

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
CSG CONSULTANTS, INC.  
FOR  
ANNUAL STREET PAVEMENT MAINTENANCE AND REHABILITATION PROJECTS  
(2023 AND 2024 PROJECTS)**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and CSG Consultants, Inc., a California corporation, (Contractor or Consultant). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. City desires to secure the design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin upon the date this Agreement is signed by both parties and terminate on December 31, 2025. Services may commence upon the City issuing a written notice to proceed.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Contractor shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

## **4. WARRANTY**

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

**5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

**6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is six hundred sixty eight thousand one hundred eighty four dollars (\$668,184), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

**7. TERMINATION**

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

**8. ASSIGNMENT AND SUBCONTRACTING**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

**9. NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

**10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

**11. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

**12. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

**13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this

Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

#### **14. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of the Contractor, its employees, subcontractors, or agents in the performance, or non-performance, of Services under this Agreement.

#### **15. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

#### **16. WAIVER**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## 17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Department of Public Works  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [engineering@santaclaraca.gov](mailto:engineering@santaclaraca.gov)

And to Contractor addressed as follows:

CSG Consultants, Inc.  
550 Pilgrim Drive  
Foster City, CA 94404  
and by e-mail at [contracts@csgengr.com](mailto:contracts@csgengr.com)

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

## 18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## 19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**21. NO USE OF CITY NAME OR EMBLEM**

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

**CONTINUED ON PAGE 8**

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form: \_\_\_\_\_

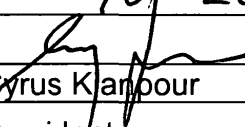
Dated: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney  
City of Santa Clara

\_\_\_\_\_  
Rajeev Batra  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**CSG CONSULTANTS, INC.**  
a California corporation

Dated: 10-26-2022  
By (Signature):   
Name: Cyrus Kharbour  
Title: President  
Principal Place of Business Address: 550 Pilgrim Drive  
Foster City, CA 94404  
Email Address: cyrus@csgegengr.com  
Telephone: (650) 522-2500  
Fax: (650) 522-2599  
"CONTRACTOR"

## **EXHIBIT A SCOPE OF SERVICES**

### **I. GENERAL**

#### **Description of Projects and Objective**

CITY desires to engage CONSULTANT to provide engineering design services to prepare bid documents (plans, specifications, and engineer's estimate or PS&E) for public works bidding of pavement maintenance and rehabilitation construction contracts to support the City's Annual Street Pavement Maintenance and Rehabilitation Program.

This Agreement provides for services for two (2) street pavement maintenance and rehabilitation construction contracts as follows:

1. 2023 Annual Street Pavement Maintenance and Rehabilitation Project ("2023 Project")
2. 2024 Annual Street Pavement Maintenance and Rehabilitation Project ("2024 Project")

Each of the above projects shall be considered as a separate and distinct project under this Agreement. The projects shall be prosecuted and administered as independent projects and in the following sequence: design delivery for the 2023 Project, then subsequently upon construction bidding of the 2023 project, design delivery for the 2024 Project.

CONSULTANT shall receive written confirmation from CITY prior to proceeding with services for the 2024 Project.

#### **Background**

This Scope of Services is based upon CONSULTANT's proposal dated September 7, 2022 in response to CITY's Request for Proposals, and subsequent negotiations between CITY and CONSULTANT. It is mutually agreed by CITY and CONSULTANT that this Scope of Services incorporates CONSULTANT'S professional qualifications and experience and will meet CITY's objectives.

## **Baseline Solution**

The following documents were prepared by CITY and attached to the Request for Proposals and are incorporated herein to this Agreement by reference:

- Attachment H1, 2023 Street List
- Attachment H2, 2023 Street Map
- Attachment I1, 2024 Street List
- Attachment I2, 2024 Street Map

The above documents provide for the presumed locations, construction costs, and pavement treatments for the 2023 Project and the 2024 Project and are based upon information derived from CITY's pavement management system, Streetsaver. These documents and information contained therein are considered preliminary and draft.

The City's anticipated budgets for the construction contract(s) for the projects are as follows:

- 2023 Project: \$3,500,000
- 2024 Project: \$2,700,000

The above budgets are considered as the construction cost only, inclusive of a ten percent (10%) construction contingency.

The final disposition of specific streets with their respective pavement treatments to be maintained and rehabilitated in each project are subject to change through the course of services dependent upon services provided by CONSULTANT during the Preliminary Engineering and Evaluation task. Under the Preliminary Engineering and Evaluation task for each project, CONSULTANT will evaluate the physical street conditions, analyze pavement treatments and associated costs, and provide recommendations in consideration of budgets and schedules.

