



## DESIGN PROFESSIONAL SERVICES AGREEMENT (MASTER) WITH BELLECCI AND ASSOCIATES, INC.

### 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  
Bellecci and Associates, Inc. \_\_\_\_\_ ("Consultant"),  
a Corporation \_\_\_\_\_ for design services for publicly bid and built bicycle  
transportation projects \_\_\_\_\_ ("Project").

### 2. SERVICES

**2.1 Scope of Services.** Consultant agrees to provide the Services "as needed" and as set forth in the Scope of Services, attached and incorporated here as **Exhibit A**. The Services must comply with this Agreement and with each Service Order issued under the authority of the City Director of Public Works or his designee, in accordance with the following procedures.

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

### 3. TIME OF PERFORMANCE

**3.1 Term.** This Agreement begins on the Effective Date and ends on December 31, 2020  
("Contract Time"), unless terminated earlier as provided herein.

**3.2 Schedule of Performance.** All Services must be provided within the times specified in each Service Order, and under no circumstances should the Services go beyond the Contract Time. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin work on each separate task upon receiving City's Notice to Proceed ("NTO"), and must complete each task within the time specified in each Service Order.

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

Services on time. Consultant must respond promptly to the City's Service Orders and any change orders that may be issued.

#### **4. COMPENSATION**

**4.1 Maximum Compensation.** City will pay Consultant for satisfactory performance of the Services a total amount that will be based upon actual costs but that will be capped so as not to exceed \$ 600,000.00 ("Contract Price"), based on the budget and rates set forth in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

**4.2 Invoices and Payments.** City will pay Consultant for Services satisfactorily provided under a Service Order, within 30 days following receipt of a properly submitted invoice for Services provided during the preceding calendar month. Unless otherwise provided by a Service Order, each invoice must include for each day of Services:

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

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

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

#### **5. INDEPENDENT CONSULTANT**

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

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

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

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

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

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

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

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

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

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant or its Subconsultants in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document or other information or work, in any medium (collectively, "Work Product"), prepared by Consultant in connection with this Agreement will be the exclusive property of the City 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 prepared/created by Consultant and its Subconsultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire", Consultant and Subconsultants hereby assign to City all copyrights to the Work Product when and as created. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

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

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

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

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

## **8. RECORDS**

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

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

## **9. ASSIGNMENT**

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

## **10. PUBLICITY / SIGNS**

Any publicity generated by Consultant in connection with the Project and Services during the Contract Time and for one year thereafter will reference City contributions in making the Project possible. The words "City of Cupertino" shall be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be

posted, exhibited or displayed on or about City property, except signage required by law or this Agreement without prior written approval from City.

## **11. INDEMNIFICATION**

**11.1** To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants (collectively, “Indemnitees”), as follows:

**a. Indemnity Obligations Subject to Civil Code Section 2782.8.** With respect to the Services performed in connection with the Agreement, Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any and all liability, claims, actions, causes of action, demands or charges whatsoever against any Indemnitee, 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 Consultant, its officers, officials, employees, 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. 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 Involving Intellectual Property.** Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant’s negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City’s choice, expert fees and all other costs and fees of litigation.

**c. Claims for Other Liability.** For all other liabilities not included in provisions “b” and “c” above, Consultant shall indemnify, defend, and hold harmless the Indemnitees against any and all liability, claims, actions, causes of action or demands whatsoever, including any injury to or death of any person or damage to property, or other liability of any nature arising out of, pertaining to, or relating to the performance of this Agreement by Design Professional, its employees, officers, officials, agents or Subconsultants, including liability based on breach of contract, obligations, or warranties, or any unauthorized use or disclosure of City’s confidential and proprietary information.

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

**11.3** If this Agreement is entered into or amended on or after January 1, 2018, Consultant's duty to pay for any of Indemnitees’ defense related costs will be limited to its proportionate share of fault, as determined by final decision by a court of competent jurisdiction, subject to any applicable exceptions in Civil Code section 2782.8.

**11.4** Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City. Section 11 survives expiration or termination of this Agreement.

## **12. INSURANCE**

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

## **13. COMPLIANCE WITH LAWS**

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

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

**13.3 Discrimination Laws.** Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS) or any other protected classification. Consultant shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Consultant understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person is strictly prohibited.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Consultant may be required to file a



conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of the California Code of Regulations and other laws.

Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant agrees to abide by City policies and administrative rules prohibiting gifts to City officials and employees.

