGEMENT

Project management will include, but not be limited to, the supervision and scheduling of project staff, review of work prepared by staff and subconsultants, project coordination, project organization, quality assurance and control, acting as the client liaison, monitoring the project schedule and budget, preparation of project reports and attendance at meetings with the City and other agencies to receive input and discuss and review the project during its critical design periods. More specific responsibilities may include but not be limited to:

Task 1.0 – Coordination/Meetings/Administration

Task 1.1: Project Development Meetings

Biggs Cardosa will schedule monthly project development virtual meetings to discuss the status of the PROJECT, upcoming efforts, issues, and other relevant information. An agenda and invitation will be sent two (2) days prior to the meeting, including minutes from the previous meeting. Minutes of each meeting will be distributed to attendees within five (5) workdays of the meeting. At the meeting, we will distribute an Outstanding Issues list. Items on the list are discussed at the meeting, new issues are added and assigned, and tasks completed are noted as “closed”.

Task 1.2: Miscellaneous Coordination Meetings (Agency)

Biggs Cardosa will conduct additional coordination meetings, as needed, with agencies having jurisdiction within the PROJECT limits. This task will include preparing memos, letters, e-mails, and phone calls necessary to manage the PROJECT. This scope assumes a total of two (2) meetings with various agencies.

Task 1.3 – Progress Reports and Invoices

On a monthly basis, Biggs Cardosa will issue invoices and progress reports to the City detailing major items worked on during the billing period and anticipated work for the following month. Biggs Cardosa will establish and apply internal accounting methods and procedures acceptable to the City for documenting and monitoring contract costs.

Phase 1 Task 1 Deliverables:

- Meeting agendas and minutes
- Outstanding Issues List (and updates)
- Invoices with progress reports

TASK 2: PLANNING AND PROJECT DEVELOPMENT

Task 2.1 – Kick-Off Meeting

Biggs Cardosa will schedule a PROJECT kick-off meeting and invite key personnel from the City, as well as other parties that, in concurrence with the City, are important stakeholders in the success of the PROJECT. The goal of the kick-off meeting is to introduce staff, discuss project background and scope, establish communication and procedure guidelines, and discuss the PROJECT schedule. Biggs Cardosa will also start preparation of a detailed PROJECT description, including PROJECT components, environmental study limits (ESL), and timing of construction.

Task 2.2 – Research and Data Gathering

The Biggs Cardosa design team will review available data, including previous studies, provided by the City. Key information to review will be photos, record drawings and inspection reports, and maintenance history.

Biggs Cardosa will collect utility information using USA database. Utility record data will be drafted on a utility base map.

Task 3: PRELIMINARY/CONCEPT PLANS

Task 3.1 – Preliminary Geotechnical Investigations & Foundation Report

Task 3.1.1 – Research and Data Collection

The design team will review available geologic and soil literature in the vicinity of the site, including a review of as-built drawings and existing boring data in the PROJECT vicinity.

Task 3.1.2 – Sample Collection

Biggs Cardosa will collect three bulk samples from the creek bed with hand tools. One sample will be collected at the bridge location, with two additional samples to be collected approximately 50 to 100 feet upstream and downstream from the bridge, respectively, depending on access. The purpose of these samples is to provide gradation data for scour analyses. Actual sampling locations will depend upon available access, with consideration of the water level in the creek.

Task 3.1.3 – Laboratory Testing

Particle size analyses will be performed on the three collected samples.

Task 3.1.4 – Preliminary Geotechnical Evaluation Memorandum

Biggs Cardosa will prepare a memorandum covering the overall geotechnical/geologic condition on a broad basis, including, but not limited to, geology, subsurface conditions, groundwater, as-built data, etc. The laboratory data from Task 3.1.3 will be included as part of the memorandum.

Task 3.1.5 – Geotechnical Explorations

Task 3.1.5.1 Permit and Utility Clearance

Explorations will be performed within the City's right-of-way (ROW), and an encroachment permit will not be required. Traffic control will be provided, as necessary, during field explorations. Traffic control plans will be prepared by an outside vendor, part of Biggs Cardosa subconsultant's team..

Biggs Cardosa will apply for drilling permits from Valley Water as the boring is greater than 45 feet.

A field engineer will mark the boring location and contact the Underground Service Alert (USA) for utility clearance. A private utility locator and removing the USA marking are not included in the scope.

Task 3.1.5.2 Field Exploration

A total of two soil borings, each up to 80 feet deep, are planned with one at each abutment. A truck rig would be used for the field explorations. Lane closures are expected during the field explorations. Traffic control is included in the cost and will be performed by an outside vendor.

A field engineer will classify and log the subsurface soil and rock conditions encountered in the test boring at the time of drilling. Samples will be collected for laboratory testing.

The borings will be grouted 2 sack slurry. Then the AC hot patch be squared off (2'x2'x3" minimum patch). Actual locations of the explorations will be determined based on the site condition due to access or utility conflicts.

Task 3.1.5.3 Laboratory Testing

Laboratory tests will be performed on representative soil samples, including but not limited to, moisture contents, densities, particle size analyses, plasticity index (basic soil characteristics), corrosion tests (pH, sulfate, chloride, and resistivity), consolidation tests, and strength tests as deemed necessary.