The above referenced lists of streets with presumed pavement treatments and costs contained therein for each of the 2023 Project and the 2024 Project represent the Baseline Solution provided in this Scope of Services as the basis to develop this Scope of Services and the Schedule of Fees. The Baseline Solution is further defined as inclusive of all construction work necessary to fully implement the pavement treatments, inclusive of all ancillary work such as asphalt dig outs, concrete curb ramps, traffic striping, signal loop replacements, utility cover adjustments, and other similar ancillary work customary to a pavement maintenance and rehabilitation project administered by CITY. This Scope of Services and Schedule of Fees represents all design professional services to be provided by CONSULTANT as necessary to implement the Baseline Solution.

Should there be deviations from the Baseline Solution that results in services or fees being materially or significantly different than presumed for the Baseline Solution, the

Scope of Services and Schedule of Fees shall be addressed by CITY and CONSULTANT in writing prior to CONSULTANT proceeding to the Construction Documents task.

## **Assumptions**

CITY and CONSULTANT agree on the following assumptions as being pertinent to this Scope of Services and Schedule of Fees:

1. The 2023 Project requires and assumes an accelerated design schedule that is accelerated beyond which would typically be performed for a street pavement maintenance and rehabilitation project of similar nature and scale within City's historical practices in order to meet the CITY's targeted bidding timeframe, which is April 2024. Said accelerated schedule is incorporated into this Scope of Services and Schedule of Fees accordingly. This Scope of Services and Schedule of Fees assumes the following design schedules:
  - 2023 Project:
    - Notice to Proceed: December 1, 2022
    - Submit Final Bid Package: April 5, 2023
  - 2024 Project:
    - Notice to Proceed: April 3, 2023
    - Submit Final Bid Package: November 2, 2023
2. The design will be reliant on CONSULTANT experience, and industry knowledge and practices, and does not contemplate physical testing, land surveying, or detailed engineering analysis for pavement treatment selection (e.g. R-value analysis, pavement section structural design).
3. Concrete improvements, including Americans with Disabilities Act (ADA) curb ramps, will not be designed using land surveys and detailed finish design elevations.
4. Changes to pavement drainage and slopes are not contemplated to be significant in the projects and the design will not include pavement land surveying and detailed design of finish elevations for pavement surfaces.
5. Conflicts with existing underground utilities and infrastructure are not contemplated to be significant in the projects and the design will not include potholing of existing utilities.

## **II. RESPONSIBILITIES OF CITY**

CITY will provide the following information regarding the project as-available:

- Record drawings and maps (as-available)
- Information from City's Streetsaver pavement management system
- CITY's Standard Details, Specifications, Benchmark, and Design Criteria

- Storm Drain (SD), Sanitary Sewer (SS), Electric, Water and Recycled Water Block Book Maps (as-available)
- Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, City water lines, City electric utilities, and aerial photographic tiles
- Payment of permit application fees, if required

### **III. BASIC SCOPE OF SERVICES**

The Basic Scope of Services includes all professional services required to prepare bid documents (plans, specifications, and engineer's estimate or PS&E) for public works bidding of pavement maintenance and rehabilitation contracts to support the City's Street Pavement Street Maintenance and Rehabilitation Program.

The following tasks shall be completed for each project, the 2023 Project and the 2024 Project unless specifically described herein otherwise.

Hereinafter the term "project" may refer to either the 2023 Project or the 2024 Project, whichever project is underway and applicable at the time services are performed.

#### **1. TASK 1: PROJECT MANAGEMENT**

CONSULTANT shall:

- 1.1 Manage its team and overall project activities consistent with the direction from CITY in order to meet the project schedule and budget.
- 1.2 Coordinate with CITY, design team members, consultants, utility companies, other government agencies, and other affected parties as required throughout the duration of the project.
- 1.3 Prepare, monitor, and update progress schedule in MS Project format beginning at the kickoff meeting and ending at construction contract award. Schedule shall show significant milestones for the project. CONSULTANT shall notify CITY if there are delays in any phase of the project. In such cases, CONSULTANT shall make up the schedule in subsequent phases of the project or provide information to CITY substantiating a time extension. The schedule shall be maintained at all times and shall be updated each time progress and milestones are changed.
- 1.4 Meetings: The following meetings are assumed in this Scope of Services and Schedule of Fees which includes preparation for the meetings. A kick-off meeting shall be conducted with designated CITY staff prior to beginning work to review anticipated tasks and schedule, review available information and needs, and address any outstanding questions regarding the project moving forward raised by CITY or CONSULTANT. During the course of

services while there is active work on the project, CONSULTANT shall schedule and attend brief bi-weekly (every other week) conference calls with CITY. The purpose of the bi-weekly conference calls will be to keep CITY apprised on the project's progress and address any issues that may arise during the course of services. Bi-weekly conference calls shall not be considered as formal meetings and time for said calls shall be considered and invoiced as Project Management.

