CITY OF MILPITAS  
DESIGN SERVICES AGREEMENT  

1. PARTIES AND DATE.  

This Agreement is made and entered into as June 20, 2017 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and Riggs Cardosa and Associates, Inc., a California Corporation with its principal place of business at 865 The Alameda, San Jose, CA 95126 (hereinafter referred to as "Designer"). City and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.  

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the City on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. City desires to engage Designer to render such services for the Lower Penitentia Creek Pedestrian Bridge ("Project") as set forth in this Agreement.

3. TERMS  

3.1 Employment of Designer.  

3.1.1 Scope of Services. Designer promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from June 21, 2017 to December 31, 2020, unless earlier terminated as provided herein. Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.
3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of City. Designer hereby designates Mahvash M. Harms, S.E. (License No. S2639) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that City and Designer cannot agree as to the substitution of a new Project Designer, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the City. In the event that City and Designer cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the City. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Sarah E. Moyle, P.E., License No. C64531.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Designer shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved.
by the City in writing. Unless changes are approved in writing by the City, Designer’s agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer’s consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer’s sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Designer’s failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold City, its officials, officers, employees and agents free
and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafixing ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and City.

3.5.3 Americans with Disabilities Act. Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the City, any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.
(b) **Standard of Care.** Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

(c) **Liability for Non-compliance.**

(i) **Indemnity:** Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(ii) **Defense:** City reserves the right to defend any enforcement action or civil action brought against the City for Designer’s failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(iii) **Damages:** City may seek damages from Designer for delay in completing the Services caused by Designer’s failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 **Independent Contractor.**

3.6.1 **Control and Payment of Subordinates.** City retains Designer on an independent contractor basis and Designer is not an employee of City. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City’s employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of City, and shall at all times be under Designer’s exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.7 **Schedule of Services.**

3.7.1 **Designer Services.** Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.
3.7.2 **Timely Performance Standard.** Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Designer agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 **Performance Schedule.** Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Designer cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of City. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 **Excusable Delays.** Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the City nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 **Request for Excusable Delay Credit.** The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 **Additional Designer Services.**

3.8.1 **Request for Services.** At City's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in
Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Designer as to the compensation to be paid for such services. City shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget
limitation information, the City shall provide the Designer with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, City shall furnish Designer with, or direct Designer to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Greg Chung, Interim Director of Engineering/City Engineer, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. City shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of two hundred forty nine thousand, six hundred fifty Dollars ($249,650) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.
3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit “C” attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit “C” attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are included in the Compensation for the Services and Additional Services. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project.

3.10.4 Payment to Designer. Designer’s compensation and reimbursable expenses shall be paid by City to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit “B” and the compensation rates indicated in Exhibit “C” attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit “B” attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.
3.10.5 Withholding Payment to Designer. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City’s right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages so determined by the City, incurred by the City for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from parties not within the Designer’s reasonable control.

3.10.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Since the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer’s principal place of business and at the Project site. Designer shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws.

3.10.7 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all sub consultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any sub consultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer's sole responsibility to comply with all applicable registration and labor compliance requirements.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination: Designer’s Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment
or termination, Designer shall be paid for Services and reimbursable expenses rendered up to
the date of such suspension, abandonment or termination, pursuant to the schedule of payments
provided for in this Agreement, less any claims against or damages suffered by City as a result
of the default, if any, by Designer. Designer hereby expressly waives any and all claims for
damages or compensation arising under this Agreement, except as set forth herein, in the event
of such suspension, abandonment or termination. Designer may terminate this Agreement for
substantial breach of performance by the City such as failure to make payment to Designer as
provided in this Agreement.

