



**DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)
WITH HNTB CORPORATION FOR CONSULTANT SERVICES FOR DON
BURNETT BICYCLE FOOTBRIDGE ROUTINE INSPECTION**

1. PARTIES

This Agreement is made and entered into as of _____
("Effective Date"), by and between the City of Cupertino, a municipal corporation ("City"), and
HNTB ("Consultant"),
a Corporation _____ for the routine inspection, resolution of bridge pins and review of perimeter
fencing for the Don Burnett Bicycle Footbridge _____ ("Project").

2. SERVICES

2.1 Basic Services. Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant's written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City.

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

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

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

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on November 1, 2018, unless terminated earlier as provided herein ("Contract Time").

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

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

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$69,945 (“Contract Price”), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant’s actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

4.2 Basic Services. City will pay Consultant \$ N/A (“Lump Sum Price”) for the complete and satisfactory performance of the Basic Services in accordance with **Exhibit C**. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, subConsultant’s costs, materials, supplies, equipment, travel, taxes, overhead and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City’s reasonable satisfaction.

4.3 Additional Services. City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$ N/A. Additional Services provided to City’s reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge (“Reimbursable Expenses”). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

4.4 Invoices and Payments. Monthly invoices must describe the Services completed and the amount due for the preceding month. City will pay Consultant within 30 days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. **Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in 30 minute increments; (iv) the hourly billing rate or Sub-Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.

- b. **Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City-approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

5. INDEPENDENT CONTRACTOR

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

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its 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 any subConsultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License.

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 tools, materials and equipment required to perform the Services under this Agreement.

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 any violations pursuant to the indemnity 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 in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement (“Work Product”), will be the exclusive property of the City and shall not be shown to a third-party without prior written approval by City

7.2 Copyright. To the extent permitted by Title 17 of U.S. Code, all copyrights to the 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 its 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 Consultant will provide City full access to Consultant’s books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or

audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 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 for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City, 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 Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

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

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

13.3 Discrimination Laws. Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777 and 3077.5. Consistent with City policy prohibiting, Consultant understands that harassment and discrimination by Consultant or any of its subConsultants 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 is familiar with and agrees to abide by the City’s rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section 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 Roger Lee, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City’s reasonable approval, Consultant’s Project Manager for all purposes under this Agreement will be John Litzinger, 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 against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

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

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

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

21. ENTIRE AGREEMENT

This Agreement and all its Sections represent the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between this 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 to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino 10300 Torre Ave. Cupertino CA 95014 Attention: Roger Lee Email: rogerl@cupertino.org	To Consultant: HNTB Corp. 1735 Technology Drive, Suite 650, San Jose, CA 95110 Attention: John Litzinger Email: JLitzinger@HNTB.com
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27. VALIDITY OF CONTRACT

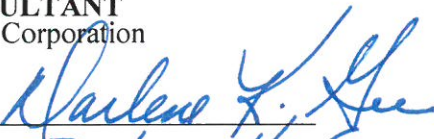
This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney's Office.

28. EXECUTION

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

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

CONSULTANT
HNTB Corporation

By 
Name Darlene K. Gee
Title Vice-President
Date 5/31/18

CITY OF CUPERTINO
A Municipal Corporation

By _____
Name _____
Title _____
Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

RANDOLPH STEVENSON HOM
Cupertino City Attorney

ATTEST:

GRACE SCHMIDT
City Clerk

Exhibit A

**DESIGN SERVICES SCOPE/HOURLY ESTIMATE
For The
DON BURNETT BICYCLE FOOTBRIDGE**

SCOPE OF SERVICES:

The following scope of services and hourly estimate is provided for design services to complete the project regarding:

- A. Bridge Pin Repair
- B. Bridge Periodic Inspection
- C. Bridge Survey
- D. Perimeter Fence Modification

BRIDGE PIN REPAIR, BRIDGE BI-ANNUAL INSPECTION AND SURVEY

A. BRIDGE PIN REPAIR

In March 2018, the City of Cupertino staff informed HNTB that the southeast pin of the Bridge worked its way transversely in the westerly direction. The movement of the pin has sheared six (6) bolts that secure the cover plate that was installed in 2012.