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

## **14. PROJECT COORDINATION**

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

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

## **15. ABANDONMENT OF PROJECT**

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

## **16. TERMINATION**

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

**17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION**

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

**18. ATTORNEY FEES**

If City files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceeding to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This attorney fee provision does not apply to legal actions initiated by Consultant or Subconsultant. This Section survives termination of this Agreement.

**19. THIRD PARTY BENEFICIARIES**

There are no intended third party beneficiaries of this Agreement.

**20. WAIVER**

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

**21. ENTIRE AGREEMENT**

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

**22. INSERTED PROVISIONS**

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

**23. HEADINGS**

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



## **24. SEVERABILITY/PARTIAL INVALIDITY**

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

## **25. SURVIVAL**

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

## **26. NOTICES**

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

To City of Cupertino 10300 Torre Ave. Cupertino CA 95014  Attention: <u>John Raaymakers</u>  Email: <u>johnr@cupertino.org</u>	To Consultant: <u>Bellecci and Associates, Inc.</u> <u>7041 Koll Center Parkway, Suite 132</u> <u>Pleasanton, CA 94566</u>  Attention: <u>Daniel Leary</u>  Email: <u>daniel@bellecci.com</u>
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## **27. VALIDITY OF CONTRACT**

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

## **28. EXECUTION**

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

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

**CONSULTANT**

Bellecci and Associates, Inc.

By \_\_\_\_\_

Name Daniel Leary

Title Principal

Date \_\_\_\_\_

*Tax I.D. No.:* 68-0229035

**CITY OF CUPERTINO**

A Municipal Corporation

By \_\_\_\_\_

Name David Brandt

Title City Manager

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
RANDOLPH STEVENSON HOM  
Cupertino City Attorney

**ATTEST:**

\_\_\_\_\_  
GRACE SCHMIDT  
City Clerk

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

Design Professional shall provide certain Design 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 14, 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 Design Professionals with similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. 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 Design 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 a 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.
- 1.00 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, 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 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, record maps and preliminary title reports. Prepare a calculated base map of the existing right-of-way for use in design.
- 2.06 **Base Sheet Preparation:** The Design Professional shall compile survey and other data as made available into a base sheet create Project base information in AutoCAD 2015 for use in subsequent Project design tasks and submit to the City for review and comment. The base information shall utilize topographic survey as furnished by the City or by the Design Professional, according to the agreement.
- 2.07 **Outreach:** Design Professional shall conduct outreach with groups as identified by the City to establish design program.



**2.08 Conceptual Alternative Development:** Design Professional shall prepare three (3) hand drawn, color rendered conceptual solutions for the Project, each which address the primary Project issues and budget.

**2.09 Staff Review:** Design Professional shall present each concept to the City with analysis for evaluation. The City shall select one concept as the preferred solution and provide the Design Professional with written direction to proceed with that concept.

**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 with solutions for resolution

2.04 Summary of Utility Companies Contacted and Actions Taken

2.05 Prepare calculated base map of ex. Right-of-Way

2.06 Scaled Base Map in AutoCad (current version) Format, including Project Area Surface Features

2.07 Description of outreach

2.08 Prepare conceptual alternative

2.09 Presentation of concepts with analysis of each concept and meeting notes

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

**3.01 Meetings:** The Design Professional shall 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 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 Professionals experience with similar local projects and engineer's judgement.

**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 Estimate of Probable Construction Cost

## **Task 4.0 Construction Document Development**

**4.01 Meeting:** The Design Professional shall 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 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 Striping Plans
- Erosion Control Plans

**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 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 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

- 4.02 65% Construction Documents
- 4.03 65% Design Plans
- 4.04 Draft Technical Specification
- 4.05 65% Construction Cost Estimate
- 4.06 95% Construction Documents
- 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 a flash drive.

In addition, provide one (1) complete wet signed and stamped sets of Construction Documents and Technical Specifications. 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 the City.

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

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

**5.04 100% 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)

- 5.01 100% Construction Document
- 5.02 100% Plans (digital + one stamped, signed, full size record set of plans)
- 5.03 100% Technical Specifications (digital and one stamped, signed hard copy) in Word and one (1) bound 8-1/2 X 11 set
- 5.04 100% Cost Estimate (digital)

**Task 6.0: Bid and Award Support**

**6.01 Bid Period Assistance:** Design Professional shall provide the following bid phase services, at the City's request, through award of the construction contract:

- a. Attend the general contractor's 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 the Bid phase.
- d. Assist in the evaluation of bids as requested by the City.

**6.02 Addenda Preparation:** As requested by the 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:** Design Professional shall 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 by the City Council.

- a. The Design Professional shall provide one (1) 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.