3.12.2 City’s Suspension of Work. If Designer’s Services are suspended by City,
City may require Designer to resume such Services within ninety (90) days after written notice
from City. When the Project is resumed, the Total Compensation and schedule of Services shall
be equitably adjusted upon mutual agreement of the City and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonment or
termination, Designer shall provide to City all preliminary studies, sketches, working drawings,
specifications, computations, and all other Project Documents, as defined below, to which City
would have been entitled at the completion of Designer’s Services under this Agreement. Upon
payment of the amount required to be paid to Designer pursuant to the termination provisions of
this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such
Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall
make such documents available to City upon request and without additional compensation other
than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated
in whole or in part as provided herein, City may procure, upon such terms and in such manner as
it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible
transparencies of working drawings and master plans, preliminary sketches, design presentation
drawings, structural computations, estimates and any other documents prepared pursuant to this
Agreement, including, but not limited to, any other works of authorship fixed in any tangible
medium of expression such as writings, physical drawings and data magnetically or otherwise
recorded on computer diskettes (hereinafter referred to as the “Project Documents”) shall be and
remain the property of City. Although the official copyright in all Project Documents shall remain
with the Designer or other applicable subcontractors or consultants, the Project Documents shall
be the property of City whether or not the work for which they were made is executed or
completed. Within thirty (30) calendar days following completion of the Project, Designer shall
provide to City copies of all Project Documents required by City. In addition, Designer shall retain
copies of all Project Documents on file for a minimum of fifteen (15) years following completion of
the Project, and shall make copies available to City upon the payment of reasonable duplication
costs. Before destroying the Project Documents following this retention period, Designer shall
make a reasonable effort to notify City and provide City with the opportunity to obtain the
documents.

3.13.2 Right to Use. Designer grants to City the right to use and reuse all or part
of the Project Documents, at City’s sole discretion and with no additional compensation to
Designer, for the following purposes:
(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Designer shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.
3.14 Indemnification.

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Designer shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Designer's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer.

3.14.2 Additional Indemnity Obligations. To the fullest extent permitted by law, Designer shall defend, with counsel of City's choosing and at Designer's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.14.1 that may be brought or instituted against City, or its directors, officials, officers, employees, volunteers and agents. Designer shall pay and satisfy any judgment, award or decree that may be rendered against City, or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Designer shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Designer shall reimburse City, and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.15 Insurance. Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Designer shall not allow any sub consultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the sub consultant has secured all insurance required therein.

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.
Designer shall cooperate and consult with City in the use and selection of manufactured items on the Project including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18  Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for design services between City and the designer chosen therefor by City.

3.19  Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20  Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21  Asbestos Certification.

Designer shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22  No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23  Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Santa Clara County.
3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.27 Safety.

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Designer shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Designer shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Designer's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY: CONSULTANT:
City of Milpitas Biggs Cardosa Associates, Inc.
455 E. Calaveras Boulevard 865 The Alameda
Milpitas, California 95035 San Jose, CA 95126
Attn: Greg Chung, Engineering Attn: Mahvash Harms (408) 296-5515

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party
at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City’s Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of City’s minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.
3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS  
Approved By:

__________________________
Steve Pangelinan
Acting City Manager

__________________________
Date

Approved As To Form:

__________________________
Christopher J. Diaz
City Attorney

Biggs Cardosa & Associates, Inc.

__________________________
Signature

__________________________
Name

__________________________
Title

__________________________
Date
EXHIBIT “A”

DESIGNER’S SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Designer agrees to perform all the necessary professional design, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: [INSERT IF APPLICABLE] [COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.]

1.3 Additional Services. Designer shall perform the following Additional Services for the Project: [INSERT ADDITIONAL SERVICES OR “N/A” IF NOT APPLICABLE]

1.4 Communication with City. Designer shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor’s warranty period. Designer shall take direction only from the City’s Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Designer will be ‘fully aware of the duties and responsibilities of the construction manager. The Designer shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Designer shall request clarification from the City in writing if the Designer should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Designer shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially
impact the Project budget and timeline, including the City's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Designer to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Designer shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Designer shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Designer shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed design concept of the buildings ("Schematic Plans"). Designer shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All design drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Designer shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Designer's Preliminary Project Budget"). The purpose of the Designer's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget. Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.
4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Designer, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Designer shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Designer's Updated Project Budget").

4.4 Timetable. Designer shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Designer shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Designer shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Designer shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following:
(1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Designer will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Designer which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Designer and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Designer's professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of City. The parties agree that Designer, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent designer or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Designer shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Designer's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Designer that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer's fees. Should it become evident that the total construction cost will exceed the specified sum, Designer shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Designer, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Designer shall provide such documents as may be required by any federal, state, regional or local
agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Designer shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City’s legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the “Construction Documents”), Designer shall provide City with its final estimate of probable construction cost (“Designer’s Final Estimate”). As discussed herein, including in Section 7.3, it shall be the Designer’s duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Designer with specific written approval of the Construction Documents and Designer’s Final Estimate, Designer shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Designer shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Designer’s Final Estimate by more than five percent (5%), City may request Designer to amend, at Designer’s sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer’s Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Designer’s Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:
8.1 **Observation.** The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Designer.

