

**MASTER AGREEMENT BETWEEN THE CITY OF CUPERTINO AND  
HMH ENGINEERS, INC. FOR DESIGN PROFESSIONAL SERVICES FOR VARIOUS  
CAPITAL IMPROVEMENT PROJECTS**

This Master Agreement for Design Professional Services ("Agreement"), dated \_\_\_\_\_, 2016 is entered into by and between City of Cupertino, a municipal corporation ("City"), and HMH Engineers, Inc., a California corporation ("Design Professional").

**RECITALS**

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the Constitution and the statutes of the State of California and the Cupertino Municipal Code.

B. Design Professional represents that it is specially trained, experienced and competent to perform the civil engineering services ("Services") required by this Agreement.

C. Design Professional represents that it is duly licensed in good standing by the State of California to perform such Services.

D. City is entering into this Agreement in reliance upon Design Professional's representations, set forth above, to provide the Services in accordance with the terms and conditions of this Agreement.

**TERMS AND CONDITIONS**

**1. TERM:**

The term of this Agreement ("Term") will begin on the date this Agreement is fully executed by both parties and will terminate on December 31, 2018, unless terminated earlier as set forth below.

**2. SERVICES TO BE PERFORMED:**

Design Professional will provide Services under this Agreement on an "as needed" basis, in response to and in compliance with this Agreement and the Scope of Services set forth in **Exhibit A, Scope of Services**, attached hereto and incorporated herein, and in compliance with each Service Order authorized by the City. The City has sole discretion to authorize any Service Order, but has no obligation to authorize any Service Order under this Agreement. Services may only be provided by Design Professional in response to and in compliance with a Service Order issued by the City's Director of Public Works or his or her delegee (collectively, "Director") in accordance with the following procedures, except or unless otherwise specified in Exhibit A:

**A. Service Order Development.** The Director will provide a written request for Design Professional's Services, including a request to schedule a meeting within a specified time to discuss the requested Services. The Design Professional will meet with the City within the time specified in the written request. After the initial meeting, Design Professional must

submit to City within the time specified by the City, a written proposal which includes, at a minimum, the specific scope of services, schedule of performance, and compensation. Following receipt and review of the written proposal, the parties will meet to discuss the proposal and the terms of the Service Order to be issued by the City. The City will prepare a Service Order, using the Service Order Form attached as **Exhibit B, Service Order Form**, attached hereto and incorporated herein, specifying the scope of Services, deliverables, the schedule of performance, compensation and any other applicable terms. The Director has the discretionary authority, but not the obligation, to streamline these procedures, e.g., conferring by telephone instead of meeting, when the Director deems it is in the City's best interest to do so.

**B. Service Order Execution.** The Service Order must be executed by authorized representatives for each party before any Services may be performed. Design Professional will not be entitled to compensation for any Services performed without a duly authorized and fully executed Service Order.

**C. Reports.** Design Professional must provide City with written reports concerning the status of Services required under this Agreement, at the time and in the form required by the City.

### **3. SCHEDULE OF PERFORMANCE:**

All Services must be provided within the time specified in the schedule of performance for each Service Order. All Services under this Agreement must be completed on or before the end of the Term. The schedule of performance for a Service Order may not extend beyond the Term.

### **4. COMPENSATION:**

**A. Not to Exceed Limits.** Compensation for Services provided under each Service Order will be based on the rates set forth in **Exhibit C, Compensation**, attached hereto and incorporated herein, and will be subject to any maximum compensation limit specified in the Service Order. The total, aggregate compensation to be paid to Design Professional during the Term of this Agreement may not exceed One Million Dollars (\$1,000,000).

**B. Invoices and Payments.** City will pay Design Professional for Services satisfactorily provided under a Service Order, within 30 days following receipt of a properly submitted invoice for Services provided during the preceding calendar month, unless otherwise provided by a Service Order.

Unless otherwise provided by a Service Order, each invoice must include, for each day Services were provided:

1. The name of each individual providing Services;
2. A succinct summary of the Services performed by each such individual;
3. The time spent by each individual providing those Services;
4. The applicable hourly billing rate and payment due; and
5. A detailed breakdown of all allowable expenses.