Task 3.1.5.4 Preparation of Boring Log

The boring log will be edited based on the field logs and the laboratory test results and will be prepared based on Caltrans standards. It is assumed that the boring data will be provided in boring record format, i.e., letter-sized gINT log.

Task 3.1.5.5 Soils Analysis/Evaluation

Associated engineering analyses may be required to provide additional input to the foundation design. Based on our experience, the following may be expected:

- Seismic design criteria, i.e., ARS curve per Caltrans ARS Online website. (site-specific ARS curve is not included.)
- Seismic hazards (liquefaction potential),
- Foundation evaluation (axial/lateral capacity for deep foundations or bearing capacity/settlement for shallow foundations),
- Development of geotechnical parameters for LPILE analyses (LPILE to be performed by the structural engineer),
- Slope stability evaluation at the abutments,
- Lateral earth pressures for the abutment walls per Caltrans SDC 2.0
- Corrosion potential

Task 3.1.5.6 Report Preparation

The preliminary memorandum will be updated to present the results of the boring data and the engineering analyses.

Task 3.2 Hydrology & Hydraulics

Task 3.2.1: Obtain, Review and Summarize Existing Information

Task 3.2.1.1– Obtain, Review Summarize Bridge Maintenance Reports

The design team will obtain, review and summarize the available bridge maintenance reports from BIRIS including routine maintenance reports, underwater inspections and special hydraulic analysis.

Task 3.2.1.2– Obtain and Review FEMA information

Biggs Cardosa will update the available information from FEMA by submitting a request to the FEMA library through the City of Cupertino, review the effective and preliminary Flood Information Study and hydrology information available from FEMA.

Task 3.2.1.3–Field Investigation

Biggs Cardosa will meet with the City of Cupertino and field review the bridge reach with the project team.

Assumptions for Phase 1 Task 3.2 include:

1. No hydraulic analysis is assumed for this phase of the scope of work.
2. No potential scour countermeasure or scour monitoring will be provided for this scope of work.

Task 3.2.2 Hydraulic Analysis Memorandum (HAM)

Task 3.2.2.1 – Draft HAM

Biggs Cardosa will complete a draft HAM documenting the existing conditions and potential scour countermeasure alternatives.

Task 3.2.2.2 – Final HAM

Biggs Cardosa will incorporate comments in a Final HAM documenting the information gathering and potential scour countermeasure alternatives.

Assumptions for Phase 1 Task 3.2 include:

1. The Draft and Final HAM will be provided in electronic format assuming one round of comments on the Draft HAM.

Task 3.3 – Feasibility Study

The Biggs Cardosa design team will develop a feasibility study for Stevens Creek Bridge to determine the recommended scour countermeasure for Stevens Creek Bridge prior to proceeding with the plan design. This phase of work focuses on identifying PROJECT challenges, developing and screening improvement alternatives, and defining the PROJECT.

Task 3.3.1 – Scour Countermeasure Evaluation

Biggs Cardosa will evaluate up to three (3) structure concepts including scour countermeasure, bridge rehabilitation, and bridge replacement. Biggs Cardosa will discuss the advantages and disadvantages of each alternative in the feasibility study report.

Bridge Preliminary General Plans: Biggs Cardosa will prepare one preliminary General Plan sheet for the recommended structure concept that includes a plan, elevation, and typical section.

Bridge General Plan Estimates: Biggs Cardosa will prepare preliminary Engineer's Estimates for each of the structure concepts which will include the appropriate contingencies (typically 25%) in accordance with Caltrans guidelines. The most accurate cost estimate possible will be provided to Biggs Cardosa for planning and budgeting purposes at this early stage of design.

Task 3.3.2 – Feasibility Study Report

The Feasibility Study Report will be prepared during the preliminary design phase to document the basis of design and reasoning made to arrive at the selected scour countermeasure. Design considerations will include bridge structure evaluation, environmental impacts, hydraulic constraints, geotechnical constraints, constructability, construction staging and access, structure cost, and civil costs.

Biggs Cardosa will review the existing conditions and assess the most cost-effective structure concepts. Biggs Cardosa will evaluate alternative scour countermeasures and bridge configurations to meet the requirements of the PROJECT constraints. Biggs Cardosa will work closely with the City to evaluate the impacts to cost, schedule, constructability, and environmental considerations created by each of the feasible structure concepts.

The Feasibility Study Report will include the following primary elements:

- Discussion of the three structure concepts including discussion on construction and maintenance costs, permitting constraints, environmental impacts, right-of-way impacts, and initial geotechnical and hydraulic results to highlight how the preferred alternative was determined.
- Estimated construction costs.

Phase 1 Task 3 Deliverables:

- Preliminary Geotechnical Evaluation Memorandum
- Final Hydraulic Analysis Memorandum (HAM)
- Three (3) Cost Estimates (PDF)
- Draft and Final Feasibility Study Report (PDF)

TASK 4: ENVIRONMENTAL APPROVAL

****CONSULTANT MUST RECEIVE AN EXECUTED SERVICE ORDER FROM THE CITY PRIOR TO BEGINNING ANY TASK****

The design team will prepare the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) review documents and supporting technical studies for the PROJECT.