8.2 **General Administration.** Designer shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 **Pre-Construction Meeting.** Designer shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested parties.

8.4 **Site Visits of Contractor’s Work.** Designer shall conduct site visits to observe each contractors’ work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City’s sole discretion, but in no event less than weekly.

8.5 **Site Visits of Inspector’s Work.** Designer shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Designer and City. Designer shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 **Coordination of Designer’s Consultants.** Designer shall cause all architects, engineers and other consultants, as may be hired by Designer or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 **Reports.** Designer shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 **Construction Meetings; Minutes.** Designer shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City’s sole discretion, but no less than weekly.

8.9 **Written Reports.** Designer shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 **Written Records.** Designer shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 **Material and Test Reports.** Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.
8.12 Review and Response to Submissions. Designer shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Designer’s review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Designer shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the City and contractor(s) of such rejections. Designer shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Designer shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City’s final written approval of such substitutions. Designer’s consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Designer shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Designer shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Designer shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Designer shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Designer shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Designer’s approval, or submit them to the City with recommendations for revision or denial if necessary. Designer shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Designer may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City’s Representative is first secured.

8.17 Applications for Payment. Designer shall examine, verify and approve contractor’s applications for payment, and shall issue certificates for payment in amounts approved by the City’s inspector.

8.18 Final Color and Product Selection. Designer shall coordinate final color and product selection with City’s original design concept.

8.19 Substantial Completion. Designer shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Designer shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Designer shall notify contractor in
writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify City of all Punch List Items.

8.21 Warranties. Designer shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners’ manuals, instruction books, diagrams, record “as built” drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Designer shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Designer shall participate in any further inspections of the Project necessary to issue Designer’s Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Designer shall cause all other architects, engineers and other consultants, as may be hired by Designer, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Designer shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an “as-built” set of Final Working Drawings and Specifications (“As-Built Drawings and Specifications”). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Designer shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Designer by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Designer with specific written approval of the As-Built Drawings and Specifications, Designer shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Designer’s final payment, Designer shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Designer’s Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:
10.1 Advice. Designer shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.
EXHIBIT “B”
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

The Designer and City shall use the City’s Preliminary Construction Budget to establish an estimate of the Designer’s Total Compensation based upon the following Fee Schedule:

<table>
<thead>
<tr>
<th>CONSTRUCTION COSTS</th>
<th>% RATE</th>
<th>FEE (100% OR FRACTION THEREOF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>first $500,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
<tr>
<td>next $500,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
<tr>
<td>next $1,000,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
<tr>
<td>next $4,000,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
<tr>
<td>next $4,000,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
<tr>
<td>excess of $10,000,000</td>
<td>______%</td>
<td>____________________________</td>
</tr>
</tbody>
</table>

The estimated Total Compensation shall be inserted in Section 3.10.1 of the Agreement. For periodic payment purposes, this amount may be adjusted upon mutual agreement of the City and Designer according to the Designer’s Preliminary Project Budget, the Designer’s Updated Project Budget and the Designer’s Final Estimate.

The actual Total Compensation will be determined based on the actual construction costs for the Project. The term “Actual Construction Costs” shall be defined as: (1) the sum of all of the contracts between the City and the contractors who will actually construct the Project and for whose work Designer or its consultants prepared Final Working Drawings and Specifications acceptable to the City; and (2) all authorized additive change orders for such contracts, so long as any such additive change orders were not made necessary by the negligent or willful acts or omissions of the Designer or its consultants; and (3) general conditions and all other construction management fees for CM/multiple prime contracts, if any. The Actual Construction Costs shall not include the following: (1) compensation paid to the Designer, the Designer’s consultants or other consultants hired by the City; (2) the costs of land or rights-of-way; (3) the costs of furnishings, equipment or other articles furnished by the City for the Project; (4) testing and inspection fees; (5) reimbursable costs as outlined in this Agreement or any other agreement for the Project; and (6) other costs which are the responsibility of the City, including those provided for in Section 3.9 of the Agreement.
2. **PHASING/FUNDING SCHEDULE.**

   Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Planning Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Schematic Plan Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Design Development Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Final Working Drawings &amp; Specifications Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Construction Contract Documents Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Bid Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Construction Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>As-Built Drawings Phase:</td>
<td>_____</td>
</tr>
<tr>
<td>Warranty Period Phase:</td>
<td>_____</td>
</tr>
</tbody>
</table>
EXHIBIT “C”

COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

BIGGS CARDOSA ASSOCIATES HOURLY COMPENSATION RATES FOR BRIDGE ENGINEERING SERVICES:

- Principal: $216.00 - $278.00
- Associate: $192.00
- Engineering Manager: $166.00
- Project Administrator: $136.00
- Senior Engineer: $150.00
- Project Engineer: $135.00
- Staff Engineer: $122.00
- Assistant Engineer: $112.00
- Junior Engineer: $106.00
- Senior Computer Drafter: $122.00
- Computer Drafter: $106.00
- Junior Computer Drafter: $95.00
- Secretarial Services: $88.00

Charge Rates Applicable October 1, 2016 Thru September 30, 2017

BIGGS CARDOSA ASSOCIATES HOURLY COMPENSATION RATES FOR BRIDGE INSPECTION SERVICES:

- Construction Manager: $200.00/hr
- Senior Structure Representative: $176.00/hr
- Structure Representative: $156.00/hr
- Senior Bridge Inspector: $156.00/hr
- Bridge Inspector Level IV: $145.00/hr
- Bridge Inspector Level III: $132.00/hr
- Bridge Inspector Level II: $126.00/hr
- Bridge Inspector Level I: $120.00/hr

Basis of Charges
- Weekdays
- Over 8 hours & Saturdays: 1.5 x Basic Rate
- Sundays/Holiday & Over 8 hours on Saturday: 2 x Basic Rate

Charge Rates Applicable October 1, 2016 Thru September 30, 2017
2. **REIMBURSABLE EXPENSES.**

   Subconsultants                Cost Plus 10%
   Expenses                      Cost Plus 15%
   In-House CADD Plots
     Prints                        $0.30/ sq. ft.
     Plots                         $1.50/ sq. ft.
     Mylar Plots                  $3.00/ sq. ft.

3. **ADDITIONAL SERVICES.**

   Additional Services shall be computed at the actual hourly rates listed above.

4. **ADDITIONAL CONSULTANTS.**

   If City requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus 10%. Owner shall have the authority to review and approve the rates of any such consultants.
EXHIBIT “D”

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Designer’s Agreement.

Designer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Designer, its agents, representatives, employees or subcontractors.

Designer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Designer shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Designer’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

___ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:
Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of
if Designer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than
$1,000,000 per accident for bodily injury and property damage.

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto),
with limits no less than $5,000,000 per accident for bodily injury and property damage.

Garage keepers’ extra liability endorsement to extend coverage to all vehicles in the care,
custody and control of the Designer, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer’s Liability policy shall be endorsed to waive any right of subrogation as
respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Insurance appropriates to the Designer’s profession, with limit no less than $1,000,000
per occurrence or claim, $2,000,000 aggregate

(If Design/Build), with limits no less than $1,000,000 per occurrence or claim, and
$2,000,000 policy aggregate.

Insurance appropriates to the Designer’s profession, with limit no less than _______ per
occurrence or claim, ________ aggregate

Workers’ Compensation Insurance:

Insurance as required by the State of California, with Statutory Limits, and Employer’s
Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or
disease. (Not required if Designer provides written verification it has no employees)

The Designer makes the following certification, required by section 1861 of the
California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every
employer to be insured against liability for workers’ compensation or to undertake self-insurance
in accordance with the provisions of that code, and I will comply with such provisions before
commencing the performance of the work of this contract.

________________________________________
Designer Signature

Builder’s Risk (Course of Construction):

Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the
completed value of the project and no coinsurance penalty provisions.

Surety Bonds:
Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Designer’s Pollution Legal Liability:

Designer’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than $1,000,000 per occurrence or claim and $2,000,000 policy aggregate.

If the Designer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Designer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Designer or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Designer’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Designer’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.
Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Designer's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Designer’s insurance and shall not contribute with it.