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

**5. TIME IS OF THE ESSENCE:**

Time is of the essence for the performance of all Services required under each Service Order and for all of Design Professional's duties under this Agreement. Design Professional must at all times have sufficient, qualified staff or subconsultants assigned to provide timely provision of all Services under this Agreement. Design Professional must respond promptly to Service Order requests; and, when applicable, to contractor requests, including, but not limited to, requests for information, substitution requests and change order requests.

**6. STANDARD OF CARE:**

All Services must be provided in a manner that meets or exceeds the standard of care applicable to the same type of design professionals performing similar work in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by the City and who do not have any contractual relationship with City, with the exception of this Agreement.

**7. ERRORS AND OMISSIONS:**

Design Professional is solely responsible for all of its or its subconsultants' errors and omissions and must promptly correct any and all such errors and omissions at its sole expense. Design Professional must also take appropriate measures to avoid or mitigate any delay, liability or costs resulting from any such errors or omissions. This provision survives expiration or termination of this Agreement.

**8. PROJECT COORDINATION:**

**A. City's Representative.** The Director's authorized delegee, John Raaymakers, will be the City's representative for all purposes under this Agreement, serving as the Project Manager with authority to oversee the progress and performance of Services under this Agreement. The City reserves the right to replace or provide a substitute Project Manager at any time, and without prior notice to the Design Professional.

**B. Design Professional's Representative.** Design Professional will assign a single Project Executive, subject to City approval, with authority to receive and act on directions from the City and responsibility for the progress and performance of Services under this Agreement. The designated Project Executive is **TBD**. If a substitute or replacement Project Executive is required for any reason, the City must be notified of the need as soon as possible, Design Professional's designation of the individual proposed to serve as the substitute or replacement will be subject to the Director's prior written approval. Design Professional is not entitled to compensation for the time required for the substitute or replacement Project Executive to obtain sufficient knowledge of the required Services to fully assume the former Project Executive's responsibilities.

**9. HOLD HARMLESS:**

**A. Indemnity Obligations Subject to Civil Code Section 2782.8.** Design Professional will, to the fullest extent allowed by law, with respect to all Services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers (collectively, the "Indemnified Parties") from and against any and all liability, claims, actions, causes of action or demands whatsoever against

any of them, including any injury to or death of any person or damage to property or other liability of any nature (collectively, "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's employees, officers, officials, agents or subconsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation. Design Professional is not obligated under this Agreement to indemnify City to the extent that any Liability is caused by the sole or active negligence or willful misconduct of any of the Indemnified Parties. In addition to its indemnity obligations, Design Professional will provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such Liability.

**B. Claims for Other Liability.** For all liabilities other than those included within paragraph (A) above, Design Professional will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Indemnified Parties against any and all liability, claims, actions, causes of action or demands whatsoever from and against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the performance of this Agreement by Design Professional or Design Professional's employees, officers, officials, agents or subconsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation. Design Professional will not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the sole or active negligence or willful misconduct of the Indemnified Parties.

**C. Claims Involving Intellectual Property.** In addition to the obligations set forth in paragraphs (A) and (B) above, Design Professional will indemnify, defend, and hold the Indemnified Parties harmless from and against any claim in which an alleged violation of intellectual property rights, including but not limited to copyright or patent rights, arises out of, pertains to, or relates to Design Professional's negligence, recklessness or willful misconduct under this Agreement. 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.

**D. Survival.** The requirements of this section survive expiration or termination of this Agreement.

## **10. INSURANCE:**

On or before the commencement of the Term of this Agreement, Design Professional must furnish City with certificates showing the type, amount, effective dates and dates of expiration of insurance coverage required in this section. Such certificates, which do not limit Design Professional's indemnification obligations, must also contain substantially the following statement: "If any of the above insurance covered by this certificate is canceled before the expiration date thereof, the insurer affording coverage will provide 30 days advance written notice to the City of Cupertino, Attention: City Manager." Design Professional will maintain in force at all times during the performance of this Agreement all insurance coverage required by this Agreement with an insurance company that is acceptable to City and authorized to do insurance business in the State of California. Design Professional must also submit endorsements with the certificates naming the City as additional insured in relation to the commercial general liability and commercial automobile liability policies, as further specified below.