- Kickoff Meeting
- Two (2) Design Meetings

1.5 Provide monthly progress reports.

1.6 Stakeholder Coordination: CONSULTANT shall coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate any necessary accommodations into the construction documents. The following are anticipated stakeholders:

- City Bicycle and Pedestrian Advisory Committee (BPAC), Caltrans, County of Santa Clara, City of San Jose, and Valley Transportation Authority (VTA)

1.7 Invoicing and Contract Administration: CONSULTANT administrative staff time spent preparing invoices for services complete shall be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed. Additionally, addressing administrative issues regarding the professional services agreement, such as preparing additional services requests or budget modifications, shall also be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed.

1.8 Only the designated Project Manager or approved delegates performing project management duties shall charge time to Task 1 Project Management. CONSULTANT's technical staff working on other tasks for the project shall not charge to the project management task. Additionally, if the Project Manager is performing technical work related to other tasks, time spent on those tasks shall be charged to the task and not to project management.

Deliverables:

1. Progress schedules in MS Project format (submitted electronically as an 11" x 17" pdf file and in native MS Project format).
2. Meeting agendas, preparation materials, and meeting minutes for each project meeting.
3. Monthly progress reports and invoices.

## **2. TASK 2: PRELIMINARY ENGINEERING AND EVALUATION**

### **2.1. Data Collection & Field Review**

CONSULTANT shall collect as-built record drawing information for the streets as necessary for subsequent project design. CONSULTANT shall review the information provided by CITY to verify completeness and identify any missing information that is necessary for design. For information that is required for non-CITY maintained facilities, CONSULTANT shall contact the appropriate owner to obtain information, as needed.

CONSULTANT shall perform a field review of the streets proposed for maintenance and rehabilitation to evaluate and document existing conditions and shall prepare field notes that generally describe conditions that may affect the work, such as pavement condition, visible surface utility information, traffic conditions, physical obstructions, and constructability.

CONSULTANT shall review existing curb ramps along the proposed streets and determine if they need to be replaced per ADA requirements based upon the street maintenance treatment involved. Provisions for replacement of ADA curb ramps will be prepared by CONSULTANT in the subsequent task.

On streets anticipated to receive pavement resurfacing, CONSULTANT shall identify areas of deficient concrete curb and gutter that is readily apparent based on visual observation that may result in impacts to the pavement such as poor storm water drainage or uplift due to tree roots. Design of corrections for these deficiencies shall not be considered as included in the Basic Scope of Services, but may be authorized as Additional Services in subsequent work.

CONSULTANT's field review should include a dig-out repair assessment.

### **2.2. Utility Coordination**

CONSULTANT shall prepare a Notice of Intent to Construct (NOI) and submit it to the known utility operators in order to gather records for existing utilities for each street. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft copy of the NOI prior to sending it to the utility, maintain log of all NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be impacted by the work.

Utility coordination will be focused on locations where potential impacts may occur, such as in dig-out areas.

### **2.3. 35% Design: Develop Memorandum of Preliminary Engineering Recommended Street List & Cost Estimate Scenarios**

Based upon existing conditions, data collected, and field review, CONSULTANT shall propose recommended treatments for each street identified for the project and prepare preliminary cost estimates. As part of this task, CONSULTANT shall also evaluate and recommend alternatives for treatment for CITY's consideration, such as recommending treatments with a lower initial cost but shorter service life versus treatments at a higher initial cost but with a longer service life, etc.

The preliminary estimate shall account for all major work items that contribute to the cost. The purpose of the preliminary cost estimates is to ensure the project remains within budget and whether or not streets need to be added or removed from the project to remain within the established project budget and schedule.

CONSULTANT will prepare a preliminary Memorandum of Preliminary Engineering Recommended Street List, a Pavement Cost Matrix spreadsheet and Cost Scenario Estimates to document the findings of this task.

A meeting will be held with CITY staff to discuss the results.

### **2.4. Permitting (2023 Project Only)**

Based upon the lists of streets contemplated, it is presumed that the only external agency with permitting authority involved in the projects is the City of San Jose for the 2023 Project. The assumption is the construction work will only require an encroachment permit during construction for traffic control. It is assumed that the permit will be obtained by the construction contractor, but CONSULTANT shall review the project with San Jose to ensure it is permit-ready from a design perspective.

CONSULTANT shall coordinate with permitting agencies including the City of San Jose as needed to secure final plans approval. This task will begin once the limits of pavement and treatment have been confirmed by CITY.

#### Deliverables:

1. Notice of Intent to Construct (NOI) forms, tracking log, and information received
2. Memorandum of Preliminary Engineering Recommended Street List, including cost estimates.

### **3. TASK 3: CONSTRUCTION DOCUMENTS (65%, 95%, and FINAL BID SET SUBMITTALS)**

Upon CITY's approval of the preliminary design in Task 2 that defines the streets and treatment approach for the project, CONSULTANT shall prepare biddable and constructible construction contract documents.

