



MASTER PROFESSIONAL/SPECIALIZED SERVICES AGREEMENT WITH

1. PARTIES

This Master Agreement is made and entered into as of _____ (“Effective Date”), by and between the City of Cupertino, a municipal corporation (“City”), and _____ (“Contractor”), a _____ for _____.

2. SERVICES

2.1 Scope of Services. Contractor agrees to provide the Services set forth in the Scope of Services, attached and incorporated here as **Exhibit A1-2**, on an as-needed basis. The Services must comply with this Agreement and with each Service Order issued by the City’s Project Manager or his/her designee, in accordance with the following procedures, unless otherwise specified in **Exhibit A1-2**.

2.2 Service Orders. Before issuing a Service Order, the City Project Manager will request Services in writing and hold a meeting with Contractor to discuss the Service Order. Contractor will submit a written proposal that includes a specific Scope of Services, Schedule of Performance and Compensation, which the Parties will discuss. Thereafter, City will execute a Service Order Form for the Services, attached and incorporated here as **Exhibit B**. The Service Order will specify the Scope of Services, Schedule of Performance, Compensation and any other conditions applicable to the Service Order. Issuance of a Purchase Order is discretionary. The City Project Manager is authorized to streamline these procedures based on the City’s best interests. Contractor will not be compensated for Services performed without a duly authorized and executed Service Order.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on _____ (“Contract Time”), unless terminated earlier as provided herein.

3.2 Schedule of Performance. Contractor must deliver the Services within the time specified in each Service Order, and under no circumstances should the Services go beyond the Contract Time.

3.3 Time is of the essence for the performance of all the Services required in this Agreement and in each Service Order. Contractor must have sufficient time, resources and qualified staff to deliver the Services on time. Contractor must respond promptly to each Service Order request.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor 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 \$_____ (“Contract Price”), based upon the Scope of Services in **Exhibit A** and the budget and rates included. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount.

4.2 Per Service Order. Compensation for Services provided under a Service Order will be based on the rates set forth in the Service Order, which shall not exceed the capped amount specified in the Service Order.

4.2 Invoices and Payments. Except as otherwise provided in a Purchase Order, monthly invoices must state a description of the deliverables completed and the amount due for the preceding month. Thirty days prior to expiration of the Agreement, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Noncompliance with this requirement relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation or other benefits from the City.

5.2 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors 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 practices in the industry.

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

5.4 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

5.5 Tools, Materials and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

5.6 Payment of Taxes. Contractor must pay income taxes on the money earned under this Agreement. Upon City's request, Contractor will provide proof of payment and will indemnify City for violations pursuant to the indemnification provision of this Agreement.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor 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. Contractor shall hold in confidence all City information and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

///

///

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Contractor 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 Contractor in connection with this Agreement will be the exclusive property of the City and shall not be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

7.3 Patents and Licenses. Contractor 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 Contractor or its sub-Contractors, prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four years from the date of City's final payment.

9. ASSIGNMENT

Contractor 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 Contractor as a legal entity will be considered an assignment of the Agreement and subject to City approval. Control means fifty percent (50%) or more of the voting power of the business entity.

///

///

///

10. PUBLICITY / SIGNS

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

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and Contractors ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs and expenses (including attorney fees, legal costs and expenses related to litigation and dispute resolution proceedings), of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary information;
- (e) Claim of infringement or violation of a U.S patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim, in accordance with California Public Contract Code Section 9201. At City's request, Contractor will assist City in the defense of a claim, dispute or lawsuit arising out of this Agreement.

11.3 Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order or other transaction.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and

///

///

expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

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

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor 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. Contractor 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, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor 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. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns _____ as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

///

///

Contractor Project Manager. Subject to City approval, Contractor assigns _____ as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with City instructions, service orders and the Schedule of Performance. Contractor must regularly update the City's project manager about the status, progress and any delays with the work. City's written approval is required prior to Contractor substituting a new Representative which shall result in no additional costs to City.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts thereof at any time. Contractor 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. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

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

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 a breach shall not constitute waiver of another provision or breach.

///

///

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), 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 the main Agreement and the attachments or exhibits thereto, the text of the main Agreement shall prevail.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

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. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law and Attorney Fees, shall survive the Agreement and 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:

<p>To City of Cupertino</p> <p>Attention: _____</p> <p>Email: _____</p>	<p>To Contractor: _____</p> <p>_____</p> <p>_____</p> <p>Attention: _____</p> <p>Email: _____</p>
---	---

27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if (a) it complies with the purchasing and contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, as amended from time to time, (b) is signed by the City Manager or an authorized designee, and (c) is approved for form by the City Attorney's Office.

28. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor 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 Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

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

CONTRACTOR

CITY OF CUPERTINO

A Municipal Corporation

By _____
Name _____
Title _____
Date _____
Tax I.D. No.: _____

By _____
Name _____
Title _____
Date _____

APPROVED AS TO FORM:

Heather Minner
City Attorney

ATTEST:

GRACE SCHMIDT
City Clerk

EXHIBIT A-1
SCOPE OF SERVICES

The CONSULTANT shall provide certain Inspection/Quality Control and Contract Administration services as required and requested by the CITY.