**A. Coverage.** Design Professional must maintain the following insurance coverage:

City of Cupertino  
HMH Engineers, Inc.

For Design Professional Services

Page 4 of 15

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any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured will not be required to contribute anything toward any loss or expense covered by the insurance required under this Agreement.

**E. Sufficiency of Insurance.** The insurance limits required by City are not represented as being sufficient to protect Design Professional. Design Professional is advised to confer with Design Professional's insurance broker to determine adequate coverage for Design Professional.

#### **11. INDEPENDENT CONTRACTOR:**

City and Design Professional intend that the relationship between them created by this Agreement is that of owner-independent contractor. The manner and means of providing the Services are under the control of Design Professional, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Design Professional's performance of the Services. None of the benefits provided by City to its employees, including, but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave, are available from City to Design Professional, its employees or agents. Deductions will not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any payments due to Design Professional. Payments for the above items, if required, are the responsibility of Design Professional.

#### **12. SUBCONSULTANTS:**

Unless prior written consent from City is obtained, only those individuals and subconsultants whose names are included in this Agreement, including the Exhibits hereto, may provide Services under this Agreement. Design Professional must require all of its subconsultants providing Services under this Agreement to comply with the terms and conditions of this Agreement. Any subconsultants employed by Design Professional must be required to furnish proof of workers' compensation insurance and must also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance required for Design Professional.

#### **13. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Design Professional assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing the Services, pursuant to all applicable IRCA or other federal, or state laws, rules or regulations. Design Professional will indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance with this section by Design Professional.

#### **14. NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer or employee conduct, Design Professional agrees that harassment or discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Design Professional or Design Professional's employees or subconsultants on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy,

sex, age, sexual orientation, or any other protected classification will not be tolerated. Any violation of this provision by Design Professional, its employees, subconsultants or agents constitutes a material breach of this Agreement, and grounds for termination for cause.

**15. PROHIBITION AGAINST TRANSFERS:**

Design Professional will 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 without City's consent will be null and void, and any assignee, sublessee, hypothecate or transferee will acquire no right or interest by reason of any attempted assignment, hypothecation or transfer. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Design Professional, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Design Professional is a partnership or joint venture or syndicate or cotenancy, which results in changing the control of Design Professional as a legal entity, will be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the business entity.

**16. PERMITS AND LICENSES:**

Design Professional, at its sole expense, must obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License that may be required in connection with the performance of the Services.

**17. WORK PRODUCT:**

**A. Property Rights.** Any interest (including copyright interests) of Design Professional or its subconsultant(s) in any work product, document, report, draft, memoranda, map, record, plan, drawing, specification and other deliverable, in any medium (collectively, "Work Product"), which has been prepared or created by Design Professional or its subconsultant(s) pursuant to or in connection with this Agreement, will be the exclusive property of City. No Work Product, information or other data given to or prepared, created, or assembled by Design Professional or its subconsultant(s) pursuant to this Agreement may be made available to any individual or organization by Design Professional or its subconsultant(s) without prior written approval by City. All provisions of this section survive expiration or termination of this Agreement.

**B. Copyright.** To the extent permitted by Title 17 of U.S. Code, all Work Product prepared or created under this Agreement is deemed works for hire and all copyrights in such Work Product will be the property of City. In the event that it is ever determined that any Work Product prepared or created by Design Professional or any subconsultant under this Agreement are not works for hire under federal law, Design Professional hereby assigns to City all copyrights to such Work Product when and as created. Subject to City's prior written approval, Design Professional may retain and use copies of such Work Product for reference and as documentation of its experience and capabilities and in its promotional materials. With respect to Design Professional's standard details, Design Professional may retain the copyright, but grants to City a perpetual non-exclusive license to use such details in connection with the Services.

**C. Patents and Licenses.** Design Professional must pay any and all 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 that it selects for incorporation into the Services or Work Product provided under this Agreement.

