



DESIGN PROFESSIONAL SERVICES AGREEMENT (MASTER) WITH MESITI-MILLER ENGINEERING, INC

1. PARTIES

This Master Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and Mesiti-Miller Engineering, Inc (“Consultant”), a Corporation for Civil Engineering Design Professional Services for Various City of Cupertino Capital Improvement Projects (“Project”), and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Scope of Services. Consultant agrees to provide the Services “as needed” and as set forth in the Scope of Services, attached and incorporated here as Exhibit A. The Services must comply with this Agreement and with each Service Order issued under the authority of the City Director of Public Works or his designee, in accordance with the following procedures. Consultant further agrees to carry out its work in compliance with the City’s Shelter In Place and Social Distancing Requirements, attached here and incorporated as **Exhibit A-A**.

2.2 Service Orders. Before issuing a Service Order the City Director of Public Works/Designee will request Services in writing and hold a meeting with Consultant to discuss it. Consultant will submit a written proposal that includes a specific Scope of Services, Schedule of Performance, and Compensation, which the Parties will discuss. Thereafter City Director of Public Works/Designee will execute a Service Order using the Service Order Form attached and incorporated here as **Exhibit B**. Each Service Order will specify its scope of services, deliverables, schedule of performance, compensation, and any other applicable terms. Issuance of a Purchase Order is discretionary and the Director of Public Works/Designee may streamline these procedures, e.g., conferring by telephone instead of a meeting, if it is in the City’s best interests. Consultant will not be compensated for Services performed without a duly executed Service Order.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on March 31, 2024 (“Contract Time”), unless terminated earlier as provided herein. The City’s Director of Public Works 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 each Service Order, and under no circumstances should the Services go beyond the Contract Time. 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 each Service Order.

3.3 Time is of the essence for the performance of all the Services required in this Agreement and in each Service Order. Consultant must have sufficient time, resources and qualified staff to deliver the Services on time. Consultant must respond promptly to the City's Service Orders and any change orders that may be issued

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Services a total amount that will be based upon actual costs but that will be capped so as not to exceed \$300,000.00 ("Contract Price"), based on the budget and rates set forth 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 Invoices and Payments. City will pay Consultant for Services satisfactorily provided under a Service Order, within thirty (30) days following receipt of a properly submitted invoice for Services provided during the preceding calendar month. Unless otherwise provided by a Service Order, each invoice must include for each day of Services:

- a. The name of each individual providing Services;
- b. A succinct summary of the Services performed by each such individual;
- c. The time spent by each individual providing those Services;
- d. The applicable hourly billing rate and payment due; and
- e. A detailed breakdown of all allowable expenses.

All hourly rates and allowable expenses must conform to City-approved rates set forth in **Exhibit C**.

4.3 Final Payment. At least thirty (30) days prior to end of the Agreement, Consultant must submit a requisition for final and complete payment of costs and any pending claims for City approval. Noncompliance with this requirement relieves City of further payments/obligations under the Agreement.

5. INDEPENDENT CONSULTANT

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of City. Consultant is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's performance of the Services. Consultant is not entitled to health, workers' compensation, or other benefits from City.

5.2 Consultant Qualifications. Consultant warrants on behalf of itself and its Subconsultants that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best industry practices for similar services performed in the San Francisco Bay Area.

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

5.4 Subconsultants. Unless prior written approval from City is obtained, only Consultant's employees and Subconsultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all Subconsultants 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 Subconsultants relative to the portion of their work.

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

5.6 Payment of Benefits and Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant 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. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant'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 Consultant. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its Subconsultants, 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 or its Subconsultants in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, “Work Product”), prepared by Consultant in connection with this Agreement 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 any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product prepared/created by Consultant and its Subconsultants 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 Subconsultants 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 Subconsultants 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

81 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 4 (four) years from the date of City’s final payment.

82 City will have free and 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. This Section 8 survives the expiration/termination of this Agreement.

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 in connection with the Project and Services during the Contract Time and for one (1) year thereafter will reference City contributions in making the Project possible. The words "City of Cupertino" shall 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 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 Indemnatee.

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 it has 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

131 General Laws. Consultant shall comply with all local, state, and federal 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.

132 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.