TASK 4.0 – PUBLIC OUTREACH

Biggs Cardosa will facilitate an in-person Public Meeting for the PROJECT. Biggs Cardosa will prepare an agenda, review PROJECT materials and presentations created, review meeting notices and web content, and assist with meeting notification through stakeholder contacts. The Biggs Cardosa public outreach team will participate in two preparation virtual meetings, attend one virtual meeting at start of meeting cycle, travel to and facilitate the in-person meeting, create brief meeting summaries and attend a virtual debrief meeting.

Task 4.1 – NEPA Environmental Clearance

The PROJECT will receive federal funding from the Federal Highway Administration (FHWA) and, therefore, compliance with NEPA and related federal statutes will be required. Biggs Cardosa will undertake the required studies following the Caltrans Office of Local Assistance procedures and utilize the formats published on the Caltrans Standard Environmental Reference (SER) website.

Task 4.1.1 - Preliminary Environmental Study (PES)

Biggs Cardosa will work with the PROJECT team to develop a PROJECT description for submittal to Caltrans. Biggs Cardosa will prepare the Caltrans' Preliminary Environmental Study (PES) form and attend one formal Caltrans Field Review for the proposed PROJECT. The PES form will include a visual impact questionnaire, United States Fish and Wildlife Service (USFWS) list of federally listed species, National Marine Fisheries Service (NMFS) list of

federally listed species, Federal Emergency Management Agency (FEMA) floodplain maps, and hazardous materials database mapping.

Task 4.1.2-NEPA Technical Memorandums

Upon completion of the PES process, Caltrans will issue a letter to the City identifying the NEPA environmental document (i.e., Categorical Exclusion) and technical memos and studies to be completed to support the NEPA document. Based on recent experience working on similar Caltrans Local Assistance Projects in the greater Bay Area, Caltrans should determine the PROJECT qualifies for a Categorical Exclusion and require preparation of the following technical memos for the PROJECT:

- Natural Environment Study (NES) and Biological Assessment (BA)
- Water Quality Memo (Construction BMPs)
- Location Hydraulic Study and Summary Floodplain Encroachment Report (LHS and SFER)
- Traffic Control Plan (traffic control during construction, construction hours)
- Equipment Staging Memo (staging location details)
- Construction Noise Memo (adherence to local ordinance)
- Air Quality PM2.5 Exemption Email from MTC

Biggs Cardosa will be responsible for preparing all the above memos/reports. The coordination with MTC for the Air Quality PM2.5 Exemption email will be provided by the City, and the Biggs Cardosa design team will assist the City with this coordination. The traffic control, water quality, construction noise, and equipment staging memos will be based on information provided by the Biggs Cardosa's Team. The memos and reports will be prepared based on the Caltrans' SER and submitted to the City for review. Biggs Cardosa will revise the memos and reports once and submit them back to the City for submission to Caltrans. After the memos are deemed complete by Caltrans, Caltrans will issue the NEPA Categorical Exclusion for use by the City in obtaining federal funding.

Task 4.2 – CEQA Environmental Clearance

The PROJECT should qualify for a Class 1 Categorical Exemption (CE) under CEQA. Per CEQA Guidelines Section 15301, Class 1 activities consist of the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." The above-described technical memos and reports to be prepared under NEPA will serve as the technical reports to be used to support the CEQA CE. No additional technical memos or reports will be completed to support the CEQA CE. Biggs Cardosa will prepare the Notice of Exemption (NOE) and a CE justification memo explaining why none of the exceptions to applying a CE and listed under Section 15300.2 Exceptions of the CEQA Guidelines are applicable to the PROJECT. The memo and NOE will be submitted to the City for review and approval. This scope of work assumes the City will file the NOE with the Santa Clara County Clerk and State Clearinghouse.

Task 4.3 – Biological Resources Report

The design team will prepare a Natural Environment Study (NES) and Biological Assessment (BA) for the proposed PROJECT per the latest Caltrans guidance. The NES and BA will describe existing biological conditions and any sensitive biological resources, such as potentially regulated habitats (e.g., wetlands) and special-status species, which may occur on the PROJECT site. The PROJECT site and immediately surrounding areas are expected to support jurisdictional waters, as well as the Central California Coast steelhead (*Oncorhynchus mykiss*), northwestern pond turtle (*Actinemys marmorata*), roosting bats, and nesting common and special-status birds. The NES and BA will describe potential impacts of the PROJECT on these biological resources as well as conceptual mitigation measures necessary to mitigate the PROJECT's environmental impacts.

Biggs Cardosa will prepare a draft Biological Assessment (BA) per the latest Caltrans guidance for the purpose of facilitating Section 7 consultation with the National Marine Fisheries Service in accordance with the Federal Endangered Species Act. The BA will include a description of the PROJECT; background information regarding the Central California Coast steelhead and its potential occurrence within the work area, including agency-provided information; an analysis of PROJECT impacts on this species; and avoidance, minimization, and compensatory mitigation measures to protect this species. The report will also include a species table addressing the potential for occurrence of all federally listed, proposed, and candidate species known to occur or potentially occurring in the general vicinity of the PROJECT boundary. This task also includes coordination with the National Marine Fisheries Service (NMFS) following submittal of the BA, including a site visit with NMFS staff and US Fish and Wildlife, if necessary.