If changes in the Scope of Services or Schedule of Fees under this task are required due to changes in the Baseline Solution identified during Task 2, changes shall be proposed by CONSULTANT and approved in writing by CITY prior to commencement of this task.

The Construction Documents will be progressively developed via milestone submittals per the subtasks outlined herein and shall be required for each project.

The following are assumptions for the Construction Documents which shall be incorporated to the extent appropriate at each milestone submittal in terms of completeness and design schedule for each milestone submittal involved:

- Plans will be prepared on a photographic background at a scale of 1"=40', using CITY already available images and available GIS information as a base. Where appropriate, adjacent buildings and/or driveways will be identified to aid in field orienting the plans to the site. Utility surface features (street iron) will be shown and dig-out repairs will be identified with a numbered symbol which will relate to a numbered table identifying dig-out depth and dimensions. Limits and types of surfacing treatments will be shown as well as locations and limits of ramp and other concrete work.
- ADA Curb Ramps: CONSULTANT shall provide schematic design of replacement ADA curb ramps. The design should show the type of ramp to be installed, overall geometric layout and orientation, and any adjacent concrete or pavement reconstruction required to meet ADA requirements to the extent required to provide accurate bidding quantities. CONSULTANT shall open existing utility boxes that may need to be adjusted to accommodate the curb ramp to verify that adjustment is feasible. It is presumed that the ramps will be specified for detailed field layout by construction contractor per standard details or modified details and requirements described in the bid documents. Full curb ramp design, including land surveying and detail design of finished grades, by CONSULTANT is not anticipated.
- Asphalt Dig Outs: CONSULTANT shall perform field work to mark asphalt dig out locations on streets in the field. CONSULTANT shall subsequently record the locations by any necessary means such that they can accurately be reflected on the project plans and re-established from the plans to the field during construction. CONSULTANT shall consider constructability

while marking dig outs. It is expected that the CONSULTANT's asphalt dig-out markings made during design for design purposes will remain on the pavement surface and will be refreshed prior to construction based on the contract plans. Refreshing the markings prior to construction will be performed by CITY based upon the existing markings and the project plans. CITY and CONSULTANT shall conduct a field meeting with appropriate staff to discuss and agree on the approach to dig-out markings prior to performing the marking.

- **Striping Plans:** CONSULTANT shall coordinate with CITY's traffic engineering division to determine striping to be installed. The proposed project striping is subject to change from the existing striping. The following is assumed:
  - The street list for the 2023 Project has been reviewed by BPAC and changes to striping for bicycle lanes are known and were included as Attachment J to the Request for Proposals and is incorporated herein by reference. The street list for the 2024 Project has not been reviewed by BPAC and recommendations for changes to striping for bicycle lanes is not known.
  - On streets where striping is simple replacement, e.g. residential slurry seal replacement, striping work may be shown on an outline street map (schematic map only).
  - On streets where more extensive striping is required, plans with more detail will be prepared and which can be combined with plans for other work such as dig outs.
- **Signage Plans:** If changes to signage is required due to changes in striping, sign work may be shown schematically on either the layout sheets, striping sheets, or any other sheet as appropriate and limited to show only signs that are changing. Full detailed and stand-alone sign plans showing all existing signs and proposed signs shall not be required.
- **CITY BPAC Review:** Per the CITY's complete streets policy, the project is required to undergo a 'Complete Streets Review' by the CITY's Bicycle and Pedestrian Advisory Committee (BPAC). CITY will be responsible for submitting the project to BPAC for review and attending the BPAC meeting if so required. CONSULTANT shall provide project plans to CITY for use in the BPAC submittal. It is assumed that this BPAC review will be completed at the 65% level, and that the 65% plans will be of sufficient quality and completeness to facilitate BPAC review.
- **Signal Design:** CONSULTANT shall show any signal loop replacement required as a result of the pavement or striping work. CONSULTANT shall

determine signal loop detectors that need to be replaced, and to show the replacement on the project plans. This includes determining presence or absence of existing detector hand holes and installing new hand holes where they do not currently exist. CONSULTANT shall also coordinate with CITY's traffic engineering division to ensure adequate detector lead-in-cables exist. CONSULTANT shall also design loop detector accommodations for bicycle detection should bicycle facilities be included on the pavement delineations plans according to complete streets and bicycle masterplan requirements.