133 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 Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Consultant understands that harassment and discrimination directed 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.

134 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 agrees to abide by City policies and administrative rules prohibiting gifts to City 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 Evelyn Moran, 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 approval, the Consultant's Project Manager for all purposes under this Agreement will be Rodney Cahill, 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. 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 files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceeding 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 attorney fee provision does not apply to legal actions initiated by Consultant or Subconsultant. This Section 18 survives 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 every kind or nature between the Parties, and supersedes any other agreements and understandings, either oral or written, between the Parties. 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 in writing to the persons below, which will be considered effective on the date of personal delivery or the 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: Office of the City Manager 10300 Torre Ave. Cupertino CA 95014 Attention: Evelyn Moran Email: evelynm@cupertino.org	To Consultant: Mesity-Miller Engineering, Inc 224 Walnut Ave., Suite B Santa Cruz, CA 95060 Attention: Rodney Cahill Email: rodney@m-me.com
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27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney’s Office.

28. EXECUTION

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement 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.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO
A Municipal Corporation

By _____
Name _____
Title _____
Date _____

Mesiti-Miller Engineering, Inc

By  _____
Name Rodney Cahill
Title Principal
Date Mar 3, 2021

APPROVED AS TO FORM:

HEATHER M. MINNER
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date _____

EXHIBIT A
SCOPE OF SERVICES FOR CIVIL ENGINEERING DESIGN
PROFESSIONAL SERVICES MASTER AGREEMENT

The CONSULTANT shall provide to the CITY's Department of Public Works Civil Engineering consulting services for various CITY projects.

CONSULTANT shall provide services under this Master Agreement on an "as needed" basis and only (1) upon written request from City's Director of Public Works or authorized Agent as defined in Section 8, Project Coordination and (2) as defined in a fully executed Service Order.

SECTION 1. GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY'S Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among Civil Engineering consultants of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT shall be at no cost to the CITY.
- D. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. SUBCONSULTANTS will be identified on each Service Order and provide all required insurance as specified in this master agreement.
- E. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director or the Director's designee and the signature of the City Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- F. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with the designated Project Manager on the performance of each Service Order.

- G. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.

SECTION 2. BASIC SERVICES.

As authorized by a fully executed Service Order, CONSULTANT shall provide Civil Engineering services for various City Public Works Projects in accordance with the following:

A. General Performance Requirements

For each assigned Project:

1. CONSULTANT shall designate a Project Manager and provide to City the names of their team members for the Project. The team members shall be satisfactory to City. CONSULTANT shall not substitute any team members without the prior approval of City. City retains the right to reject team members assigned by CONSULTANT or require replacement of team members.
2. CONSULTANT shall effectively manage and administer the Project for the efficient, progressive, and proactive delivery of the Project.
3. CONSULTANT shall be responsible for managing and coordinating the work of all subconsultants and subcontractors.
4. CONSULTANT shall consult and coordinate with the City and communicate with members of the Project team.
5. CONSULTANT shall schedule meetings and prepare meeting agendas and minutes for all Project meetings. All minutes of meetings are due to the City within ten (10) calendar days after the meeting in a digital format and shall also be provided to other appropriate agencies and entities, as directed by City.
6. CONSULTANT shall communicate weekly with City's assigned Project Manager to provide an update on the current status of the Project and provide a brief written summary report.

B. Specific Performance Requirements

For each assigned Project, CONSULTANT may provide any or all of the following tasks and subtasks, as is required for the specific Project:

Task 1.0 Pre-Design Studies

- 1.1 Project Analysis:** For budget programming purposes, analyze the Project proposal to identify and describe initial Project goals and objectives, develop a scenario to address Project goals and objectives, Project delivery process, and cost estimate to deliver the proposed Project.
- 1.2 Feasibility Study:** Perform a Feasibility Study for the proposed Project. Study will include a professional analysis of the ability of the agency to provide the desired

improvements/outcomes within the available budget, and considering other defined constraints such as right-of-way. Other factors to be considered include constructability, time to design and construct, and environmental impacts. Study will also include the outcome of the proposed improvements including traffic impacts, maintenance implications, cost to construct, cost of right of way acquisition, conformance with the General Plan, construction impacts, impacts to specific properties, and other information that will assist the City in determining whether or not to construct the Project.