Phase 1 Task 4 Deliverables:

- ✓ Natural Environment Study
- ✓ Biological Assessment
- ✓ Technical Memos
- ✓ CEQA CE
- ✓ NEPA CE
- ✓ Brief public meeting summary

PHASE 2: ENGINEERING DESIGN (PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E), BID SUPPORT, AND CONSTRUCTION SUPPORT

****CONSULTANT MUST RECEIVE AN EXECUTED SERVICE ORDER FROM THE CITY PRIOR TO BEGINNING ANY TASK****

TASK 0: PROJECT MANAGEMENT

Project management will include the supervision and scheduling of project staff, review of work prepared by staff and subconsultants, project coordination, project organization, quality assurance and control, acting as the client liaison, monitoring the project schedule and budget, preparation of project reports and attendance at meetings with the City and other agencies to receive input and discuss and review the project during its critical design periods. More specific responsibilities include but are not limited to:

Task 0.1: Project Development Meetings:

Biggs Cardosa will schedule monthly project development virtual meetings to discuss the status of the PROJECT, upcoming efforts, issues, and other relevant information. An agenda and invitation will be sent out two (2) days prior to the meeting, including minutes from the previous meeting. Minutes of each meeting will be distributed to attendees within five (5) workdays of the meeting. At the meeting, we will distribute an Outstanding Issues list. Items on the list are discussed at the meeting, new issues are added and assigned, and tasks completed are noted as “closed”.

Task 0.2: Miscellaneous Coordination Meetings (Agency): Biggs Cardosa will conduct additional coordination meetings, as needed, with agencies having jurisdiction within the project limits. This task will include preparing memos, letters, e-mails, and phone calls necessary to manage the project. This scope assumes a total of two (2) meetings with various agencies.

TASK 0.3 – PROJECT SCHEDULE

Biggs Cardosa will prepare a PROJECT Master Schedule in Microsoft Project format. The schedule will be updated regularly and discussed at the monthly PDT meetings. The schedule will have all relationships defined and the critical path and activity floats shown.

The Preliminary Project Schedule is included at the end of this section and is based on the anticipated contract execution date that includes all the major design tasks and defined relationships.

TASK 0.4 – PROGRESS REPORTS AND INVOICES

On a monthly basis, Biggs Cardosa will issue invoices and progress reports to the City detailing major items worked on during the billing period and anticipated work for the following month. We will establish and apply internal accounting methods and procedures acceptable to the City for documenting and monitoring contract costs.

Phase 2 Task 0 Deliverables:

- ✓ Meeting agendas and minutes
- ✓ Outstanding Issues List (and updates)

- ✓ Project Master Schedule (and updates)
- ✓ Invoices with progress reports

TASK 1: FINAL DESIGN – REPORTS AND STUDIES

TASK 1.1 – FINAL DESIGN REPORTS AND STUDIES

The focus of the design team is to finalize the reports and supplemental PROJECT information which form the basis of design for the PROJECT. All project sheets, which will be represented in the bid documents, will be identified and developed in varying degrees of detail during this phase.

TASK 1.1.1 – FINAL GEOTECHNICAL REPORT

It is assumed that no foundation or structural work will be required for the scour countermeasure. No work is planned for Phase 2 Task 1.1.1 at this time.

TASK 1.1.2 –HYDRAULIC MODELING AND POTENTIAL SCOUR COUNTERMEASURE SCOPING

Task 1.1.2.1 – Set up an existing conditions HEC-RAS model based on Point Precipitation Hydrology:

Biggs Cardosa will set up an existing conditions HEC-RAS hydraulic model based on a hydrograph developed from a Point Precipitation Model.

Task 1.1.2.2 – Set up a proposed conditions HEC-RAS model

Biggs Cardosa will update existing conditions HEC-RAS model based on plans provided by the PROJECT team.

Task 1.1.2.3 – Estimate Local Scour at the existing bridge

Biggs Cardosa will estimate local pier, contraction, abutment, and pressure flow scour for the existing bridge using the methods described in the Federal Highway Administration (FHWA) Publication HEC-18, *Evaluating Scour at Bridges*.

Task 1.1.2.4 – Estimate Short Term Degradation:

Biggs Cardosa will provide a survey request for a thalweg profile survey and estimate future short-term degradation based upon the results of the thalweg profile survey information.

Task 1.1.2.5 – Estimate Scour

Biggs Cardosa will estimate the scour for up to 3 proposed alternative scour countermeasure strategies.

Task 1.1.2.6: Provide Potential Scour Countermeasure Options

Biggs Cardosa will provide potential scour countermeasure options for City consideration.

Task 1.1.2.7 – Preliminary Hydraulic Report

Biggs Cardosa will complete a draft Preliminary Hydraulic Report (PHR) documenting the hydrology/hydraulics and the scour analysis.

Biggs Cardosa will incorporate one round of comments in a Final PHR.