Around August 2012, the City of Cupertino staff also observed similar movement of the northeast pin when the easterly movement of the pin caused the inner cover plate bolt to shear off. As a result, HNTB provided a detail with a WT section connected with six (6) bolts to replace the single bolt detail per the original construction. This detail was constructed to all 8 locations of the pin cover plates in late 2012. Subsequent in 2016 during HNTB's routine bridge inspection, HNTB also observed missing bolts on some of the cover plates.

The pin details are identical at all four corners of the bridge, and lateral forces are taken through an independent system to avoid unusual loads to the pins. Such details are typical of cable stayed bridges with short back spans. The unusual lateral movement of only one of the four pins suggests either misalignment at this one corner or asymmetric loading or some combination of the two. Reinstallation of the pin did not present any difficulties once dead load was removed from the tie-down, using a jacking system that utilized the existing tie down bars as detailed in the original contract drawings.

To avoid future pin movement, a retrofit strategy that reduces pin loads under service conditions (dead load, live load and thermal loads) will be explored. Alternatively, enhancing the lateral strength of the pin-keeper plate may also be sufficient.

HNTB will coordinate with a Contractor, designated and contracted by the City, to design a repair detail to position the pin back in place. The repair detail can also be used for future repair should the pin(s) in the other location work its way transversely. In Task 2, HNTB will coordinate with Kelley Engineering and Surveying, sub-consultant under Task 5 to collect additional survey data at/near the four corners of the Bridge during the morning and afternoon temperature changes. HNTB will review the survey data for potentially anomalous behavior.

HNTB anticipates the following tasks:

HNTB Corporation

Task 1 - Engineering Support for Resetting Bridge Pin

HNTB will coordinate with a Contractor, designated and contracted by the City, to design a repair detail to position the pin back in place. The repair detail can also be used for future repair should the pin(s) in the other location work its way transversely.

HNTB will provide engineering support to the City and Contractor to reset the bridge pin back in place.

Task 2 - Engineering and Design of additional measures of Bridge Pins

HNTB will coordinate with Kelley Engineering and Surveying, sub-consultant under Task 5 to collect additional survey data at/near the four corners of the Bridge during the morning and afternoon temperature changes. HNTB will review the survey data for potentially anomalous behavior.

HNTB will provide engineering and design of additional measures to mitigate the potential for future excessive transverse movement of the Bridge Pin. This will include review of the detail and bolt torquing requirements of the previous installation in 2012. HNTB anticipates maximum of 2 sheets of drawings. HNTB shall provide the bolt torquing requirement designed in 2012.

Task 3 - Engineering Support for Placement of Addition Measures in Task 2

Assuming there are additional measures recommended in Task 2 above, HNTB will provide engineering support for the placement of these addition measures. This includes:

- a) Conducting an engineered review and approval of shop drawings forwarded by the Contractor,
- b) Evaluating and approving that the work meets the approved design.

B. BRIDGE PERIODIC INSPECTION

Task 4 - Bridge Periodic Inspection

HNTB will conduct the first Bridge Periodic Inspection of the bridge to primarily check for damage and wear to the structure, including deformations and incipient cracks (previous inspections have been Bridge Routine Inspections). The inspection follows Section 9 of HNTB's, Manual for Inspection and Maintenance of the Mary Avenue Bicycle Footbridge (*Inspection Manual*) dated 17 July 2009, and shall include the following elements:

1. Substructure - This consists of above-grade portions of foundations, footings, pedestals, and end piers (abutments).
2. Superstructure - This consists of concrete deck panels and closure pours, edge girders, floorbeams, leaf bearings (tie-downs), shear keys, pintels, and threaded rod connections between tower struts and floorbeams.
3. Tower - This consists of the tower legs extending above and below the roadway level.
4. Cable-Stay System - This consists of cable stays, sockets, and anchorages.
5. Roadway Features - This consists of the pedestrian railing, deck joint compression seal assemblies, and the roadway drainage system.
6. Non-Structural Features - This consists of lighting systems and utilities.

