

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
CSG CONSULTANTS, INC.  
FOR THE ENGINEERING DESIGN SERVICES OF  
UNCONTROLLED CROSSWALK IMPROVEMENTS**

**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 on \_\_\_\_\_ and terminate on December 31, 2020.

## **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 **one hundred sixty thousand two hundred fifty dollars and zero cents (\$160,250.00)**, 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**

- A. 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.
- B. To the extent permitted by law, Contractor agrees to protect, defend, indemnify, and hold harmless City, its City Council, commissions, officers, employees, volunteers and agents from and against any employment-related claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such employment-related claim or other action, and whether sounding in law, contract, tort, or equity, brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought, and shall expressly include passive or active negligence by City. However, the obligation to indemnify set forth in this paragraph shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

#### **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: Public Works Department – Craig Mobeck  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [CMobeck@santaclaraca.gov](mailto:CMobeck@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

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

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: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
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: Oct 18, 2018  
By (Signature): [Signature]  
Name: Cyrus Kianpour  
Title: President  
Principal Place of  
Business Address: 550 Pilgrim Drive, Foster City, CA 94404  
Email Address: [cyrus@csgengr.com](mailto:cyrus@csgengr.com)  
Telephone: (650) 522-2500  
Fax: (650) 522-2599  
"CONTRACTOR"



## **EXHIBIT A**

### **SCOPE OF SERVICES**

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

#### **I. GENERAL**

CONSULTANT shall be expected to provide complete, professional, high-quality services and products; to provide consultation and work with CITY personnel and others who are involved with the work; and to provide the expertise, guidance, advice, and assistance in accomplishing the work.

CITY discourages changes to the Scope of Services and Schedule of Fees after contract execution. However, results from Task 1: DATA COLLECTION AND CROSSWALK EVALUATION may result in a change to the Scope of Work. Changes to the Scope of Work and Schedule of Fees will be addressed in writing by an Additional Services Authorization to either add or delete Scope and Fee, based upon the findings of Task 1.

#### **II. BACKGROUND**

The purpose of the project is to perform a study of marked uncontrolled crosswalks, identify appropriate safety improvements at the crosswalks, and develop plans, specifications and construction estimates for the proposed improvements.

#### **III. DESCRIPTION OF SERVICES**

The requested engineering design services involve study of roadways and marked crosswalks, identify appropriate improvements and treatments for these uncontrolled crosswalks to improve pedestrian safety, and prepare construction documents (plans, specifications and estimates) for public works construction bidding. The crosswalk locations are listed below.

1. Crosswalk across Benton Street east of Sonoma Place
2. Crosswalk across Pruneridge Avenue east of Redwood Avenue
3. Crosswalk across Homestead Avenue at University Street west of Monastery Way.
4. Crosswalk across Homestead Road east of Vaider Court
5. Across Washington Street north of Manchester Drive
6. Across Washington Street south of Linden Drive
7. Bellomy Street west of Alviso Street

CONSULTANT shall perform services as described in the Basic Scope of Services.

#### **IV. RESPONSIBILITIES OF CITY**

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

- Record drawings (as-available)
- 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).
- Collision data (as needed)

#### **V. BASIC SCOPE OF SERVICES**

The Basic Scope of Services includes all professional services required to perform a study of the roadways and marked crosswalks, identify appropriate improvements and treatments for these uncontrolled crosswalks to improve pedestrian safety, and prepare construction documents (plans, specifications and estimates) for public works construction bidding. The recommended improvements may include but not limited to removal of crosswalks, installation of pedestrian refuge islands, RRFBs, flashing beacons, in-roadway warning lights, HAWK signals, traffic signal, all-way stop control, signing or striping improvements or a finding that no improvements are required.

The evaluation should include and recommend ADA improvements as required at the study locations.

#### **TASK 1: DATA COLLECTION AND CROSSWALK EVALUATION**

CONSULTANT shall:

- 1.1 Attend a kick-off meeting with City staff to review the Project's goals, scope, costs and schedule.
- 1.2 CONSULTANT shall collect vehicle, pedestrian and bicycle volumes crossing through each crosswalk, samples of vehicle travel speed. CONSULTANT shall observe driver compliance with pedestrian right-of-way at the crosswalk study locations. CONSULTANT shall analyze collision records for the relevant roadway segments and crosswalk study locations, analyze the data collected and make recommendations on improving crosswalk safety per National Cooperative Highway Research Program (NCHRP) Report 562, Manual of Uniform Traffic Control Devices (MUTCD) and other applicable best practices of improving pedestrian safety at uncontrolled crosswalks.
- 1.3 CONSULTANT shall summarize the data collection, analysis, conclusions and recommendations in a Crosswalks Evaluation Memo.