TASK 1.2 – SURVEYING AND MAPPING

TASK 1.2.1 – PROJECT SURVEY CONTROL

Biggs Cardosa will establish survey control for use throughout design and construction. PROJECT control will reference City and SCVWD Benchmarks as available.

TASK 1.2.2 – TOPOGRAPHIC SURVEY

Biggs Cardosa will perform field topographic survey for use in design and modeling.

Biggs Cardosa will collect creek cross-sections, extending 10' beyond top of bank on each side of the creek. Creek cross sections will collect visible grade breaks perpendicular to the primary direction of flow. Cross sections will be collected at approximately the following locations:

- 200' upstream of Stevens Creek Blvd
- 150' upstream of Stevens Creek Blvd
- 100' upstream of Stevens Creek Blvd
- 50' upstream of Stevens Creek Blvd
- At Stevens Creek Blvd
- 50' downstream of Stevens Creek Blvd
- 100' downstream of Stevens Creek Blvd
- 150' downstream of Stevens Creek Blvd
- 200' downstream of Stevens Creek Blvd

Creek cross sections at Stevens Creek Blvd will include structure abutments, visible foundations, soffit, superstructure and wingwalls.

Perform field topographic surveys to obtain existing pavement elevations, roadway & creek features, surface visible utilities, trees and other obstructions within the work area. We will obtain location and invert at accessible storm drain manholes, inlets and sanitary sewer manholes.

Biggs Cardosa will draft Base Map features in AutoCAD for use in PROJECT backgrounds.

TASK 1.2.3 – RIGHT OF WAY RECORD BOUNDARY

Biggs Cardosa will prepare a base map of the right of way record data including site boundary, easements and other encumbrances of record based upon available record data from City/County. Property boundaries will be drafted in AutoCAD for use in PROJECT documents.

Phase 2 Task 1 Deliverables:

- ✓ Right of Way Record Map
- ✓ Topographic Base Map

TASK 2: PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E)

TASK 2.1 – 65% PS&E PREPARATION

Upon receiving CEQA and NEPA environmental clearance, the Biggs Cardosa design team will advance the PROJECT to the 65% level. This submittal will include the 65% plans, technical specifications, and detailed construction cost estimate. All PROJECT sheets, which will be

represented in the bid documents, will be identified and developed in varying degrees of detail during this phase.

TASK 2.1.1 – SCOUR COUNTERMEASURE DESIGN

Layout sheets, elevations, and details will be provided for the bridge scour countermeasure. Caltrans Standard Plans may be referenced from the bridge plans.

The 65% plan set is anticipated to include the following drawings:

Title Sheet	1 Sheet
Existing Conditions	1 Sheet
Layout	1 Sheet
Cross Sections	1 Sheet
<u>Construction Details</u>	<u>3 Sheet</u>
Subtotal Plans	7 Sheets

TASK 2.1.2 – ENGINEER’S ESTIMATE OF PROBABLE CONSTRUCTION COST

Detailed PROJECT quantity estimates, and cost estimates will be provided for review and approval. The cost estimate will identify construction work items, quantities, and unit costs, and summarize the estimated total PROJECT cost, including allowances for supplemental work, owner-furnished materials, expenses, mobilization, and contingencies. The unit costs shall be determined by reviewing similar recent PROJECT bid summaries, the City’s cost data, the most current Caltrans Contract Cost Data book, the California highway Construction Cost Index information, and the Caltrans Engineering Service Center site.

TASK 2.1.3 – TECHNICAL SPECIFICATIONS

Draft technical specifications (Special Provisions) will be completed based on current Caltrans Standard Special Provisions and Standard Specifications, and City construction contract standards.

Phase 2 Task 2.1 Deliverables:

- ✓ 65% Plans (11x17 PDFs)
- ✓ 65% Technical Special Provisions
- ✓ 65% Engineer’s Construction Cost Estimate
- ✓ 65% Quantity Calculations

TASKS 2.2 – 90% PS&E PREPARATION

This task includes the preparation of the 90% construction documents and will include addressing the 65% Submittal Review Comments, preparing the 90% PS&E, and submitting 90% PS&E.

The Biggs Cardosa design team will respond to the City review comments on the 65% submittal and incorporate the necessary changes in the 90% PS&E submittal.

Biggs Cardosa will prepare the technical special provisions. The City will prepare the “boilerplate” and combine the City’s “boilerplate” with the technical special provisions to create the final specification document.

Biggs Cardosa will prepare the final plans, technical specifications, and construction cost estimate. All design activities will be completed. The PS&E package will be prepared for a final City review.

Phase 2 Task 2.2 Deliverables:

- ✓ 90% Plans (11x17 PDFs)
- ✓ 90% Technical Specifications
- ✓ 90% Engineer’s Construction Cost Estimate
- ✓ Quantity Calculations
- ✓ Comment Response Matrix

TASK 2.3 – 100% PS&E

This task includes the preparation of the 100% construction documents and will include addressing the 90% Submittal Review Comments, preparing the 100% PS&E, and submitting 100% PS&E.

The Biggs Cardosa design team will respond to the City review comments on the 90% submittal and incorporate the necessary changes in the 100% PS&E submittal.