- 1.3 Meetings:** Participate in five (5) team meetings with representatives of the City during the Feasibility phase and provide written meeting minutes to the City within two (2) business days.
- 1.0 Deliverables:** (all deliverables digital unless otherwise noted)
 - 1.1 Project Analysis Report (including Project Alternatives Analysis, Preliminary Construction Cost Estimate)
 - 1.2 Feasibility Report
 - 1.3 Meeting Notes

Task 2.0 Data Collection

- 2.1 Existing Data Assembly:** CONSULTANT shall review Project data provided by the City including, but not limited to: topographic survey, geotechnical reports, traffic studies, CEQA documents, other environmental studies, tree surveys, arborist's reports, approved Master Plan(s), or other such data. The CONSULTANT shall be entitled to reasonably rely upon the accuracy and sufficiency of any information provided to the CONSULTANT by the City or the City's agents.
- 2.2** The CONSULTANT shall identify discrepancies or shortcomings among the existing data, and identify solutions for resolution, and propose generation of additional site information necessary to provide an accurate Project Base Map.
- 2.3** The CONSULTANT shall utilize existing data to the extent possible and inform the City immediately of problems associated with using existing data for Project base information.
- 2.4 Utility Coordination:** Coordinate with all utility owners who may have facilities within the Project area or that may be impacted by the Project work. Transmit preliminary plans for the identification of potential conflicts. Coordinate potholing by utility companies and owners as required.
- 2.5 Field Survey:** Perform field survey of existing control and monumentation. Locate existing survey monuments and accessible property corners and compute the existing right-of-way based on boundary evidence, records maps, and preliminary title reports. Prepare a calculated base map of the existing record right-of-way for use in design.
- 2.6 Topographic Survey:** Perform field Topographic Survey to obtain locations of utility surface facilities, inverts of accessible storm drain manholes, inlets, and sanitary sewer

manholes. Obtain location and sizes of all trees and other existing features that may impact the Project design.

- 2.7 Geotechnical Report:** Perform a geotechnical field investigation and soil boring, perform laboratory testing and prepare a geotechnical report that includes boring logs and recommendations for grading, pavement structural sections, foundations, and slope stability as well as trench excavation and backfill requirements as appropriate for the Project work. Investigation may also include percolation and other tests related to storm water treatment / C3 requirements.

2.0 Deliverables: (all deliverables digital unless otherwise noted)

- 2.1 Source Document Listing
- 2.2 Proposal of Additional Investigative Actions
- 2.3 Details of Problematic Data
- 2.4 Summary of Utility Companies Contacted and Actions Taken
- 2.5 Scaled Base Map in AutoCAD (current version) Format
- 2.6 Project Area Surface Features Added to Base Map in AutoCAD Format
- 2.7 Geotechnical Report

Task 3.0: Preliminary (35%) Design

- 3.1 Meetings:** Participate in two (2) design team meetings with representatives of the City during the Preliminary Design phase and provide written meeting minutes to the City within two (2) business days.
- 3.2 Alternatives Analysis:** Provide alternatives to accomplish the Project goals and objectives. Include a comparison of the alternatives that includes, at a minimum, achievement of goal(s), construction cost, maintenance implications/costs, energy use, construction impacts, and time to construct. Include identification of agencies or jurisdictions that would need to be coordinated with for each alternative.
- 3.3 Preliminary Plans:** Prepare Preliminary Design Plans and submit them to the City for review and comment. The plans shall be prepared digitally using current AutoCAD software. The plans shall be formatted per City standards and submitted with other Preliminary Design Documents as noted below.

The Preliminary Plans will include the major items of work needed to accomplish the Project goals.

The sheets to be provided for this Preliminary Plan submittal may include:

- Title/Index Sheet
- Demolition Plans
- Improvement Plans
- Typical Cross Sections
- Preliminary Street Alignment Plans and Profiles
- Preliminary Utility Plans
- Striping Plans
- Planting
- Details

3.4 Preliminary Estimate: Prepare a Preliminary Estimate of Probable Construction Cost based on items and quantities of work shown on the Preliminary Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.