- CONSULTANT shall identify, locate, and show the following surface features on the plans: manholes, boxes, City monuments, etc. These shall be obtained through field observation and measurements and are not required to be located by topographic land survey.
- Consultant shall evaluate the project for requirements under the State General Construction Permit and the Municipal Regional Permit and provide all necessary services to ensure the project is compliant and to incorporate requirements into the project bid documents. This includes determination of project type and risk level, if necessary, and if the project is a regulated project under the Municipal Regional Permit.
- It is assumed that traffic handling required to construct the project will be typical temporary traffic control systems per the requirements of the CITY's specifications and any necessary traffic handling plans that are required will be submitted by the construction contractor during construction. It is not anticipated that CONSULTANT will need to prepare traffic handling plans.
- Specifications shall include all Technical Specifications or Special Provisions required to construct the project. CITY will prepare the "frontend" contract specifications, i.e. Divisions 0 and 1 specifications of CITY's boilerplate. CONSULTANT shall provide all information required for CITY to complete the boilerplate. This information includes:
  - CONSULTANT's professional engineer seal and signature
  - Description of work
  - Type of Contractor's License required
  - Schedule of Bid Prices
  - Requirements for Contractor's Statement of Qualifications (e.g. experience requirements for previous construction contracts and contract values).
  - Working Days for Substantial and Final Completion
  - Recommendations for appropriate Liquidated Damages
  - Identification of any changes to the CITY's boilerplate that are required

- CONSULTANT shall be familiar with CITY's standard specifications and provide all Technical Specifications or Special Provisions such that they supplement, and do not conflict with, and are not redundant with the standard specifications. Changes to the CITY's boilerplate or deviations from the standard specifications shall be addressed by incorporating appropriate information into the project Technical Specifications or Special Provisions.
- CONSULTANT shall coordinate with CITY's traffic engineering division and determine allowable work hours, and allowable lane closure hours based on constructability and cost impacts, to be incorporated into the project documents. It is anticipated that lane closure charts will be included in the specifications for major multi-lane streets.
- The Engineer's Cost Estimate shall be an itemized list of bid items and shall be accurate and prepared based upon current construction pricing and escalated to time of bid using engineering judgement. CONSULTANT shall review recent bids, and contact vendors, suppliers, and contractors as necessary to develop an accurate cost estimate.
- CONSULTANT shall conduct QC reviews in accordance with its QA Program guidelines. CONSULTANT shall provide a copy of its QA Program guidelines. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review.

Deliverables will be reviewed for:

- Conformance to approved formats, criteria, specifications, & professional standards of practice.
- Adequacy, clarity, ease of interpretation
- Constructability
- Compatibility of design discipline interfaces
- Errors and discrepancies
- Coordination with related designs and project elements
- Integration of design disciplines
- Incorporation of design changes
- Conformance to required environmental mitigation

### **3.1. 65% Construction Documents Package**

CONSULTANT shall perform engineering and design activities to develop a 65% level of completion construction documents. Review of the 65% submittal will identify and raise potential issues for resolution in subsequent submittals. Subsequent submittals shall provide opportunities to further refine the contract documents.

The 65% design submittal will include all the pavement slurry seal and dig-out work. Residential street slurry seal only work may be on an outline street map (schematic map only) similar to a vicinity map, only with slightly more detail in order to determine limits within the curb return. Streets that have more extensive striping, and or dig outs will be shown on a map with more detail to show dig out locations and quantities. The submittal package will be provided to the City for review and comment.

Striping plans will be presented on separate drawings to reduce visual clutter for larger collector and arterial streets, however, residential streets with minimal striping may include striping notes on the pavement plans for efficiency. Detector loop replacements (if needed) will be shown on the pavement improvement plans.

The 65% design submittal will include the following:

- Improvement Plans
  - All proposed pavement and resurfacing work
  - Any signal loop detector or detector handholes to be replaced or installed
- Identify location, proposed new ramps, and quantities of curb ramp
- Striping & Signage Plan
- Technical Specifications
- Engineer's Cost Estimate

Below are agencies who will receive 65% design submittal:

- City of Santa Clara
- Bicycle and Pedestrian Advisory Committee BPAC (Complete Streets Review, both 2023 Project and 2024 Project)

A design review meeting to review the CITY's comments and any refinements in direction will be scheduled as soon as the CITY completes its review. It is assumed a 2-week review period for CITY reviews.

### **3.2. 95% Construction Documents Package**

The 95% design submittal will include all revisions made from the 65% submittal, with an emphasis on completeness, clarity of presentation, and elimination of ambiguity in the presentation of the intended work. 95% design submittal will include the following:

- Improvement Plans
  - All proposed pavement and resurfacing work
  - Any signal loop detector or detector handholes to be replaced or installed

- Reference all ramp work to curb ramp design plan
- Striping & Signage Plan
- Curb Ramp Design (Schematic design only)
- Technical Specifications
- Engineer's Cost Estimate
- Written responses from City's (& BPAC's) 65% comments

Below are agencies who will receive 95% design submittal:

- City of Santa Clara
- City of San Jose (if necessary)

A design review meeting will review any additional comments from the CITY. CONSULTANT and CITY staff will resolve any variations between the design as presented and the review comments and CONSULTANT will incorporate them into the Final Bid Set submittal. Any comments from agencies will also be resolved and incorporated into the Final Bid Set submittal.