**D. Re-Use of Work Product.** Without limiting any other City right to any of the Work Product prepared or created by Design Professional or its subconsultants, and subject to the limitations of law, all Work Product prepared under this Agreement may be used or modified by the City or its authorized agents in execution or implementation of:

1. The original Services for which Design Professional was hired;
2. Completion of the original Services by others;
3. Subsequent additions to the original Services; and/or
4. Other City projects.

**E. Deliverables and Format.** Electronic and hard copies of Design Professional's Work Product will constitute the Project deliverables. Plans must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats. All written Work Product required to be provided by this Agreement (other than large-scale architectural plans and similar items) must be printed on recycled paper and copied on both sides of the paper except for one original, which must be single-sided.

## **18. RECORDS:**

Design Professional must maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of Services under this Agreement. Design Professional must maintain adequate records of Services provided in sufficient detail to permit an evaluation of the Services. All such records must be maintained in accordance with generally accepted accounting principles and must be clearly identified and readily accessible. Design Professional must provide free access to such books and records to the City or its agents at all times during Design Professional's normal business hours. Design Professional must give the City or its agents the right to examine and audit those items, and to make transcripts or copies as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, must be kept separate from other documents and records which are unrelated to this Agreement and must be maintained for a period of three years after receipt of final payment from the City.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Design Professional must reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit. The requirements of this section survive expiration or termination of this Agreement.

## **19. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement must be given in writing and will be deemed served when delivered personally; or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified; or upon confirmation of delivery by a reputable overnight delivery service.



**A. To City.** All notices, demands, requests, or approvals from Design Professional to City must be addressed to City at:

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014  
Attention: John Raaymakers

**B. To Design Professional.** All notices, demands, requests, or approvals from City to Design Professional must be addressed to Design Professional at:

TBD  
1570 Oakland Road  
San Jose, CA 95131

## **20. TERMINATION:**

**A. Termination for Convenience.** City may, at any time, acting in its sole discretion and without cause, terminate this Agreement for convenience by giving written notice to Design Professional at least seven days before the effective date of the termination. If the Agreement is terminated pursuant to this paragraph, the City will compensate Design Professional for all Services satisfactorily performed prior to the effective date and time of the termination, in accordance with this Agreement.

**B. Termination for Cause.** If Design Professional fails or refuses to perform any of its duties under this Agreement at the time and in the manner required, Design Professional will be deemed in default of this Agreement. If the default is not cured or diligently attempted to be cured by Design Professional within the time specified in the City's written notice of default, or if the Design Professional has otherwise materially breached the Agreement, the City may terminate the Agreement for cause by giving written notice to Design Professional at least seven days before the effective date of the termination, unless otherwise specified in the written notice of default.

**C. Duties upon Termination.** If the Agreement is terminated, whether for convenience or cause, within seven days of the effective date of the termination, Design Professional must promptly deliver to City copies of all Work Product, deliverables, or documents prepared by Design Professional under this Agreement, including both print and electronic versions. Full compliance with this requirement is a condition precedent to final payment following termination. This paragraph survives termination of the Agreement.

## **21. LEGAL REQUIREMENTS:**

Design Professional must comply with all applicable local, state or federal laws, rules and regulations, and all ordinances, rules and regulations enacted or issued by City. In addition, if any of the Services provided under this Agreement are subject to prevailing wage requirements under Labor Code Section 1720 et seq., the following provisions apply to those Services:

**A. Prevailing Wages.** To the extent applicable, Design Professional must comply with the City's Labor Compliance Program and all other requirements set forth in Labor Code section 1770 et seq.

**B. Working Day.** To the extent applicable, Design Professional must comply with California Labor Code Section 1810, et seq. which provides that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated as overtime, at not less than 1 ½ times the basic rate of pay.

**C. Payroll Records.** To the extent applicable, Design Professional must comply with California Labor Code Section 1776 which requires certified payroll records be maintained with the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this Agreement. The payroll records must be made available for inspection as provided in California Labor Code Section 1776.

**D. Apprentices.** To the extent applicable, Design Professional must comply with California Labor Code Section 1777.5 regarding apprentices.

**22. DISPUTE RESOLUTION:**

This Agreement will be interpreted under and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California, and no other place. If the parties engage in arbitration to resolve a dispute relating to this Agreement, the arbitrator's award must be supported by law and substantial evidence, and must include detailed written findings of law and fact. This section survives expiration or termination of the Agreement.