3.0 Deliverables: (all deliverables digital unless otherwise noted)

- 3.1 Meeting Notes
- 3.2 Project Alternatives Analysis
- 3.3 Preliminary Plans
- 3.4 Preliminary Construction Cost Estimate

Task 4.0 Construction Document Development

- 4.1 Meetings:** Participate in two (2) design team meetings with representatives of the City during the Construction Document phase and provide written meeting minutes to the City within two (2) business days.
- 4.2 65% Construction Documents:** The 65% Construction Documents shall be a refinement of the Preliminary Design documents and are to be based on comments received for the Preliminary review. The 65% Plans, Draft Technical Specifications, and 65% Cost Estimate shall be submitted together.
- 4.3 65% Plans:** Prepare 65% Design Plans and submit them to the City for review and comment. 65% plans shall include any sheets not previously submitted (erosion control,

draft details, etc.). Advance the design to the point that all major design issues and solutions are represented in the plans. The following types of plans may be prepared:

- Title Sheet, Legend and Notes
- Typical Cross Sections
- Demolition Plans
- Street Improvement Plans and Profiles
- Utility Plans and Profiles
- Construction Details
- Traffic Handling and Construction Area Signs
- Signing and Striping Plans
- Erosion Control Plans
- Cross Sections

- 4.4 Draft Technical Specifications:** Prepare Draft Technical Specifications and submit them to the City for review and comment. The Technical Specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 4.5 65% Cost Estimate:** Prepare a 65% Estimate of Probable Construction Cost based on items and quantities of work shown on the 65% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.
- 4.6 95% Construction Documents:** The 95% Construction Documents shall be a refinement of the 65% Design Documents and are to be based on comments received for the 65% review. The 95% Plans, Final Technical Specifications, and 95% Cost Estimate shall be submitted together.
- 4.7 95% Plans:** Prepare 95% Design Plans and submit them to the City for review and comment.
- 4.8 Final Technical Specifications:** Update the Draft Technical Specifications and submit the Final Technical Specifications to the City for review and comment. The technical specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.

4.9 95% Cost Estimate: Prepare a 95% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 95% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.

4.0 Deliverables: (all deliverables digital unless otherwise noted)

4.01 Meeting Notes

4.3 65% Design Plans

4.4 Draft Technical Specifications

4.5 65% Construction Cost Estimate

4.7 95% Design Plans

4.8 Final Technical Specifications

4.9 95% Construction Cost Estimate

Task 5.0: Final (100%) Construction Documents

5.1 100% Construction Documents: The 100% Construction Documents shall address any comments received for the 95% review. The 100% Plans, Technical Specifications, and Cost Estimate shall be submitted together on digital media, either a flash drive or a CD/DVD.

In addition, provide two (2) complete wet signed, stamped sets of Construction Documents and Technical. The submitted documents shall be in reproducible, hard copy format.

City will review the 100% Construction Documents for confirmation that responses to all previously provided comments are appropriately integrated. CONSULTANT is to make any changes to the 100% plans that are requested by City.

5.2 100% Plans: Prepare 100% Design Plans and submit them to the City.

5.3 100% Technical Specifications: Update the Final Technical Specifications and submit the 100% Technical Specifications to the City.

5.4 100% Cost Estimate: Prepare a 100% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 100% Plans

5.0 Deliverables: (all deliverables digital unless otherwise noted)

5.2 100% Plans (digital + hard copies)

5.3 100% Technical Specifications (digital + hard copies)

5.4 100% Cost Estimate (digital + hard copies)

Task 6.0: Bid and Award Support

6.1 Bid Period Assistance: Provide the following bid phase services, at the City's request, through award of the construction contract:

- a. Attend the general contractor pre-bid meeting.
- b. Assist City in responding to bidders' questions and incorporation them in an addendum.
- c. Assist in the review and processing of substitution submittals during Bid phase.

6.2 Addenda Preparation: As requested by City, prepare addenda to Project documents including, but not limited to, new or revised Plans, new or revised Technical Specifications and/or removal of items from the Project Plans and/or Specifications and responding to questions and providing clarifications.

6.3 Project Document Conformance: Update the Construction Document package to include all addenda issued during the Bid process and submit a Conformed Set of Drawings and Specifications to the City within ten (10) days of the contract award.