The 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 Section 11, PROJECT COORDINATION and (2) as defined in a fully executed SERVICE ORDER, Exhibit B.

SECTION 1- GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY’s Public Works Director or authorized Agent.
- B. The CONSULTANT shall perform all services under this agreement to the currently prevailing professional standards and quality found among Inspection and Material Testing Consultants with similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. The CONSULTANT shall perform services under this AGREEMENT only by authorization of a fully executed SERVICE ORDER which shall clearly provide the nature of the specific services, the time limit within which such services must be completed, and the compensation for such services. Unauthorized services performed by the CONSULTANT shall be at no cost to the CITY.
- D. The CONSULTANT shall begin work only after receipt of a fully authorized and executed SERVICE ORDER. The CITY shall incorporate each authorized and fully executed SERVICE ORDER into the terms and conditions of this MASTER AGREEMENT.
- E. The CITY shall designate a Project Manager for each authorized and fully executed SERVICE ORDER under this AGREEMENT. The CONSULTANT shall coordinate the SERVICE ORDER performance with the CITY’s designated Project Manager.

SECTION 2. BASIC SERVICES

The Consultant shall provide Inspection/Quality Control services for 2019 Pavement Maintenance Project Phase 1– City Project No. 2019-103. All services performed shall be authorized by a fully executed SERVICE ORDER prior to work commencement and as detailed in the Pavement Engineering Inc. transmittal dated February 26, 2019 (attached for reference). Consultant services under this Master Agreement may include, but are not limited to:

EXHIBIT A-1
SCOPE OF SERVICES

A. Inspection/Quality Control Phase

1. Support asphalt testing of 2019 Pavement Maintenance Project Phase 2– City Project No. 2019-103. Coordinate with designated City staff, City consultants and Contractor as required. Services to include:
 - a. Attend and participate in field meetings.
 - b. Assist City designated Project Manager with quality control of materials and processes as required by Contract documents.
 - c. Timely perform all required asphalt testing as required by Contract documents.
 - d. At the direction of the Project Manager, assist with daily inspection reports.
 - e. At the direction of the Project Manager, collect and review material tags, test results and other records as required by Contract documents.
 - f. Files (both hard copies and electronic copies) containing the above along with communications, City instructions, punch lists and other project information will be maintained.

B. Construction Phase:

1. Support City staff and City designated Project Manager with construction management of 2019 Pavement Maintenance Project – City Project No. 2019-103. Services to include:
 - a. Attend and participate in field meetings.
 - b. At the direction of the Project Manager, assist with tabulation of bid quantities as needed to review and recommend pay requests from contractor.
 - c. Timely refer Contractor questions in the field to the Project Manager.
 - d. Coordinate with Project Manager the Contractor implementation of the various traffic control plans.
 - e. Coordinate with Project Manager local resident and business concerns including access to driveways, maintenance of work areas, noise complaints and needs of temporary signage.
 - f. Report to designated Project Manager any questions or concerns that materially affect cost, quality, time, safety or relations with residents / businesses.
 - g. Files (both hard copies and electronic copies) containing the above along with communications, City instructions, punch lists and other project information will be maintained.
 - h. Ability to act on behalf of Project Manager during Project Manager absence.
 - i. Ability to match Project Manager & Contractor work schedule, including work at night.

END OF EXHIBIT

EXHIBIT A-2
SCOPE OF SERVICES

The CONSULTANT shall provide certain Inspection/Quality Control and Contract Administration services as required and requested by the CITY.

The 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 Section 14, PROJECT COORDINATION and (2) as defined in a fully executed SERVICE ORDER, Exhibit B.

SECTION 1- GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY’s Public Works Director or authorized Agent.
- B. The CONSULTANT shall perform all services under this agreement to the currently prevailing professional standards and quality found among Inspection and Material Testing Consultants with similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. The CONSULTANT shall perform services under this AGREEMENT only by authorization of a fully executed SERVICE ORDER which shall clearly provide the nature of the specific services, the time limit within which such services must be completed, and the compensation for such services. Unauthorized services performed by the CONSULTANT shall be at no cost to the CITY.
- D. The CONSULTANT shall begin work only after receipt of a fully authorized and executed SERVICE ORDER. The CITY shall incorporate each authorized and fully executed SERVICE ORDER into the terms and conditions of this MASTER AGREEMENT.
- E. The CITY shall designate a Project Manager for each authorized and fully executed SERVICE ORDER under this AGREEMENT. The CONSULTANT shall coordinate the SERVICE ORDER performance with the CITY’s designated Project Manager.