**23. ATTORNEY FEES:**

If the City initiates a legal action, including a complaint or cross-complaint, arising out of, relating to or seeking the interpretation or enforcement of the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs, including the attorney fees and costs for any arbitration, appeal, or enforcement of judgment. This attorney fee provision does not apply to legal actions initiated by the Design Professional. This section survives expiration or termination of the Agreement.

**24. ADVERTISEMENT:**

Design Professional may not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, posters or cards of any kind on City property performed under this Agreement without prior written approval from the City.

**25. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**26. THIRD PARTY BENEFICIARIES:**

There are no intended third party beneficiaries of this Agreement.

**27. RECITALS:**

The parties agree that the above recitals, which are made part of this Agreement, are true and correct.

**28. INTEGRATED AND AMENDMENT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant will be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written instrument signed by authorized representatives for both City and Design Professional. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, all remaining provisions will remain in full force and effect.

**29. CONFLICT OF INTEREST:**

Design Professional warrants that it is not a conflict of interest for Design Professional to perform the Services required by this Agreement. Design Professional may be required to fill out a conflict of interest form if the Services provided under this Agreement require Design Professional to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

**30. GIFTS:**

Design Professional is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, as set forth in City Administrative Procedures. Design Professional agrees not to offer any City officer or designated employee any gift prohibited by the Administrative Procedures. Offering or giving a prohibited gift constitutes a material breach of this Agreement by Design Professional. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for cause as provided in Section 20 of this Agreement.

**31. INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement is deemed to be enacted herein, and the Agreement will be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement will be amended to make such insertion on application by either party.

**32. EXECUTION:**

The person executing this Agreement on behalf of the Design Professional represents and warrants that the Design Professional 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 Design Professional. 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.

**33. 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.

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

**DESIGN PROFESSIONAL**  
HMH Engineers, Inc.

**CITY OF CUPERTINO**  
A Municipal Corporation

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Timm Borden, Director of Public Works

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Tax I.D. No.: \_\_\_\_\_

APPROVED AS TO FORM:

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Randolph Stevenson Hom, City Attorney

ATTEST:

\_\_\_\_\_  
Grace Schmidt, City Clerk

Contract Amount: \$1,000,000

Account No.: by Service Order

**Exhibit A**  
**Scope of Services**

Design Professional shall provide certain Civil Engineering services as required and requested by City.

Design Professional 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. Design Professional shall perform all services to the satisfaction of City’s Public Works Director or authorized Agent.
- B. Design Professional shall perform all services under this agreement to the currently prevailing professional standards and quality found among Civil Engineering Design Professionals with similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.
- C. Design Professional shall perform services under this Master 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. City shall incorporate each authorized and fully executed Service Order into the terms and conditions of this Master Agreement.
- D. Design Professional shall begin work only after receipt of a fully authorized and executed Service Order and shall execute the Project work as detailed in the Service Order. Unauthorized services performed by Design Professional shall be at no cost to City.
- E. City shall designate a Project Manager for each fully executed Service Order under this Agreement. Design Professional shall coordinate the Service Order performance with City’s designated Project Manager.

**Section 2. Basic Services**

As authorized by a fully executed Service Order, Design Professional 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. Design Professional 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. Design Professional shall not substitute any team members without the prior approval of City. City retains the right to reject team members assigned by Design Professional or require replacement of team members.
2. Design Professional shall effectively manage and administer the Project for the efficient, progressive, and proactive delivery of the Project.
3. Design Professional shall be responsible for managing and coordinating the work of all sub-Design Professionals and subcontractors.
4. Design Professional shall consult and coordinate with the City and communicate with members of the Project team.
5. Design Professional 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. Design Professional 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, Design Professional may provide any or all of the following tasks and subtasks, as is required for the specific Project:

### **Task 1.0 Pre-Design Studies**

- 1.01 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.