Builder’s Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Designer may submit evidence of Builder’s Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City’s site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

**Designer hereby grants to City a waiver of any right to subrogation which any insurer of said Designer may acquire** against the City by virtue of the payment of any loss under such insurance. Designer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Designer, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Designer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such
deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Designer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Designer must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.
Subcontractors:

Designer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Designer shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Designer and City in the same manner and to the same extent as Designer is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Designer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Designer’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Designer’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
PROJECT DESCRIPTION

The City of Milpitas is working with a private developer to construct housing along Centre Pointe Drive. As part of this development the City is also working with the developer to provide a pedestrian bridge crossing over the Peninscina East Channel, from the Centre Pointe housing development to an adjacent park that the City is developing. The bridge will connect the residential housing and multi-use trail on the north side of the channel to the park and school planned for the south side of the channel.

It is expected that the proposed bridge will be located along the perimeter of the Centre Point B and C project, and will be approximately 60 to 65-feet long, supported on concrete abutments with cast-in-drilled-hole piles. The proposed access from the Centre Point development to the multi-use trail and pedestrian bridge would require that the existing trail on the north side of the channel be raised approximately 3.5 to 5-feet. Approach retaining walls on the channel side of the trail would be required for retention of this fill, and it is expected that they would be supported on cast-in-drilled-hole piles. At the southern landing of the proposed bridge, it is expected that any required fill could be graded into the park area and would not require retaining walls.

The Scope of Design Services provided below details the work required for the design and development of construction documents for the pedestrian bridge and trail approaches.

SCOPE OF DESIGN SERVICES

Biggs Cardosa Associates' approach for pedestrian bridge design work for the Centre Pointe Pedestrian Bridge is as follows:

Task 1: Project Management
Task 2: Preliminary Engineering
Task 3: Final Design
Task 4: Bidding Support Services
Task 5: Construction Support Services
Task 6: Special Inspection Services
Assumptions and Exclusions

TASK 1: PROJECT MANAGEMENT

Project Management includes the supervision and scheduling of project staff, review of work prepared by staff and subconsultants, project coordination, acting as the client liaison, and monitoring the project schedule and the budget. Also included in this Task is attendance at meetings with the staff of the City of Milpitas to receive input and discuss and review the project during its critical design periods.

1.1 PROJECT ADMINISTRATION:
Supervise, coordinate, and monitor design for conformance with Caltrans standards and policies. Prepare monthly progress reports and invoices. Employ and monitor subconsultants. Coordinate Consultant's work with the City's work. Close and archive the project records at the end of the project.

1.2 PROJECT INITIATION:
Upon receipt of Notice to Proceed, a project kick-off meeting will be held to finalize the project scope, the project approach, the goals and the schedule. Items to be addressed include a review of the key issues associated with the project, a description and clarification of the approach required to respond to these issues, and the verification of the project milestone dates. Items include, but are not limited to.
site layout, SCVWD concerns, storm water management, hydrology concerns, bridge approach conforms and bridge details. It is assumed that all pertinent City Departments will be present at the meeting, as well as SCVWD. Responses to all critical questions that affect bridge layout and design will be required prior to beginning 65% Design.

1.3 **DESIGN REVIEW AND COORDINATION MEETINGS:**
To facilitate comprehensive input from the City during the critical design periods, the Consultant's Project Manager and selected Team Members will attend up to 2 coordination meetings with the City staff members.

1.4 **DIRECT COSTS:**
Direct costs such as plotting and reproduction work, other than those required for the Consultant's in-house use, and delivery services and other expenses will be billed per the attached Charge Rate Schedule. The direct costs budget for the project is indicated on the attached fee sheet.

**Task 1 Deliverables:**
- Project Design Schedule
- Monthly Progress Reports

**TASK 2: PRELIMINARY ENGINEERING**

2.1 **DATA COLLECTION AND SITE VISIT**
Consultant will conduct a site visit and note field information relevant for bridge design.

2.2 **SUPPLEMENTAL / TOPO SURVEY (RIA)**
Consultant will provide supplemental ground survey and data reduction to augment and verify the existing topography survey previously prepared under a separate work order. Consultant will locate top of creek slopes, existing conforms, fence lines, existing landscape areas, and conforms at the proposed bridge location.

2.3 **GEOTECHNICAL INVESTIGATION (Engeo)**
The Consultant will provide a geotechnical exploration, soils analysis and foundation design recommendations for the proposed pedestrian bridge.