The CONSULTANT shall provide two (2) complete wet signed, stamped Conform Sets of Construction Documents and Technical Specifications that includes the 100% Construction Documents Package and all bid addenda. The submitted documents shall be in reproducible, hard copy format.

In addition, the CONSULTANT shall provide complete electronic format Conform Set Construction Documents and Technical Specifications in 1) native file formats (AutoCAD, MS Word) and 2) pdf on a CD/DVD or flash drive media.

6.0 Deliverables: (all deliverables digital unless otherwise noted)

6.01b Written response to Bidders' questions

6.1 c Written evaluation of substitution submittals

6.2 Project Addenda

6.3 Conformed Project Documents

Task 7.0: Construction Support

7.1 Submittal Review: Review and approve or reject the Contractor's submittals within five (5) working days of receipt. The CONSULTANT may request additional review time for particularly complex or unusual submittals. The City shall not grant additional review time

for standard construction item submittals. The CONSULTANT shall maintain a detailed record of all submittals and content supplied by the Contractor.

- 7.2 Requests for Information:** Review Contractor Requests for Information (RFI) and provide a written response to the Contractor with a copy to the City, within five (5) working days of receipt. The CONSULTANT's response may provide, with advance City approval, supplemental drawings and/or specifications necessary to clarify the RFI.
- 7.3 Change Orders:** Review and advise the City on requests by the City or Contractor for changes in the construction of the Project. The CONSULTANT shall review City prepared Contract Change Orders and, where necessary, prepare Drawings and Specifications to describe Work to be added, deleted or modified. The CONSULTANT shall maintain all records relative to changes in the construction.
- 7.4 Site Meetings:** Attend up to two (2) site meetings in the Construction phase and provide meeting minutes to the City within two (2) business days.
- 7.5 Prepare As-Built:** CONSULTANT to prepare final As-Built documents from Contractors mark ups and other contract changes.
- 7.1 Deliverables:** (all deliverables digital unless otherwise noted)
 - 7.1 Responses to submittals, submittal log
 - 7.2 Responses to Requests for Information
 - 7.3 Review comments for City prepared Change Orders
 - 7.4 Meeting Minutes
 - 7.5 As-Built

Other Tasks/Services that may be assigned per Project needs:

- Plan line study
- Corridor study
- Community Outreach Support/Design Visualization
- Utility Coordination
- Permit Acquisition
- Traffic Signal Design
- Street Lighting Design

- Structural Design
- Green Street Infrastructure Design
- Complete Street Roadway Design
- Environmental Engineering
- Storm Water Conveyance and Treatment Design
- Fiber Optic/Communication Design
- Aerial Photometric Survey
- Legal Descriptions and Plat Maps
- Planting and Irrigation Design
- Roadway Aesthetic Treatments

Task 8.0: Additional Services

CONSULTANT services not specifically identified in the Scope of Services shall be considered Additional Services. At the City's request, the CONSULTANT shall provide a fee proposal for specific additional services consistent with the professional rate schedule in Exhibit C.

COMPENSATION

The City shall compensate the CONSULTANT according to the hourly rate(s) stated in this Exhibit which shall remain in effect for the Master Agreement schedule of performance unless changed by written amendment to the Master Agreement.

Each authorized Service Order under this Master Agreement shall identify the method of compensation consistent with the scope of services provided by the CONSULTANT. In any case, the CONSULTANT's total payment for each authorized Service Order shall not exceed the maximum compensation identified in that Service Order, unless authorized by a written amendment executed by the City and the CONSULTANT, and the total compensation for all authorized Service Orders shall not exceed the maximum compensation stated in Article 4, CONSULTANT Compensation, of the Master Agreement.

Work exceeding the total authorized amount for a Service Order or the total compensation for the Master Agreement shall be at no cost to the City.