- 1.02 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.
- 1.0 Deliverables:** (all deliverables digital unless otherwise noted)
- 1.01 Project Analysis Report
  - 1.02 Feasibility Report

## **Task 2.0 Data Collection**

- 2.01 Existing Data Assembly:** Design Professional 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 Design Professional shall be entitled to reasonably rely upon the accuracy and sufficiency of any information provided to the Design Professional by the City or the City's agents.
- 2.02** The Design Professional 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.
- 2.03** The Design Professional shall utilize existing data to the extent possible and inform the City immediately of problems associated with using existing data for Project base information.
- 2.04 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.

- 2.05 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.
  - 2.06 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.
  - 2.07 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)
- 2.01 Source Document Listing
  - 2.02 Proposal of Additional Investigative Actions
  - 2.03 Details of Problematic Data
  - 2.04 Summary of Utility Companies Contacted and Actions Taken
  - 2.05 Scaled Base Map in AutoCAD (current version) Format
  - 2.06 Project Area Surface Features Added to Base Map in AutoCAD (current version) Format
  - 2.07 Geotechnical Report

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### **Task 3.0: Preliminary (35%) Design**

**3.01 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.

**3.02 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.

**3.03 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

**3.04 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 Design Professional's experience with similar local projects and engineer's judgment.

**3.0 Deliverables:** (all deliverables digital unless otherwise noted)

3.01 Meeting Notes

3.02 Project Alternatives Analysis

3.03 Preliminary Plans

3.04 Preliminary Construction Cost Estimate

**Task 4.0 Construction Document Development**

**4.01 Meeting:** 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.

**4.02 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.

**4.03 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

- 4.04 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.
- 4.05 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 Design Professional's experience with similar local projects and engineer's judgment.
- 4.06 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.
- 4.07 95% Plans:** Prepare 95% Design Plans and submit them to the City for review and comment.
- 4.08 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.
- 4.09 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 Design Professional's experience with similar local projects and engineer's judgment.
- 4.0 Deliverables:** (all deliverables digital unless otherwise noted)
- 4.01 Meeting Notes
  - 4.03 65% Design Plans
  - 4.04 Draft Technical Specifications
  - 4.05 65% Construction Cost Estimate
  - 4.07 95% Design Plans

- 4.08 Final Technical Specifications
- 4.09 95% Construction Cost Estimate

## **Task 5.0: Final (100%) Construction Documents**

**5.01 100% 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. Design Professional is to make any changes to the 100% plans that are requested by City.

**5.02 100% Plans:** Prepare 100% Design Plans and submit them to the City.

**5.03 100% Technical Specifications:** Update the Final Technical Specifications and submit the 100% Technical Specifications to the City.

**5.03 100% 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)

- 5.02 100% Plans (digital + hard copies)
- 5.03 100% Technical Specifications (digital + hard copies)
- 5.04 100% Cost Estimate

## **Task 6.0: Bid and Award Support**

**6.01 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. Respond to bidders' questions until the question cutoff period identified in the bid documents package.
- c. Assist in the review and processing of substitution submittals during Bid phase.

**6.02 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.

**6.03 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 Design Professional 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 Design Professional 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
- 6.01c Written evaluation of substitution submittals
- 6.02 Project Addenda
- 6.03 Conformed Project Documents

## **Task 7.0: Construction Support**

**7.01 Submittal Review:** Review and approve or reject the Contractor's submittals within five (5) working days of receipt. The Design Professional 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 Design Professional shall maintain a detailed record of all submittals and content supplied by the Contractor.

**7.02 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 Design Professional's response may provide, with advance City approval, supplemental drawings and/or specifications necessary to clarify the RFI.

**7.03 Change Orders:** Review and advise the City on requests by the City or Contractor for changes in the construction of the Project. The Design Professional shall review City prepared Contract Change Orders and, where necessary, prepare Drawings and Specifications to describe Work to be added, deleted or modified. The Design Professional shall maintain all records relative to changes in the construction.

**7.04 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.

**7.0 Deliverables:** (all deliverables digital unless otherwise noted)

7.01 Responses to submittals, submittal log

7.02 Responses to Requests for Information

7.03 Review comments for CITY prepared Change Orders

7.04 Meeting Minutes

**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**

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

**Exhibit B**  
**Service Order Form**

Each Service Order for work under this Master Agreement shall be initiated and executed as provided for in the Master Agreement, Section 2.A, Service Order Development. An exemplar of the Service Order form follows.