Phase 2 Task 2.3 Deliverables:

- ✓ 100% Plans (11x17 PDFs)
- ✓ 100% Technical Specifications
- ✓ 100% Engineer’s Construction Cost Estimate
- ✓ 100% Quantity Calculations
- ✓ Updated Comment Response Matrix

TASK 3: ENVIRONMENTAL PERMITTING

The design team will prepare permit applications for PROJECT impacts to sensitive/regulated habitats along Stevens Creek including a USACE Section 404 Nationwide Permit Application Package, a Section 401 Regional Water Quality Control Board Water Quality Certification Application Package, and a California Department of Fish and Wildlife Lake and Streambed Alteration Agreement Notification Package.

Task 3.1 – US Army Corps of Engineers -Section 404 Nationwide Permit

Task 3.1.1 - Delineation of Regulated Habitats

If vegetated wetlands subject to USACE jurisdiction are present in PROJECT impact areas, a formal delineation of these habitats will be completed, as such a delineation would be necessary

for USACE permitting. A technical report summarizing the methods and results of the field survey for jurisdictional wetlands and other waters, including waters of the U.S. regulated by the USACE under Section 404 of the Clean Water Act, waters of the state regulated by the San Francisco Bay Regional Water Quality Control Board (RWQCB) under Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act, and waters regulated by the CDFW. The report will be prepared to specifications developed by the San Francisco District of the USACE and will be of sufficient detail for agency review and a jurisdictional determination.

Task 3.1.2 - USACE Section 404 Nationwide Permit Application Package

Biggs Cardosa will assemble a Nationwide Permit application package that includes Eng. Form 4345, a PROJECT description, a summary of previous environmental studies, an assessment of impacts to 404-jurisdictional habitats, and discussion of suitable mitigation measures. The USACE permit package will be provided to the PROJECT team for review and comment. After incorporation of any changes, the package will be submitted to USACE. We will maintain regular contact with USACE to monitor the processing of the permit application. This task includes one site visit with a USACE representative, if necessary. We will respond to comments received on the draft application and generate a final report to process this permit application.

Task 3.2 – California Fish and Wildlife – Section 1602 Streambed Alteration Agreement

Biggs Cardosa will prepare permit materials in support of a 1602 Lake and Streambed Alteration Agreement for submittal to the CDFW Electronic Permit Information Management System (EPIMS) to authorize impacts to waters of the state and riparian habitats regulated by CDFW under Section 1602 of the California Fish and Game Code. Application materials include Form FG 2023, Lake and Streambed Alteration Program Project Questionnaire, all copies of environmental documentation, all correspondence with USACE, RWQCB, and other agency staff, an impact assessment, and PROJECT drawings.

The CDFW permit package will be provided to the PROJECT team for review and comment. After incorporation of any changes, the package will be submitted to CDFW through its Environmental Permit Information Management System. We will maintain regular contact with CDFW to monitor the processing of the permit application. This task includes one site visit with a CDFW representative, if necessary. Biggs Cardosa will respond to comments received on the draft application and generate a final application and process the permit application.

Task 3.3 - Regional Water Quality Control Board – Section 401 Water Quality Certification or Waiver

The RWQCB will take jurisdiction over the same aquatic features that are regulated by USACE, and may also claim areas up to the top of bank of Stevens Creek, as well as any riparian trees or

shrubs rooted below top of bank, as waters of the state. Therefore, Biggs Cardosa will prepare a Clean Water Act Section 401 water quality certification application to submit to RWQCB. The complete permit package includes much of the same information that is submitted to the USACE but also includes Form R2C502-E and several additional materials. The submittal will include copies of the project's NES and BA, all correspondence with USACE and RWQCB staff, an impact assessment, and project drawings.

The RWQCB will require alternative analyses for projects, with the level of effort of analysis to be determined by the impact levels of the project. Because the project is likely to encroach on RWQCB jurisdiction, we expect some level of effort will be required to document and explain the project's preferred alternative against other potential projects. The report will discuss alternatives that were considered and rejected, along with details regarding why any alternatives having less impact to waters of the state than the proposed project are impracticable. The report will include information on why the project cannot practicably reduce impacts on waters of the State, to document that the proposed project is the Least Environmentally Damaging Practicable Alternative (LEDPA).

As required for 401 certifications under the Clean Water Act, we will organize and attend a pre-application meeting with RWQCB staff and project team members to discuss the project. Following the pre-application meeting, we will make any necessary edits to the application materials to reflect RWQCB input on the project and will then submit an administrative draft RWQCB permit package to the project team for review and comment. After incorporation of any changes, the package will be submitted to RWQCB. We will maintain regular contact with RWQCB to monitor the processing of the permit application. This task includes one site visit with an RWQCB representative, if necessary. We will respond to comments received on the draft application and generate a final application and process the permit application.