Periodic Inspections are performed every ten years and include all aspects of Routine Inspections, plus a bridge survey, inspection of cable corrosion protection system, and other requirements outlined in Section 9 of the *Inspection Manual*.

The elements listed above will be inspected either by visual or hands-on methods:

HNTB Corporation

- The visual method will be conducted from either on the bridge within Caltrans Right-of-Way or under the bridge within the City Right-of-Way using visual aids (such as binoculars, etc) from the ground and will not include equipment or tools to provide a different visual observation platform. The elements that are not able to be inspected visually will be noted in the report.
- The hands-on method will be conducted from either on the bridge within Caltrans Right-of-Way or under the bridge within the City Right-of-Way that are accessible from the ground and will not include equipment or tools to provide a different platform from which to have hands-on access. The elements that are not able to be inspected by hands-on access will be noted in the report.

The forms included in the Operations and Maintenance Manual will be used in the preparation of a Bridge Inspection Report. The Bridge Inspection Report will be in memo form to provide the results of the findings of the bridge inspection. The results of the bridge survey described in Task below will be included in the memo report. HNTB's corrective measures shall be consolidated and summarized at the beginning of the report.

The table below summarizes the different elements with items associated with each element and type of inspection method to be used:

Routine Inspection Checklist		
Bridge Element	Item	Method of Inspection
Substructure	Footings	Visual
	Tower Pedestals	Visual
	Tower Legs	Visual
	Tower Struts	Visual
	Tower Base Plates	Visual
	Tower Cable Anchorage Plates	Visual
	Tower End Piers (Abutments)	Hands-on
Superstructure	Deck Slab	Top (Hands-on), Bottom (Visual)
	Floorbeams	Visual
	Leaf Bearings (Tie-Downs)	Hands-on
	Edge Girders	Visual
	Cable-Stay System	Visual, Hands-on at abutments
	Shear Keys	Hands-on
	Pintels	Visual
	Threaded Rod Connections	Visual
Deck	Deck Walking Surface	Hands-on
	Approach Slabs	Hands-on
	Elastomeric Bearing Pads (at shear keys)	Hands-on
	Expansion Joint Assemblies	Hands-on
	Pedestrian Railing	Hands-on
	Drainage System	Hands-on

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Measurements	Expansion Joint Openings	Hands-on
	Position of pins at leaf bearings	Hands-on

HNTB assumes that a telescopic boom will be needed for access to cable and top of tower inspection, and the City is able to provide and operate a telescoping boom on the Bridge.

C. BRIDGE SURVEY

Task 5 - Bridge Survey

HNTB will conduct (with support from Kelley Engineering and Surveying) a survey of the bridge to establish an update on the performance of the bridge based on the Operations and Maintenance Manual (Chapter 9.8) for the bridge. The update will be compared to the baseline survey previously performed. The survey will include the following:

- a. Elevation and location of the towers and piers. A single point on each tower will be selected as the monitoring/surveyed point for the tower.
- b. Elevation (the profile grade of the deck) along the gutter lines and adjacent to each cable stay.
- c. Measurement of expansion joint openings.

A 1-hour pre-meeting for the bridge survey to confirm the elements of the survey will be conducted on the day of the bridge survey.

See attached scope of work and fee estimate by Kelley Engineering and Surveying dated 4/3/2018 for additional detail in describing this task.

Task 6 - Engineering Support for Corrective Measures Identified During Bi-annual Bridge Inspection

Assuming there are additional measures recommended in Task 4 & 5 above, HNTB will provide engineered support for the corrective measures identified in the bi-annual bridge inspection report and evaluating and approving that corrective measures completed by the Contractor are acceptable.

D. PERIMETER FENCE MODIFICATION

Task 7 – Perimeter Fence Modification

HNTB will provide engineering support to design alternatives to deter the public from gaining access to the Bridge exterior girders at both the Homestead High School (north side) of the Bridge and the Mary Avenue (south side) of the bridge.