CONSULTANT Hourly Rate(s)

The CONSULTANT shall be compensated according to the following hourly rate(s) for all work performed under authorized Service Orders:

CONSULTANT's Rates: Hourly Rates

Labor Category	Master Agreement Hourly Rate (as of January 1, 2021)
Engineer I	\$ 116 / hour
Engineer II	135 / hour
Engineer III	155 / hour
Engineer IV	180 / hour
Engineer V	200 / hour
Principal Engineer	210 / hour
Administrative Assistant	87 / hour
CAD Technician I	85 / hour

CAD Technician II	105 / hour
Labor Category	Master Agreement Hourly Rate
Field Technician I	100 / hour
Field Technician II	125 / hour
Sub-Consultants Direct Billing	10%
Outside Services Direct Cost	15%
Photocopies	0.10 / sheet
Plotting -internal check plots on bond	2.00 / sheet
Automobile mileage	0.58 / mile
Airfare, Car Rental, etc.	15%
Per Diem Allowance (varies by location)	150 / day

Reimbursable Expenses

Reimbursable expenses include the cost of items, other than direct labor, specifically required to perform the Services, excluding normal business operating expenses and overhead, which are included in the direct hourly rates set forth above. City will compensate CONSULTANT for such reimbursable expenses only with prior written authorization by the individual designated as the City Representative in Section 8, Project Coordination, of the Agreement. The City will reimburse the CONSULTANT for allowable reimbursable expenses for the documented actual cost only, with no surcharge or markup for CONSULTANT administration. Reimbursable expenses must be separately identified on the CONSULTANT invoice and documentation of each reimbursable expense must be submitted to the City upon request and maintained as required under Section 18, Records, of the Agreement. Allowed reimbursable expenses include, but are not limited to:

- Individual or multiple document reproductions that exceed 50 pages;
- Drawing or bid set reproductions;
- Special software required by City specifically for a project, excluding standard software programs such as Microsoft Office suite applications (i.e. Word, Excel, PowerPoint, Project, etc.); Adobe Acrobat; or standard photo editing programs.
- Travel expenses to the extent allowed by City policy, and subject to any limitation on allowable travel expenses under a Service Order, with mileage reimbursed per the current IRS standard mileage rate at the time of travel;
- Subconsultants required by project scope of services;
- Safety equipment required by City policy or the project scope of services;

- Mass mailing notifications;
- Special expenses for public meetings, such as refreshments, interpreters, security, valet parking, facility rental, tents or booths, easels, markers, paper, presentation equipment.

Method of Payment

The CONSULTANT shall submit an invoice to the City by the 5th business day of each month that clearly identifies the work performed in the previous month and authorized reimbursable expenses. All invoices from CONSULTANT shall be addressed to City at:

Attention: Evelyn Moran
City of Cupertino
10300 Torre Ave.
Cupertino CA 95014-3255
E-mail: evelynm@cupertino.org

The invoice shall identify the applicable period of work, a description of the work performed consistent with the Service Order scope of services, the number of hours, hourly rate, reimbursable expenses, Service Order maximum compensation, Service Order compensation to date including invoice number, total invoice amount for current invoice, Service Order maximum compensation balance remaining.

All CONSULTANT payments shall be addressed to:

Mesiti-Miller Engineering, Inc.
224 Walnut Ave., Ste. B
Santa Cruz, CA 95060
Attn: Rodney Cahill
Email: rodney@m-me.com

END OF EXHIBIT

Exhibit A-A – SHELTER IN PLACE AND SOCIAL DISTANCING REQUIREMENTS

A. Health Laws Acknowledged. It is acknowledged that Consultant's/Contractor's ("Contractor") duty to comply with Laws, as defined in Section 13 of the Contract/Agreement ("Contract"), includes immediate compliance by Contractor and its subcontractors with the restrictions on travel and the Social Distancing Requirements set forth in the most recent health order issued by the County of Santa Clara Health Department in response to the COVID-19 pandemic, and any subsequent amendments or superseding orders thereto (the "Health Order"), and any other local, state, or federal laws that have been or may be enacted in response to the COVID-19 pandemic (collectively, "Health Laws").

B. Health Order Compliance. Contractor shall comply with any restrictions on travel and social distancing requirements in the Health Order when performing work under this Contract. If a scope of work item, notice to proceed, or work order under this Contract specifies work that cannot be performed in compliance with the Health Order or other Health Laws, Contractor shall refrain from conducting the work and immediately inform the City.