- 1.4 CONSULTANT shall coordinate, prepare meeting agenda/presentation materials/minutes, and attend upto three meetings with representatives from Central Park Elementary School, Washington Open Elementary School, Buscher Middle School and Wilson High School.

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Deliverables:

- A. Crosswalks Evaluation Memo
- B. Meeting agendas, preparation materials, and meeting minutes for each project meeting.
- C. Monthly progress reports and invoices (1 hard copy).

**TASK 2: PRELIMINARY (30%) DESIGN**

- 2.1 CONSULTANT shall collect and review relevant reports, record drawings, data, maps and other documents relevant to defining the limits and scope of design for the project. CONSULTANT shall also take the lead on confirming the location and alignment of existing underground utilities with the appropriate utility companies and provide an allowance within their proposal for coordinating any relocation of utilities should it become necessary.

The City will provide utility maps for storm drain, sanitary sewer, water, and electric utility. Other utility information not mentioned will need to be coordinated with outside agencies.

- 2.2 CONSULTANT shall perform any needed topographic surveys. Topographic surveys are required for all intersections from public right-of-way/property lines on one side of the street to public right-of-way lines on the other side of the street. Detailed topographic survey will be required at locations with crosswalks and locations where new curb ramps are installed to meet ADA and City standards.
- 2.3 CONSULTANT shall work with Silicon Valley Power (SVP) to identify and show locations of electric service for the new flashing beacons or other powered devices if needed.
- 2.4 Prepare the 30% Construction Documents consisting of the Plans, Specifications, Engineer's Cost Estimate.
- 2.5 The 30% Plans shall include, but not limited to, sketches showing new and existing items to be used or impacted by the Project; existing traffic striping, pavement markings, messages; and pedestrian warning system; existing improvements such as curb, gutters, sidewalks, curb ramps etc.; proposed civil construction required to upgrade existing curb ramps to ADA compliance or installation of new ADA curb ramps; flow line elevations along the new

- ADA curb ramps; and all existing utilities such as water mains/laterals, meters/valves and fire hydrants, electric lines/vaults, poles and pull boxes, and sanitary sewer(SS) and storm drain (SD) systems.
- 2.6 Develop quantities and Engineer's Cost Estimate based on current bidding trend and economy.
  - 2.7 Meet with City staff to review City comments on 30% design, and gain concurrence on how the documents will be revised as appropriate to incorporate City comments into the 70% plans.
  - 2.8 Follow the guidelines of the most current City's Design Criteria, Standard Details, and the City Standard Specifications (Divisions 0 & 1). The Plans shall be prepared on a 24"x36" D-size drawings utilizing the City standard format and drawing reference number.
  - 2.9 Prepare Project schedule.
  - 2.10 Deliverables:
    - A. 30% documents
    - B. Project schedule

### **TASK 3: PREPARE 70% DOCUMENTS**

CONSULTANT shall:

- 3.1 Prepare the 70% Construction Documents consisting of the Plans, Specifications, Engineer's Cost Estimate, and all other required documents.
- 3.2 The 70% Plans submittal shall include plan sheets showing property lines, existing utilities, proposed utilities, project improvements, and any other project features and requirements. 70% Technical Specifications and Engineer's Cost Estimate shall be included with this submittal.
- 3.3 Deliverables:
  - A. Response to 50% design review comments.
  - B. 70% Documents
  - C. Project Schedule

### **TASK 4: PREPARE 100% DOCUMENTS**

CONSULTANT shall:

- 4.1 Revise 70% Documents per City's review comments.
- 4.2 Prepare a written response to City's review comments.

- 4.3 Prepare 100% Documents. Comments received from the 70% submittal shall be incorporated. Unfinished work on Plans and Specifications shall be limited to the minor completion of details and to changes or corrections required by the City, and resulting from checking and quality assurance reviews.
- 4.4 Deliverables:
- A. Response to 70% PS&E design submittal comments.
  - B. 100% Documents

## **TASK 5: PREPARE FINAL BID DOCUMENTS**

CONSULTANT shall:

- 5.1 Revise 100% Documents per City's review comments.
- 5.2 Finalize Plans, Specifications, Engineer's Cost Estimate and quantity estimate.
- 5.3 Complete and submit bid-ready contract documents. The final submittal shall consist of final Plans and Specifications stamped, signed, and dated by the CONSULTANT responsible for their preparation and ready for City staff approval signatures. All outstanding comments from previous submittals shall be incorporated into this final submittal of Bid Documents.
- 5.4 Updated Project Construction Schedule, if impacted by review comments.
- 5.5 Deliverables:
- A. Stamped, signed, and dated Final Plans for City signature (two originals stamped and signed). The Final Plans shall be reproducible on AutoCAD.
  - B. Stamped, signed, and dated Final Specifications and supporting documents meeting the City requirements for bidding purposes (two originals)
  - C. Final Construction Engineer's Cost Estimate
  - D. Final Project Schedule
  - E. Electronic files of the Final Plans and Specifications, Engineer's Cost Estimate and Project Schedule shall be copied on CD(s) and submitted to City (in AutoCAD, MS Word/Excel/Project, and PDF formats).
  - F. List of potential bidders in Word format and shall include the company's name, email address, contact number, and address of business.

## **TASK 6: BIDDING SUPPORT SERVICES**

CONSULTANT shall:

- 6.1 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 planholders list and log of bidders questions and responses.

- 6.2 Attend Pre-Bid Meeting, if required by Project. CONSULTANT shall coordinate with the City to prepare agenda and meeting minutes.
- 6.3 The City will take the lead to prepare addenda to Construction Documents; however, the City may seek assistance from the CONSULTANT to prepare the addenda for distribution.
- 6.4 The City will take the lead to evaluate bids and prepare recommendation letter to award the contract; however, the City may seek assistance from the CONSULTANT.
- 6.5 Deliverables:
  - A. Written clarifications and response to prospective bidders.
  - B. Addenda to the Bid Documents, if needed.
  - C. Written recommendation for award of contract, if needed.

## **TASK 7: CONSTRUCTION ADMINISTRATION**

CONSULTANT shall:

- 7.1 Attend Pre-Construction Meeting upon request by City and respond to pre-construction meeting questions.
- 7.2 Review and approve shop drawings and submittals. Assuming three rounds of reviews and comments.
- 7.3 Review Contractor's request for information (RFI's) and furnish additional drawings and/or specifications for supplementing, clarifying, and/or correcting purposes.
- 7.4 Attend meetings (assume 2) and site visits (assume 2) when necessary as determined and requested by City. Meetings and site visits shall be coordinated whenever possible.
- 7.5 Assist the City with the review of construction, and other activities, when requested.
- 7.6 Prepare, review, and recommend approval of design related change orders, as required.
- 7.7 Deliverables:
  - A. Shop drawing and submittal comments.
  - B. RFI responses.
  - C. Site visit memoranda, as required.

- D. Drawings and specifications for supplementing, clarifying, and/or correcting the contract documents and for design related change orders.
- E. Change orders, as required.

## **TASK 8: RECORD DRAWINGS AND PROJECT CLOSE-OUT**

CONSULTANT shall:

- 8.1 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.
- 8.2 At Final Completion of the Project, provide the City with one set of reproducible Record Drawings (24"x36") 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.
- 8.3 Provide a CD with a complete set of the Record Drawings (24"x36") and all X-ref files "bound," including other associated fonts, plot style files on AutoCAD 2009 or later AutoCAD version, including electronic copies in PDF format. CONSULTANT may, at its own expense, prepare and retain a copy of each drawing for its permanent file.
- 8.4 Deliverables:
  - A. Final Punch List input and written recommendations for substantial and/or final completion.
  - B. Record Drawings (24"x36") on a CD using AutoCAD 2009 or later AutoCAD version, and one set electronic copy in PDF format.
  - C. CD containing PDF copies of all submittals received during construction phase.

## **TASK 9: ADDITIONAL TOPOGRAPHIC SURVEY AND BULB-OUT DESIGN (OPTIONAL TASK)**

If authorized by the CITY in writing, CONSULTANT shall:

- 9.1 Perform bulb-out design and storm drain modification to shorten the distance at the crosswalk location upon the City request.
- 9.2 Perform additional topographic survey required for grading and drainage of the bulb-out.

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## EXHIBIT B SCHEDULE OF FEES

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. City will pay Contractor within thirty (30) days of City's receipt of an approved invoice.

### I. GENERAL PAYMENT

The total payment to the Consultant for Basic Services, as stated in **Exhibit A, Scope of Services**, shall not exceed \$145,500, plus any authorized Reimbursable Expenses. Reimbursable Expenses shall not exceed \$200.00. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$14,550.00. In no event shall the amount billed to City by Consultant for services under this Agreement exceed \$160,250.00.

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 completed 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.