- b. The Design Professional shall provide one (1) complete electronic format Conform Set Construction Documents and Technical Specifications in both native file formats (AutoCAD, MS Word) and pdf on a City compatible a flash drive.

**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 Administration**

Design Professional's responsibility to provide the Construction Administration Services commences with the construction contract award and ends with submission of the final Project Punch List. Design Professional shall advise the City, in writing, of any construction items that are not in conformance with the Contract Documents. Design Professional shall have reasonable access to the construction of the Project wherever it is in preparation or progress as appropriate to meet its obligations under this Agreement. Duties, responsibilities and limitations of authority of Design Professional under this Task shall not be restricted, modified or extended except by advance, written agreement between City and Design Professional.

**7.01 Submittal Review:** The Design Professional shall 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:** The Design Professional shall review Contractor's Requests for Information and provide a written response to the Design Professional with a copy to the City, within five (5) working days of receipt. The Design Professional's response shall provide, with advance City approval, supplemental drawings and/or specifications necessary to clarify the RFI. The Design Professional shall maintain a detailed record of all RFI's and responses supplied to the Contractor.

**7.03 Change Orders:** Design Professional shall 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, prepares 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 Construction Meetings:** Attend up to two (2) site meetings in the Construction phase and provide meeting minutes to the City within two (2) business days.

**7.05 Record Drawings:** Design Professional shall revise the contract plans to include all change orders, RFI responses and field changes to reflect actual conditions. Utilizing the contractor's red-line mark-up plan set the Design Professional shall transfer these changes to the record drawings.

**7.0 Deliverables** (all deliverables shall be digital unless otherwise noted)

7.01 Responses to submittals, submittal log

7.02 Responses to Requests for Information, RFI log

7.03 Review comments for City prepared Change Orders

7.04 Meeting Minutes

## 7.05 Record Drawings

### **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 C.

#### **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

**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 2.2 Service Orders. An exemplar of the Service Order form follows.

END OF EXHIBIT

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

**MASTER AGREEMENT PO#:** \_\_\_\_\_ **M. A. Date:** \_\_\_\_\_

**Maximum Compensation:** \_\_\_\_\_ **S.O. Acc't No.:** \_\_\_\_\_

**Consultant:** Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**Project Description:**

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

☒ Description: (simple project description if appropriate)

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

**City Project Management**

Managing Department: Public Works Project Manager: \_\_\_\_\_

**Fiscal/Budget :**

	Amount
<b>Master Agreement Maximum Compensation:</b>	\$0
<b>Total Previously Encumbered to Date:</b>	\$0
<b>Encumbrance this Service Order:</b>	\$0
<b>Total Liquidated Encumbrance:</b>	\$0
<b>Master Agreement Unencumbered Balance:</b>	\$0

**Contract Manager:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Approvals:**

**Consultant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**CIP Manager:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

**City Finance:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Management Analyst

**EXHIBIT C**  
**COMPENSATION**

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

The City will compensate the Consultant 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.

**Consultant Hourly Rates:**

Principal	\$ 224 per hour
Project Manager	\$ 186 per hour
Professional Engineer	\$ 176 per hour
Senior Engineer	\$ 160 per hour
Design Engineer	\$ 142 per hour
Assistant Engineer	\$ 132 per hour
Construction Manager	\$ 184 per hour
Resident Engineer	\$ 160 per hour
Senior PW Inspector	\$ 138 per hour
PW Inspector	\$ 124 per hour
Professional Land Surveyor	\$ 184 per hour
Survey Coordinator	\$ 164 per hour
Survey Technician	\$ 124 per hour
Flag Person	\$ 84 per hour
1-Man Field Survey Crew	\$ 196 per hour
2-Man Field Survey Crew	\$ 268 per hour
3-Man Field Survey Crew	\$ 338 per hour
Legal/Expert Witness	\$ 300 per hour
Clerical	\$ 60 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 Consultant for such reimbursable expenses only with prior written authorization by the individual designated as the City Representative in Section 14, Project Coordination, of the Agreement. The City will reimburse the Consultant for allowable reimbursable expenses for the documented actual cost only, with no surcharge or markup for Consultant administration. Reimbursable expenses must be separately identified on the Consultant invoice and documentation of each reimbursable expense must be submitted to the City upon request and maintained as required under Section 8, 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

**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement 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 (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant'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 Form 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 CA 00 01 covering any auto (including owned, hired, and non-owned autos) 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. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. 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 Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

**OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL policy. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant'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***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

***Verification of Coverage***

Consultant must furnish acceptable insurance 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 prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

***Higher Insurance Limits***

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

***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.