### **3.3. Final Bid Set Construction Documents Package**

The Final Design Submittal will incorporate all comments received from the City, and BPAC (and any other local agencies that may be impacted during construction). The final package will include signed plans and specifications camera ready for reproduction by the City for bidding.

The Final Bid Set Package shall comply with the following:

- CONSULTANT shall conduct a quality control (QC) review of the submittal in accordance with CONSULTANT's Quality Assurance/Quality Control (QA/QC) program.
- PEER Review: Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet. The professional shall sign, date and seal the following Certification of Peer Review on a letterhead document with the transmittal of the final plans and specifications:

“The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional engineer with expertise and experience in the appropriate fields of engineering equal to or greater than the Engineer of Record, and that appropriate corrections have been made.”

#### Deliverables:

1. 65% Construction Documents Package
2. 95% Construction Documents Package

3. Final Bid Set Construction Documents Package
4. Final Plans in autocad and pdf format
5. Final Specifications in word and pdf format
6. Final Cost Estimate in excel and pdf format

#### **4. TASK 4: BID SUPPORT ASSISTANCE**

Upon written request by CITY, CONSULTANT shall:

- 4.1. Provide clarifications and assistance during the bidding phase to satisfactorily answer any questions from prospective bidders, if requested by CITY. CITY to reproduce and distribute Contract Documents, maintain a planholder's list and log of bidders questions and responses.
- 4.2. Attend Pre-Bid Meeting, if required by the CITY. CONSULTANT shall coordinate with CITY to prepare agenda and meeting minutes.
- 4.3. Prepare Addenda to Construction Documents, if needed. CITY to reproduce and distribute all addenda.
- 4.4. Assist CITY in evaluating bids and preparation of recommendation letter to award the contract, if needed.
- 4.5. If addenda are issued, CONSULTANT will prepare a conformed set of documents that incorporated addenda into the documents.

#### Deliverables:

1. Written clarifications and response to prospective bidders, if needed
2. Addenda to the Bid Documents, if needed.
3. Written recommendation for award of contract, if needed.
4. Conformed construction documents, if needed.

#### **5. TASK 5: CONSTRUCTION SUPPORT**

THE CITY's Field Services Division will have primary responsibility for construction management and inspection. Upon written request by CITY, CONSULTANT shall:

- 5.1. Attend Pre-Construction Meeting upon request by CITY and respond to pre-construction meeting questions.
- 5.2. Review and approve shop drawings and submittals, including mix designs. Assumes reviews, comments, and review of revised submittals, as necessary and as applicable for each submittal.
- 5.3. Review Contractor's request for information (RFI's) and furnish additional drawings and/or specifications for supplementing, clarifying, and/or correcting purposes.
- 5.4. Attend meetings and site visits when necessary as determined and requested by CITY. Meetings and site visits shall be coordinated whenever possible.
- 5.5. Assist CITY with the review of construction, and other activities, as

- requested.
- 5.6. Prepare, review, and recommend approval of design related change orders, as requested.

Deliverables:

1. Shop drawing and submittal comments.
2. RFI responses.
3. Site visit memoranda, as required.
4. Drawings and specifications for supplementing, clarifying, and/or correcting the contract documents and for design related change orders.
5. Change orders, as required.

**6. TASK 6: RECORD DRAWINGS AND PROJECT CLOSE-OUT**

CONSULTANT shall:

- 6.1. Upon request by CITY, in accordance with Bid Documents, CONSULTANT shall assist CITY in determining if the project is ready for the stage of completion requested by the Contractor (Substantial or Final Completion). Attend the Final Walkthrough to provide input to final "punch list" and help determine if the work is ready for CITY acceptance. CONSULTANT shall provide CITY with a written recommendation.
- 6.2. At Final Completion of the project, provide CITY with one set of reproducible Record Drawing that reflects the changes to the work during construction based upon marked up prints, drawings, and other data furnished by the Contractor, CITY, and consultants. If CONSULTANT adds additional sheets to the plans, these shall be properly numbered, properly referenced on other affected drawings, and included in the drawing sheet index.
- 6.3. Provide a complete set of the Record Drawings and all X-ref files "bound," including other associated fonts, plot style files on AutoCAD, including electronic copies in PDF format. CONSULTANT may, at its own expense, prepare and retain a copy of each drawing for its permanent file.

Deliverables:

1. FINAL Punch List input and written recommendations for substantial and/or final completion.
2. Record Drawings on a CD using AutoCAD, and one set electronic copy in PDF format.
3. CD containing PDF copies of all submittals received during construction phase.

**7. TASK 7: OPTIONAL TASKS**

If deemed necessary during the course of services, this task provides for CONSULTANT to perform Optional Tasks as part of the Basic Scope of Services. Optional Tasks shall be authorized in writing prior to performing work, and shall only be invoiced if agreed by CITY and CONSULTANT in writing prior to performing work. Fees for Optional Tasks shall be considered as part of the fees for Basic Scope of Services.