Task 3.4 - Regulated Habitats Mitigation and Monitoring Plan

Biggs Cardosa will prepare a mitigation and monitoring plan (MMP) describing any compensatory mitigation that may be required by regulatory agencies, or as a CEQA mitigation measure, for impacts on stream, wetland, and/or riparian habitats and habitat for steelhead. The Draft MMP will be prepared in accordance with USACE's Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines (USACE MMP Guidelines). The MMP is the central technical document required by the resource agencies to complete the project's permit applications. The MMP will describe the project's impacts on regulated wetland habitats and species, present the conceptual habitat mitigation plan, and include an ecological monitoring plan and a long-term management plan.

Task 3.4.1 - Resource Agency Coordination to Define the Mitigation Package

Prior to preparation of the MMP, we will coordinate one site visit with the USACE, RWQCB, CDFW, and/or NMFS to discuss the City's proposed mitigation for project impacts on regulated habitats and steelhead habitats. The purpose of this site visit will be to describe the rationale for the proposed mitigation, address questions and concerns from the resource agencies, and determine what each agency will require to meet their regulatory rules. This task includes communication with the City prior to the agency meeting to strategize on the content of the meeting, coordinating meeting times, and developing meeting materials.

Task 3.5 – US Fish & Wildlife Coordination

This task includes coordination with the USACE regarding potential mitigation requirements, if the NMFS requires compensatory mitigation for impacts on listed species.

TASK 4: BID AND CONSTRUCTION SUPPORT

****CONSULTANT MUST RECEIVE AN EXECUTED SERVICE ORDER FROM THE CITY PRIOR TO BEGINNING ANY TASK****

TASK 4.1 – BID SUPPORT

The Biggs Cardosa design team will provide support to the City during construction bidding. The City will administer and coordinate the bidding procedures for the project. The City will advertise the project for bidding and distribute the plans to prospective bidders. The City's project manager will be the designated person to receive contractor inquiries. Biggs Cardosa will assist the City as requested during the bidding process. The work may include responding to contractor bid inquiries and providing consultation and interpretation of the construction documents during the advertisement period. We have budgeted the bidding support effort to respond to 4 inquiries.

TASK 4.2 CONSTRUCTION SUPPORT

Biggs Cardosa will assist the City during construction by providing construction support, as requested. It is assumed that the City will hire/provide a Resident Engineer/Construction Manager to provide construction inspection services, and to act as a liaison to the City regarding construction related matters. A brief discussion of the anticipated scope of work is included below.

Task 4.2.1 Preconstruction Meeting

Biggs Cardosa will attend the preconstruction meeting and one construction progress meeting, as required. We will answer clarification questions pertaining to the plans and special provisions, if needed.

Task 4.2.2 Respond to RFI's

Biggs Cardosa will review contractor RFI's (Request for Information) and provide written responses. Cost will be on a time and expense basis.

Task 4.2.3 Review Submittals

Biggs Cardosa will review contractor submittals and provide written responses. Cost will be on a time and expense basis.

Task 4.2.4 Record Drawings

Biggs Cardosa will prepare record drawings once the construction is complete. Record drawings will reflect change orders, accommodations, and adjustments to all improvements constructed. The basis of the revisions shown on the record plans will be a red mark construction set of plans provided by the project Resident Engineer.

Phase 2 Task 4 Deliverables:

- ✓ RFI responses
- ✓ Submittal review
- ✓ Record Drawings

OPTIONAL DESIGN SERVICES

THE FOLLOWING TASKS ARE NOT INCLUDED IN THE BASE SCOPE OF SERVICES BUT CAN BE ADDED AT THE CITY'S REQUEST AS PROJECT NEEDS ARISE.

Task 1 – Bridge Scour Monitoring Plan

Task 1.1 – Assist with developing a bridge scour monitoring plan

Biggs Cardosa will assist with putting a monitoring plan together including adding monitoring devices at the bridge site. These include but are not limited to monitoring movement of the bridge itself (with very sensitive tilt-meters) or monitoring channel elevations with active devices attached to the bridge.

Task 1.2 – Assist with installation of a bridge scour monitoring plan

Biggs Cardosa will assist with installing a monitoring plan together including adding monitoring devices at the bridge site.

Task 2 – Section 106 Report

Biggs Cardosa will complete the following tasks and studies to support the project: National Historic Preservation Act Section 106 review process by Caltrans:

Record Search. Biggs Cardosa will perform a record search for previous studies and recorded cultural resources by submitting requests to the Northwest Information Center (CHRIS), Sonoma State University, Rohnert Park, to include the project area and a ½-mile radius around it. Biggs Cardosa will also request a Sacred Lands File search and tribal contact list for Santa Clara County from the California Native American Heritage Commission in Sacramento.

Prepare Area of Potential Effect Map. In consultation with the City and project engineers, Biggs Cardosa will prepare an Area of Potential Effects (APE) map for review by Caltrans. The map will use the most recent format guidance from the Office of Historic Preservation and Caltrans.

Archaeological Survey Report. Biggs Cardosa will retain a qualified archaeologist to complete a pedestrian field survey, background research, and geoarchaeological assessment of the project corridor. This data will be used to complete an Archaeological Survey Report that conforms to the guidance in the Caltrans Standard Environmental Reference (SER) Volume 2.