### II. BASIC SERVICES

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A, Scope of Services**, shall be in proportion to services rendered and on a time and materials basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. Consultant may reallocate remaining budget from completed Task to other Tasks. The total amount of all the Tasks is a not-to-exceed amount.

Task 9 is an Optional Task, as stated in Exhibit A and will require pre-approval in writing by CITY prior to performing any services under the task.

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The amount of each Task and the total amount of all the Tasks are as itemized below:

<b>Description</b>	<b>Cost</b>
Task 1.0: Project Management and Data Collection and Crosswalk Evaluation	\$ 24,530.00
Task 2.0: Preliminary Design(30% Level)	\$ 16,650.00
Task 3.0: Prepare 70% Documents	\$ 48,620.00
Task 4.0: Prepare 100% Documents	\$ 12,480.00
Task 5.0: Prepare Final Bid Documents	\$ 5,245.00
Task 6.0: Bidding Support Services	\$ 5,160.00
Task 7.0: Construction Administration	\$ 7,865.00
Task 8.0: Record Drawings and Project Close-Out	\$ 3,510.00
Task 9.0 Bulb-out Design and Topographic Survey(Optional)	\$ 21,440.00
<b>TOTAL BASIC SERVICES (not-to-exceed)</b>	<b>\$ 145,500.00</b>

In no event shall the billed amount to City by Consultant for Basic Services under this Agreement exceed **one hundred forty five thousand five hundred dollars and zero cents (\$145,500.00)**, subject to budget appropriations.

### **III. REIMBURSABLE EXPENSES**

Reimbursable Expenses shall not exceed **\$200.00** without prior written approval by the City. The amount allocated for Reimbursable Expenses shall be the Consultant's full compensation for all Reimbursable Expenses required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services. The following is a sample of items that are included as part of the Basic Services and are not considered Reimbursable Expenses:

- Basic Office Expenses such as overhead, paper, pens, pencils, ink cartridges
- Insurance Expenses, Applicable Taxes, Computer Time
- Travel Expenses (local and long distance)
- Faxes
- Local and Long Distance Telephone Expenses (land lines and cellular phones)
- US Mail
- Paper Cost
- Copying Cost
- Plotting Cost

Reimbursable Cost may include:

- Outside Reproduction Cost for Plans and Reports as specified in Section III, BASIC SCOPE OF SERVICES, of Exhibit A.
- Presentation Materials, when requested by City
- Overnight Delivery Services, when requested by City
- Courier Services, when requested by City

All reimbursable costs, other than those listed above, shall be approved in advance by City.

#### **IV. ADDITIONAL SERVICES**

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved 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 term set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed **\$14,550.00**, subject to budget appropriations.

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## V. RATE SCHEDULE

### Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual workhours directly chargeable to the Project. Current rates by classification are listed below:

### Firm/Classification

#### **CSG Consultants, Inc. – Design Consultant, Project Management**

<b>Staff</b>	<b>Role</b>	<b>Hourly Rate</b>
Hatem Ahmed	Principal-In-Charge	\$230
Michael Fisher	Project Manager	\$210
Sophie Truong	Principal Engineer	\$210
Nourdin Khayata	Resident Engineer	\$230
Stephen Tovmassian	Senior Engineer	\$185
Tommy Cho	Senior Engineer	\$185
Amir Abdollahi	Assistant Engineer	\$140
Erick Bi	Engineering Designer	\$130

#### **W-Trans – Traffic Engineering/Signal Design**

<b>Staff</b>	<b>Role</b>	<b>Hourly Rate</b>
Dalene Whitlock	Principal	\$275
Mark Spencer	Principal	\$245
Steve Fitzimmons	Principal	\$210
Kevin Carstens and Allison Jaromin	Assistant Engineers	\$115
Hannah Yung-Boxdell	Administrative	\$95

#### **Quiet River Land Services – Surveyors**

<b>Staff</b>	<b>Role</b>	<b>Hourly Rate</b>
Kevin McGuire	Project Manager	\$175
Melanie Schwartz	Senior Survey Technician	\$135
Two-Person Field Crew		\$275
Administration Staff		\$67

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant 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 Consultant'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 Consultant; 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 Consultant 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.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

**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 Consultant 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 Consultant. 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 Consultant'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 Consultant 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 Consultant'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

Consultant and City agree as follows:

1. Consultant 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 Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant 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. Consultant 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. Consultant 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 Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

## G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

## H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications



and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara – Public Works Department

P.O. Box 100085 – S2                      or                      1 Ebix Way  
Duluth, GA 30096    John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number:                      770-325-0409

Email address:                      ctsantaclara@ebix.com

#### I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

## **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.