SECTION 2. BASIC SERVICES

The Consultant shall provide Inspection/Quality Control services for 2019 Pavement Maintenance Project Phase 2– City Project No. 2019-109. All services performed shall be authorized by a fully executed SERVICE ORDER prior to work commencement and as detailed in the Pavement Engineering Inc. transmittal dated February 26, 2019 (attached for reference). Consultant services under this Master Agreement may include, but are not limited to:

EXHIBIT A-2
SCOPE OF SERVICES

A. Inspection/Quality Control Phase

1. Support asphalt testing of 2019 Pavement Maintenance Project Phase 2– City Project No. 2019-109. Coordinate with designated City staff, City consultants and Contractor as required. Services to include:
 - a. Attend and participate in field meetings.
 - b. Assist City designated Project Manager with quality control of materials and processes as required by Contract documents.
 - c. Timely perform all required asphalt testing as required by Contract documents.
 - d. At the direction of the Project Manager, assist with daily inspection reports.
 - e. At the direction of the Project Manager, collect and review material tags, test results and other records as required by Contract documents.
 - f. Files (both hard copies and electronic copies) containing the above along with communications, City instructions, punch lists and other project information will be maintained.

B. Construction Phase:

1. Support City staff and City designated Project Manager with construction management of 2019 Pavement Maintenance Phase 2 Project – City Project No. 2019-109. Services to include:
 - a. Attend and participate in field meetings.
 - b. At the direction of the Project Manager, assist with tabulation of bid quantities as needed to review and recommend pay requests from contractor.
 - c. Timely refer Contractor questions in the field to the Project Manager.
 - d. Coordinate with Project Manager the Contractor implementation of the various traffic control plans.
 - e. Coordinate with Project Manager local resident and business concerns including access to driveways, maintenance of work areas, noise complaints and needs of temporary signage.
 - f. Report to designated Project Manager any questions or concerns that materially affect cost, quality, time, safety or relations with residents / businesses.
 - g. Files (both hard copies and electronic copies) containing the above along with communications, City instructions, punch lists and other project information will be maintained.
 - h. Ability to act on behalf of Project Manager during Project Manager absence.
 - i. Ability to match Project Manager & Contractor work schedule, including work at night.

END OF EXHIBIT

Exhibit B

MASTER AGREEMENT PO#: XX

SERVICE ORDER PO#: 1

Maximum Compensation: \$242,045.00

Term: NTP: May 21, 2018

END DATE: **June 30, 2020**

Approval by: City Manager
City Council

Director Date:
Item Number: Date:

Consultant: Firm Name: Pavement Engineering, Inc.
Address: 3820 Cypress Drive, Suite 320, Petaluma, CA 94954-

5613

Contact: Joe Ririe Phone: (707) 769-5330

PROJECT DESCRIPTION

Project Name: **Inspection and Material Quality Control Services for 2019 Pavement Maintenance Project - Phase 1**, City Project No. 2019-103

Description: Time and reimbursables between May 21, 2019 and June 30, 2020 for service in accord with Exhibit A-1 of the Master Agreement (attached hereto for reference)

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

CITY PROJECT MANAGEMENT

Managing Department: Public Works

Project Manager: Roger Lee

FISCAL/BUDGET

Master Agreement Maximum Compensation:	Amount: \$315,105.00
Previously Encumbered on MA:	\$ 0
Amount of previously Encumbered balance expended:	\$ 0
Amount available to be Encumbered for a SO:	\$315,105.00
ENCUMBER: Account No. 270-85-821-900-921 SO # 1	\$242,045.00
Total Expended and Encumbered to date:	\$242,045.00
Master Agreement Balance:	\$73,060.00

Exhibit B

APPROVALS

Consultant: _____ Date: _____

Director of Public Works: _____ Date: _____

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

City Finance: Name: _____ Date: _____

Exhibit B

MASTER AGREEMENT PO#: XX

SERVICE ORDER PO#: 3

Maximum Compensation: \$73,060.00

Term: NTP: May 21, 2018

END DATE: **June 30, 2020**

Approval by: City Manager
City Council

Director Date:
Item Number: Date:

Consultant: Firm Name: Pavement Engineering, Inc.
Address: 3820 Cypress Drive, Suite 320, Petaluma, CA 94954-5613

Contact: Joe Ririe Phone: (707) 769-5330

PROJECT DESCRIPTION

Project Name: Inspection and Material Quality Control Services for 2019 Pavement Maintenance Project - Phase 2, City Project No. 2019-109

Description: Time and reimbursables between May 21, 2019 and June 30, 2020 for service in accord with Exhibit A-1 of the Master Agreement (attached hereto for reference)

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

CITY PROJECT MANAGEMENT

Managing Department: Public Works

Project Manager: Roger Lee

FISCAL/BUDGET

Master Agreement Maximum Compensation:	Amount: \$315,105.00
Previously Encumbered on MA:	\$ 242,045.00
Amount of previously Encumbered balance expended:	\$ 0
Amount available to be Encumbered for a SO:	\$73,060.00
ENCUMBER: Account No. 270-85-821-900-921 SO # 2	\$73,060.00
Total Expended and Encumbered to date:	\$315,105.00
Master Agreement Balance:	\$0.00

Exhibit B

APPROVALS

Consultant: _____ Date: _____

Director of Public Works: _____ Date: _____

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

City Finance: Name: _____ Date: _____

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 01 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 and non-contributory 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 policy 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.