**7.1. OPTIONAL TASK: Changes to Baseline Solution**

This task provides for design services due to changes to the Baseline Solution, as described elsewhere in this Agreement, throughout the course of services. Changes to the Baseline Solution are considered as those changes that materially and significantly alter the construction work from originally contemplated for each project and are determined within the sole discretion of CITY. By way of example, but not limited to, such changes may include: significantly higher or lower pavement treatments (e.g. changing from an assumed slurry seal to reconstruction or vice versa), adding or removing streets from projects, adding or removing curb ramp locations, adding or removing signal equipment, and etcetera.

If deemed necessary by CITY, CONSULTANT shall perform design services consistent with Tasks 1 through 6 of this Scope of Services for the changes to the Baseline Solution. The Schedule of Fees for this task included in Attachment B are considered allowances and are determined by CITY. Prior to performing any services under this task, CONSULTANT shall provide a written cost proposal showing the estimate of hours and dollars for services related to the changes. This task shall only be invoiced if authorized by CITY in writing prior to providing services. If this task is authorized, the budget allowances shown on the Schedule of Fees may be reallocated to and invoiced under Tasks 1 through 7 as appropriate and as agreed in writing by CITY and CONSULTANT. Should changes cause a reduction in the services required, e.g. streets are removed from a project, CITY reserves the right to reallocate fees from Tasks 1 through 6 to or from this task and to or from the projects.

## **EXHIBIT B SCHEDULE OF FEES**

### **I. GENERAL PAYMENT**

Billing shall be on a monthly basis based on the services performed for each task. Consultant shall, during the term of this Agreement, invoice the City for hours and dollars of work completed under this Agreement. The invoice shall describe the task invoiced, percent complete of the task, time and materials expended by task, and total amount during the invoice period. The invoice shall also show the total to be paid for the invoice period. All invoices shall provide a written description of work performed during the invoice period, deliverables completed, and progress to date on tasks being invoiced in order to support the amount invoiced. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice

For invoicing purposes, Consultant shall administer the 2023 Project and 2024 Project as separate and distinct projects per the fees as described herein. City may reallocate fees between the 2023 Project and the 2024 Project as necessary in City's sole discretion throughout the course of services, which shall be in writing.

#### 2023 Annual Street Pavement Maintenance and Rehabilitation Project ("2023 Project"):

The total payment to the Consultant for Basic Services, as stated in Exhibit A, shall not exceed \$340,380. The amount billed to City for Additional Services shall not exceed the sum of \$34,038. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$374,418, subject to budget appropriations.

#### 2024 Annual Street Pavement Maintenance and Rehabilitation Project ("2024 Project"):

The total payment to the Consultant for Basic Services, as stated in Exhibit A, shall not exceed \$267,060. The amount billed to City for Additional Services shall not exceed the sum of \$26,706. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$293,766, subject to budget appropriations.

The total combined amount for both the 2023 Project and the 2024 Project billed to City by Consultants for services under this Agreement shall not exceed \$668,184 subject to budget appropriations.

### **II. BASIC SERVICES**

The total payment to Consultant for all services necessary for performing all tasks, as stated in Exhibit A, shall be in proportion to services rendered and on a time and materials not-to-exceed basis.

The Consultant fee allocated to each task, as shown below, shall be the Consultant's full compensation for all services required by this Agreement, as directed by the City, and

no additional compensation shall be allowed. City may reallocate budget from tasks to other tasks or to or from additional services. The Consultant shall bill time and materials spent on a task under the appropriate task and will not be allowed to charge to future or inactive tasks unless approved in writing by City. The Consultant shall provide a summary of dates and hours charged per date by individual, and individual timesheets, if requested by City. The hours and amounts charged to each task shall be proportionate to the services rendered.

Tasks denoted as Optional Tasks, as stated in Exhibit A, require pre-approval in writing by CITY prior to performing any services under the task. Payment for any Optional Task is allowed only if written authorization is given by the City in advance of the work to be performed. Fees for Optional Tasks shall be considered as Basic Services.

The total amount of all the tasks is a not-to-exceed amount. Figures in the following tables include all subconsultant costs, reimbursable expenses, and administrative markups. The following table is a summary of the tasks based upon the negotiated Cost Proposal submitted by CSG Consultants, Inc. on October, 11, 2022 and agreed by CITY and CONSULTANT, and incorporated into this Exhibit B herein by reference.

CONSULTANT shall invoice time and materials according to the tasks identified in the Cost Proposal. The time and materials for services performed for subtasks may vary above or below the fees identified on the Cost Proposal provided that the total services performed for subtasks remains within the fee established for the task.