Historic Properties Survey Report. Biggs Cardosa will prepare a Historic Properties Survey Report, a summary report that includes the final draft of the APE map, discusses documentation efforts, presents the findings of the ASR, and summarizes the National Register eligibility conclusions for cultural resources. The document will provide evidence of coordination with Native American groups, local government, and other interested persons and organizations, and requests the concurrence of the State Office of Historic Preservation (if necessary).

MISCELLEANOUS

- 1) All drafting will be done in AutoCAD. Electronic submittals will be in PDF format.
- 2) All reports will be submitted as draft and final. There will be one round of reviews of each draft reports.
- 3) The Feasibility Study Report will be reviewed and approved by the City and Caltrans. There will be one round of agency review.
- 4) The City and any other commenting entity will provide full comments at each submittal.
- 5) Technical specifications will be developed per the latest Caltrans standards at the start of the 65% PS&E phase. The scope excludes any updates to the technical specifications to meet new standards released by Caltrans during the life of the project.
- 6) The City will pay the cost of any permit fees.
- 7) Virtual project meetings will be hold for up to 12 months during Task 1-3.
- 8) Staged construction will not be required for the project.
- 9) Attendance at the pre-bid meeting and analysis of bids is not included in this scope of services.
- 10) Construction access will be performed through public right-of-way.

Hydrology / Hydraulics

- 11) The Draft and Final HAM will be provided in electronic format with one round of comments on the Draft HAM.
- 12) A Fluvial Geomorphology Study is not required for this project.
- 13) Publicly available GIS data can be used and is sufficient for 1000' upstream / downstream modelling requirements.

- 14) The PROJECT will be exempt from Provision C.3 of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) requiring treatment for projects with over 5,000 square feet of new and reworked impervious surface.
- 15) A Stormwater Pollution Prevention Plan (SWPPP) will be prepared by the contractor.

Geotechnical

- 16) No encroachment permit will be required.

Environmental

- 17) The City will be responsible for providing all fees associated with regulatory permits and other regulatory agency obligatory compensatory mitigation.
- 18) Biggs Cardosa's Team will attend one Caltrans Field Review.
- 19) Cultural resources analysis is not included in this scope.
- 20) The City will file the Notice of Exemption with Santa Clara County and State Clearinghouse.

Right of Way

- 21) No right of way acquisition or temporary construction easements will be required for design and construction.
- 22) Title Reports will not be required for the project.

Attachment 1

**CITY OF CUPERTINO
DESIGN PROFESSIONAL SERVICES AGREEMENT
SERVICE ORDER NO.**

Agreement Contract #:

Agreement Date:

Agreement Maximum Compensation:

Agreement End Date:

Consultant:

Firm Name:

Address:

Contact:

Phone:

Project Description

Project Name:

☒ Description: (simple project description if appropriate)

☒ Attachment A: Includes Description of Project, Scope of Service, Schedule of Performance and Compensation

City Project Management

Managing Department: Public Works

Project Manager:

Fiscal/Budget

	Amount
Agreement Maximum Compensation:	<u>\$0.00</u>
Total Previously Encumbered to Date:	<u>\$0.00</u>
Encumbrance this Service Order:	<u>\$0.00</u>
Agreement Unencumbered Balance:	<u>\$0.00</u>

Account No.:

Project Manager:

Date:

APPROVALS

Consultant:

Date:

Project Manager:

Date:

EXHIBIT B
SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work no later than June 30, 2030, unless extended by a contract amendment.

This Schedule of Performance establishes the milestones for commencement and completion of the Tasks as specified in Exhibit A, Scope of Services and will be specified in each Service Order.

EXHIBIT C

COMPENSATION

Capitalized terms which are defined in the Agreement have the same meaning in this Exhibit C.

This Exhibit C on Compensation supplements the provisions of Section 4 of the Agreement on Compensation, as further specified in Section 4.

1. BASIC SERVICES BUDGET SCHEDULE

A. Maximum Compensation.

The CITY agrees to compensate CONSULTANT for satisfactory professional services performed in accordance with the terms and conditions of this AGREEMENT. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services, and reimbursable expenses, shall not exceed SIX-HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$625,000.00). This not-to-exceed amount is an estimate for the services stated in Exhibit A. Actual compensation will be negotiated through service orders for specific scope of work and cost for each phase of the project.

B. Method of Payment

The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY's approved overhead rate set forth in the Cost Proposal. The maximum total cost as specified in Paragraph "A" above shall not be exceeded, unless authorized by AGREEMENT amendment. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT.

In addition to the allowable incurred costs, CITY will pay CONSULTANT a fixed fee of 10%, as shown in the attached cost proposals for all Total Direct Labor Costs and Total Indirect Costs. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.

C. Subconsultant Services.

CONSULTANT is directly responsible for any payment for SUBCONSULTANT work on this PROJECT. SUBCONSULTANT work on this PROJECT is included in the Maximum Compensation shown above and shall be billed to the CITY by CONSULTANT as part of the Basic Services. CONSULTANT shall only use SUBCONSULTANTS upon the prior written approval of CITY.

D. Budget Schedule

The Budget Schedule for this AGREEMENT shall be as follows in the following Attachment 2, Cost Proposal from the CONSULTANT AND SUBCONSULTANTS.