C. Individuals at High Risk of Severe Illness. Nothing in this Contract shall be interpreted to require any person at high risk of severe illness from COVID-19 to leave their residence to perform work under the Contract. Contractor will inform the City if other arrangements for the work must be made, and City will do so, with no penalty to Contractor, although Contractor will not be compensated for work performed by the City or third parties. Information from the Center for Disease Control ("CDC") on "high risk" categories is available at the CDC's website at: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>.

D. Health Order Requirements and Best Practices. Contractor will immediately undertake all appropriate measures to ensure compliance with the Social Distancing Requirements in the Health Order by all individuals performing work under this Contract, including Contractor's or any subcontractor's workers, employees, representatives, vendors, or suppliers (collectively, "workers"), and shall maintain these measures for as long as required by the Health Order or other Health Laws. As long as required by the operative Health Order or other Health Laws, these measures shall include, but are not limited to, the following:

1. Meetings/Site Access. Use electronic alternatives to in person meetings, e.g., conference calls, video-conferencing, etc., to the greatest extent possible. Limit access to any project site or any work area to workers who are necessary to perform in-person work. Require non-essential personnel to work from home to the extent possible. Avoid all non-essential travel.

2. Distancing. Where workers perform in-person work at a project site or a work area, prohibit workers from being less than six feet apart, unless and only to the extent that would compromise worker safety or violate safety Laws for specific operations. Prohibit handshaking or any physical contact among workers, with the sole and limited exception

of any physical contact required for worker safety or to comply with safety Laws.
Prohibit workers from sharing a vehicle.

E. Changed Requirements. It is understood and acknowledged that circumstances pertaining to the COVID-19 pandemic are evolving rapidly and that new local, state, or federal requirements may modify the requirements under this Exhibit. Contractor agrees to work cooperatively with the City to implement new or changed requirements as quickly as possible.

F. Subcontracts. Contractor shall include the terms of this Exhibit in all subcontracts and require any agents, subcontractors, or subconsultants to comply with its provisions.

1229192.7

EXHIBIT B

SERVICE ORDER PROCESS

CONSULTANT shall provide services under this Master Agreement on an “as needed” basis and only (1) upon written request from the CITY’s Director of Public Works or authorized Agent as defined in Article 14 of the Master Agreement, Project Coordination, and (2) as defined in a fully executed Service Order.

SECTION 1 – SERVICE ORDER INITIATION

- A. The CITY’s Public Works Director or his designee shall provide written request for CONSULTANT services as defined in this agreement. After which, CONSULTANT shall provide to CITY a written proposal including specific scope of services, performance schedule and compensation. Scope of Services will reference Tasks from Exhibit A where possible.
- B. CITY and CONSULTANT shall discuss the proposal in detail and agree upon the terms of the Service Order.
- C. CITY shall prepare a Project Service Order and Attachment A. The Service Order shall, at a minimum, include (1) specific scope of services, deliverables, schedule of performance, and compensation. An exemplar of the Service Order form follows this Exhibit.

SECTION 2- SERVICE ORDER EXECUTION

- D. Both parties shall execute the Service Order as evidenced by the signatures of the authorized representatives defined in Article 14 of the Master Agreement, Project Coordination, and the date signed.
 - E. CONSULTANT shall begin work on the scope of services only after receipt of a fully executed authorized Service Order defining those services. CONSULTANT understands and agrees that work performed before the date of the authorized Service Order or outside the scope of services once a Service Order is signed and authorized shall be at no cost to the City.
 - F. The maximum compensation authorized by a single Service Order and/or the aggregate of Service Orders shall not exceed the maximum compensation set forth in Article 4 of the Master Agreement.
-

CITY OF CUPERTINO
MASTER AGREEMENT CONSULTANT SERVICES
SERVICE ORDER NO. Choose

Master Agreement Contract #: _____ **MA Date:** _____

Maximum Compensation: _____ **MA End Date:** _____

Consultant: **Firm Name:** _____
Address: _____
Contact: _____ **Ph:** _____

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 :

Master Agreement Maximum Compensation: _____

Total Previously Encumbered to Date: _____

Encumbrance this Service Order: _____

Master Agreement Unencumbered Balance: _____

SO Acc't #: _____ **PO #:** _____

Project #: _____ **Date:** _____

Approvals Signatures:

**Consultant/
Contractor** _____ **Date:** _____

**Manager/
Supervisor:** _____ **Date:** _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above
fund for the above contract as estimated and that fund are available as of this date of signature

City Finance: _____ **Date:** _____
Management Analyst

EXHIBIT C
Insurance Requirements
Professional/Specialized Services Agreement

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance and results of the Services hereunder by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, contractual liability, property damage, bodily injury, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project (ISO CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO CG 20 10 04 13
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or, if Contractor has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation**: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees).*
4. **Professional Liability**. Insurance which includes coverage for professional acts, errors and omissions, with limits no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate *(if applicable)*.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and higher insurance limits maintained by Contractor.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of the Services performed by or on behalf of Contractor including materials, parts, or equipment furnished. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not

available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

Primary Coverage

For any claims related to this Contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Contractor grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

City may approve self-insured retentions and require proof of Contractor's ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurers must be acceptable to City and licensed to do business in California, and each insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

Claims Made Policies (applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
2. Insurance must be maintained for at least five (5) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

Verification of Coverage

Contractor shall furnish the City with acceptable original certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City prior to commencing the Services. City retains the right to demand verification of compliance at any time during the Contract.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Insurance coverage shall not limit Contractor's duties to indemnify, defend and hold City harmless. City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland CA 94604-2675		CONTACT NAME: Elise Fisher PHONE (A/C, No, Ext): 510-465-3090 FAX (A/C, No): 510-452-2193 E-MAIL ADDRESS: certificates@dealeyrenton.com	
INSURED Mesiti-Miller Engineering, Inc. 224 Walnut Avenue, Suite B Santa Cruz CA 95060		INSURER(S) AFFORDING COVERAGE INSURER A: US Specialty Insurance Company INSURER B: Sentinel Insurance Company INSURER C: Hartford Accident and Indemnity Company INSURER D: Trumbull Insurance Company INSURER E: INSURER F:	
License#: 0020739 MESIENG-01		NAIC # 29599 11000 22357 27120	

COVERAGES

CERTIFICATE NUMBER: 1403139079

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab ☐ Included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:	Y	Y	57SBWBN1671	12/10/2020	12/10/2021	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
C	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	57UEGFN8896	12/10/2020	12/10/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000	Y	Y	57SBWBN1671	12/10/2020	12/10/2021	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	57WEGA4YSL	12/10/2020	12/10/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Professional Liability			USS2031405	12/10/2020	12/10/2021	Per Claim \$2,000,000 Annual Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability.
 RE: All Operations of the Named Insured
 The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are named as additional insureds as respects general and auto liability as required per written contract or agreement. General and Auto Liability are Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

CERTIFICATE HOLDER

CANCELLATION 30 Day Notice of Cancellation

The City of Cupertino Attn: Evelyn Moran 10300 Torre Ave Cupertino CA 95014	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

ADDITIONAL COVERAGES BY WRITTEN CONTRACT, AGREEMENT OR PERMIT

This is a summary of the coverage provided under the following form (complete form available):

BUSINESS LIABILITY COVERAGE FORM SS 00 08 04 05**Additional Insured When Required by Written Contract, Written Agreement or Permit**

WHO IS AN INSURED under Section C. is amended to include as an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products completed operations hazard".

The person(s) or organization(s) are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under the provision only for that period of time required by the contract, agreement or permit.

With respect to the insurance afforded to the additional insured, this insurance does not apply to: "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specification; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

When You Add Others As An Additional Insured To This Insurance: That is other insurance available to an additional insured. However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

- (a) **Primary Insurance When Required By Contract:** This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.
- (b) **Primary And Non-Contributory To Other Insurance When Required By Contract:** If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

Waiver of Subrogation

If you have waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided you waived your rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 57WEGAJ4YSL

Endorsement Number:

Effective Date: 12/10/2020

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Mesiti-Miller Engineering, Inc.
224 Walnut Avenue, Suite B
Santa Cruz, CA 95060

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization from whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by _____ Authorized Representative

MME for Civil Engineering Design Professional Services for Various City of Cupertino Capital Improvement Projects

Final Audit Report

2021-03-03

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Agreement completed.

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