2023 Project:

<b>Description</b>		<b>Amount</b>
Task 1	Project Management	\$ 22,670
Task 2	Preliminary Engineering and Evaluation	\$ 44,100
Task 3	Construction Documents	\$ 219,540
Task 4	Bid Support Assistance	\$ 2,840
Task 5	Construction Support	\$ 31,110
Task 6	Record Drawings and Project Closeout	\$ 5,120
<b>Subtotal</b>		<b>\$ 325,380</b>
Task 7	Optional Tasks	\$ 15,000
<b>Total</b>		<b>\$ 340,380</b>

For the 2023 Project, in no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed three hundred forty thousand three hundred eighty dollars (\$340,380), subject to budget appropriations.

2024 Project:

<b>Description</b>		<b>Amount</b>
Task 1	Project Management	\$ 18,150
Task 2	Preliminary Engineering and Evaluation	\$ 33,320
Task 3	Construction Documents	\$ 162,390
Task 4	Bid Support Assistance	\$ 2,840
Task 5	Construction Support	\$ 29,880
Task 6	Record Drawings and Project Closeout	\$ 5,480
<b>Subtotal</b>		<b>\$ 252,060</b>
Task 7	Optional Tasks	\$ 15,000
<b>Total</b>		<b>\$ 267,060</b>

For the 2024 Project, in no event shall the amount billed to City by Consultant for Basic Services under this Agreement exceed two hundred sixty seven thousand sixty dollars (\$267,060), subject to budget appropriations.

In no event shall the total combined amount for both the 2023 Project and the 2024 Project billed to City by Consultant for Basic Services under this Agreement exceed six hundred seven thousand four hundred forty dollars (\$607,440), subject to budget appropriations.

### III. REIMBURSABLE EXPENSES

Reimbursable Expenses shall not be billed by the Consultant under this Agreement. Full compensation for all expenses shall be considered as included in the hourly rates billed.

The following are samples of items that are considered as included as part of the hourly rates paid for Basic Services and are not considered for additional compensation:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance), including meals and gas

- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

**IV. ADDITIONAL SERVICES**

Additional Services consists of services not included in the Scope of Services outlined within this Agreement. Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated price. Monthly billing for Additional Services shall be consistent with the terms set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by City in advance of the work to be performed. Additional Services shall not exceed the following amounts:

2023 Project:	\$34,038
2023 Project:	\$26,706

In no event shall the total combined amount for Additional Services for both the 2023 Project and the 2024 Project billed to City by Consultant for under this Agreement exceed sixty thousand seven hundred forty-four dollars (\$60,744), subject to budget appropriations. Additional Services that exceed the above amounts will require a written amendment to the Agreement.

**V. RATE SCHEDULE**

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Rates by classification are listed below and shall be fixed for the duration of the 2023 Project. Any classifications added, or staff members changing classifications throughout the course of services, shall be approved in writing by City.

Rates for the 2024 Project may be adjusted as described herein. Rates may be adjusted no more than once and shall occur no sooner than the written authorization to proceed with the 2024 Project. CONSULTANT shall propose any adjusted rates in writing for CITY’s consideration and acceptance in writing. Adjusted rates shall be no more than the percentage of difference between the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-Hayward, CA, area between the effective date of this Agreement and the CPI as may be available and nearest to and in advance of the month in which the adjustment is contemplated and shall be capped at a maximum of 5% for each classification. Following the adjustment, rates shall be fixed for the remaining duration of the 2024 Project.

Consultant understands and agrees that adjustments to rates does not cause an adjustment in the fees established for tasks or adjustment to the maximum compensation under this agreement. Consultant shall be required to provide the full services as described in Attachment A in accordance with the Fees established in this Attachment B, regardless of adjustments to rates.

CSG Consultants, Inc:

<b>Classification</b>	<b>Hourly Rate</b>
Project Manager/Principal	\$ 240
Senior Engineer	\$ 205
Associate Engineer	\$ 180
Assistant Engineer	\$ 150

## **EXHIBIT C INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

### **A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

### **B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at

least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution

from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required



be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

*EXHIBIT C-06 Professional Service Contract*

## **EXHIBIT D LABOR COMPLIANCE ADDENDUM**

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements.

### **A. Prevailing Wage Requirements**

1. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the City Clerk's office, which shall be available to any interested party upon request. Contractor is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractors and subcontractors are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at [www.dir.ca.gov](http://www.dir.ca.gov).
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Contractor agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified

payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.

6. In addition to submitting the certified payrolls and related documentation to City, Contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors **MUST** be a registered “public works contractor” with the DIR **AT THE TIME OF BID**. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All contractors/subcontractors and related construction services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a “public works contractor”. Those you fail to register and maintain their status as a public works contractor shall not be permitted to perform work on the project.
10. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney’s fee relating to such fine.
11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is

practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

### C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Contractor until Contractor has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.