HNTB assumes that the design alternatives will be limited to the existing perimeter fencing. The anticipated tasks include:

1. Gather as-builts and record drawings, current site photos
2. One (1) one-hour field meeting with City, Sheriff, and Homestead High School representative(s) attended by 2 HNTB representatives to:
 - a. Understand how access is being gained, and
 - b. Outline potential design alternatives
3. Develop redline sketches on record drawings/site photos. Assume up to 3 alternatives.

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4. Develop construction cost estimates of alternatives.
5. Memo and sketches to document ideas.
6. City makes selection of preferred alternative.
7. Final design drawings of selected alternative (as part of the Bridge Pin Repair).
8. Engineering support during construction.

COMPENSATION

HNTB will be compensated on a time and materials (not-to-exceed) basis for these Tasks. The attached breakdown (Exhibit C) of hours and tasks is approximate and assumed to be sufficient to establish the not-to-exceed cumulative amount for the Tasks as described above. It is assumed the hour breakdown between Tasks may need to be modified as the work is performed and completed.

DESIGN PROFESSIONAL SERVICES AGREEMENT ("AGREEMENT")

The Agreement is amended as follows:

1. 3.3 Time is of the essence – the word “essence” is replaced with “importance”.
2. 4.4 Invoices and Payments – the following language is added at the end of the first paragraph: “If City objects to any invoice submitted by Consultant, City shall so advise Consultant in writing giving reasons therefor within seven (7) days of receipt of such invoice. If any invoice submitted by Consultant is disputed by City, only that portion so disputed may be withheld from payment at which time City shall immediately reimburse Consultant for any outstanding amounts due with respect thereto.”
3. 11. Indemnification – the following language replaces this section in its entirety:

11.1 To the fullest extent allowed by law and except for losses caused by the negligence or willful misconduct of City personnel, Consultant agrees to indemnify and hold harmless the City, its City Council, boards and commissions, officers, officials, employees, (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 and hold harmless Indemnitees from and against any and all liability against any Indemnitee, including any injury to or death of any person or damage to property or other liability of any nature (collectively, "Liability"), from any third parties, to the extent caused by 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.

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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 and hold harmless the Indemnitees against liability, including any injury to or death of any person or damage to property, or other liability of any nature to the extent caused by the negligent acts, errors or omissions of performance of this Agreement by Design Professional, its employees, officers, officials, or subconsultants, 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. Should the Consultant be required to provide legal defense costs pursuant to the requirements set forth in this Section, any such reasonable legal defense cost shall be accrued to the Consultant in a prorated proportion in accordance with the Consultant's percentage of fault as determined by any applicable trier-of-fact or as agreed to and incorporated into any settlement agreements.

4. 16 Termination – the following language is added at the end of the first paragraph:
“Design Professional shall not be liable for any errors or omissions contained in the deliverables which are incomplete as a result of a suspension or termination where Design Professional is deprived of the opportunity to complete Design Professional's services.”
5. The following language is added in its entirety after Section 19 Third Party Beneficiaries:

“20. DISPUTE RESOLUTION: In the event of a dispute between City and Contractor arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration; provided, however, in the event the parties are unable to reach

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agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.”

Exhibit B

SCHEDULE

The schedule for the project is anticipated to be as follows:

- Bridge Survey – NTP plus 4-8 weeks
- Bridge Pin Repair Engineering Support – NTP plus 4 weeks
- Bridge Pin Repair Design – NTP plus 8-12 weeks
- Bridge Inspection – NTP plus 8-12 weeks
- Bridge Inspection Report – 2 weeks after completion of the Bridge Inspection and Bridge Survey
- Preventive Fence Modifications - NTP plus 8-12 weeks for alternatives memo, and final design 8-12 weeks after City makes selection of preferred alternative
- Engineering Support for Corrective Measures Identified During Bi-annual Bridge Inspection – per City schedule but assumed to be performed by June 30, 2019

BENT

DESIGN SERVICES SCOPE/HOURLY ESTIMATE for the DON BURNETT BICYCLE FOOTBRIDGE, Bridge No. 37-662
City of Cupertino, California

[illegible]

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.