City of Cupertino  
MASTER AGREEMENT FOR CONSULTANT SERVICES  
**SERVICE ORDER**

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**MASTER AGREEMENT**

P O #: \_\_\_\_\_

Service Order No.: \_\_\_\_\_

Maximum Compensation: \$ \_\_\_\_\_

Term: NTP: \_\_\_\_\_

End Date: \_\_\_\_\_

Approval by: City Manager ☐

Director ☐

Date: \_\_\_\_\_

City Council ☐

Item Number: \_\_\_\_\_

Date: \_\_\_\_\_

Consultant:

(name) \_\_\_\_\_

(street address) \_\_\_\_\_

(city, state, zip) \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

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**PROJECT DESCRIPTION**

Project Name: \_\_\_\_\_

☐ Description: (simple project description if appropriate)

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

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**CITY PROJECT MANAGEMENT**

Managing

Department: Public Works \_\_\_\_\_

Project Manager: \_\_\_\_\_

City of Cupertino  
MASTER AGREEMENT FOR CONSULTANT SERVICES  
**SERVICE ORDER**

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**BUDGET / FISCAL**

	Amount
<b>Master Agreement Maximum Compensation:</b>	<b>\$0</b>
Previously Encumbered on MA:	
S.O. # - (charge acct no.) - (project name)	\$0
S.O. # - (charge acct no.) - (project name)	\$0
Total Previously Encumbered to Date:	\$0
Current Unencumbered amount in MA:	\$0

**Encumbrance:**

S.O. # - (charge acct no.) - (project name)	\$0
Total Encumbered to Date including this S.O.:	\$0
Master Agreement Balance:	\$0

Contract \_\_\_\_\_ Date: \_\_\_\_\_

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**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: \_\_\_\_\_ Date: \_\_\_\_\_  
Management Analyst

**EXHIBIT C**  
**COMPENSATION**

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

The City will compensate the Design Professional for satisfactory performance of duly authorized Services, based on the hourly rate(s) set forth below. The hourly rates are deemed to include all costs including, salary, wages, benefits, taxes, insurance, and the like paid to or on behalf of each individual providing the Services, and are also deemed to include profit, overhead, vehicle, equipment and supply costs and the like. The hourly rates do not include reimbursable expenses, which are addressed below. These hourly rates will remain in effect for the Term of the Agreement unless changed by written amendment to the Agreement. Total compensation for Services provided pursuant to a Service Order, including reimbursable expenses, may not exceed the maximum compensation authorized under the Service Order.

**Design Professional Hourly Rates:**

Principal	\$200 per hour
Civil Engineering or Land Surveying Manager	\$172 per hour
Senior Civil Engineering or Land Surveying Manager	\$192 per hour
Land Development Manager	\$168-240 per hour
Senior Planner	\$194 per hour
Senior Civil Engineer, Land Surveyor, or Landscape Architect	\$156 per hour
Design Specialist	\$148-180 per hour
Project Planner	\$174 per hour
Project Civil Engineer, Land Surveyor, or Landscape Architect	\$146 per hour
Project Arborist	\$136 per hour
Engineer, Planner, Surveyor, or Landscape Designer	\$138 per hour
Assistant Engineer, Surveyor, Planner, or Landscape Designer	\$126 per hour
Junior Engineer, Surveyor, Planner, or Landscape Designer	\$116 per hour
Senior Technician	\$130 per hour
Project Technician	\$120 per hour
Technician	\$112 per hour
Assistant Technician	\$102 per hour
Junior Technician	\$86 per hour
Project Support Staff	\$84 per hour
Field Services	
2-Man Field Crew	\$236 per hour
3-Man Field Crew	\$310 per hour
1-Man Field Crew	\$164 per hour
Senior Field Engineer	\$156 per hour

**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 Design Professional 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 Design Professional for allowable reimbursable expenses for the documented actual cost only, with no surcharge or markup for Design Professional administration. Reimbursable expenses must be separately identified on the Design Professional 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.

END OF EXHIBIT