A. **Geotechnical Exploration:**
The Consultant will obtain Santa Clara Valley Water District (SCVWD) drilling and encroachment permits prior to performing our field exploration.

One boring will be drilled to a depth of approximately 50 feet, adjacent to the proposed southern abutment location, on the city park and school side of the bridge. Drilling operations will be observed and any subsurface conditions encountered will be logged. Soil samples will be taken at frequent intervals for visual classification and laboratory testing. Soil cuttings generated from the boring will be drummed and off-hauled. Resulting holes will be backfilled in accordance with Santa Clara Valley Water District (SCVWD) requirements.

Soil samples will be re-examined in the laboratory to verify field classifications and will be tested for moisture content, dry unit weight, Plasticity Index, gradation, strength, corrosion, and other physical properties as appropriate.

Based on the geological and geotechnical data gathered, a geotechnical exploration report will be prepared, to address the following:

- Suitability of the site for the proposed pedestrian bridge.
• Physical properties of the typical soils encountered.
• Assessment of geological/geotechnical hazards at the subject site, including compressible soils and liquefiable soils, as appropriate.
• Foundation recommendations for the bridge abutments.
• Caltrans ARS curves.
• L-pile input information and group effect considerations.
• Recommendations for wing wall design.
• Gracing and drainage recommendations.

B. **Design Consultation and Plan Review:**
Consultation on foundation design and soils issues will be provided throughout the design process, as well as response to comments and questions. Grading and improvement plans, as well as foundation plans and calculations will be reviewed for conformance with the geotechnical design recommendations.

2.4 **HYDRAULIC ANALYSIS** *(Schaaf & Wheeler)*
The Consultant will evaluate the potential hydraulic impact that might be caused by the construction of the proposed pedestrian bridge over the Penitencia East Channel near its confluence with Lower Penitencia Creek. Generally, the 100-year water surface profiles in and overflows from Lower Penitencia Creek and Penitencia East Channel will be evaluated to determine whether the proposed bridge construction (particularly the abutments) causes significant changes in either parameter. This work will include:

A. **Coordination with SCVWD:**
The evaluation will be coordinated with the design team and representatives from Santa Clara Valley Water District, which has jurisdiction over the potentially affected waterways. This coordination includes one meeting and one site visit.

B. **Hydraulic Modeling Evaluation:**
HEC-RAS and/or FLO-2D models completed under separate contract for the Silicon Valley Berryessa Extension will be used to evaluate the significance of changes in water surface elevations, average flow velocities, and channel overbanking caused by proposed bridge construction.

C. **Erosion Protection:**
Recommendation of design measures for erosion control at the bridge site if necessary.

D. **Technical Memorandum**
A technical memorandum documenting the findings will be provided.

2.5 **CONSTRUCTION STAGING AREA EXHIBIT** *(PJA)*
It is assumed that the City Park property will be available for construction staging. Consultant will develop a staging exhibit, based on the discussions and coordination noted in the tasks above.

2.6 **CDFW PERMIT** *(Zentner)*
Consultant will complete and process a California Department of Fish and Wildlife permit for construction of the bridge.
A. **Project Description:**
A survey of the site will be completed, and a description of the site and local ecology will be prepared by qualified biologists using the standard site description methodologies, for inclusion in the CDFW application.

B. **CDFW Permit Application:**
A draft application will be prepared for City and design team review, and will include the project description and recommendations for appropriate erosion control and revegetation measures. Upon coordination and incorporation of any changes, a final application will be prepared for City signature and submitted.

The CDFW application will be tracked and processed, and the City will be updated on the progress of the application. It is estimated that preparation of the application can begin once the 35% design is completed and approved, and completion of the application will take approximately four weeks. It is expected that CDFW approval would follow in approximately 45 – 60 days.

2.7 **35% DESIGN SUBMITTAL (BCA, RJA)**
The preliminary design phase is intended to allow the City, Water District, utility companies and other involved agencies to review and comment on the basic design concepts early in the design process. Plan development will be based on the bridge alignment, profile geometry and structure type approved by the City.

Preliminary calculations will be performed to estimate the size and depth of the bridge foundations, and plans will be developed to establish the fundamental elements of the design. The anticipated plans for this submittal will include preliminary plans for the bridge alignment, profile, and grading and conform improvements at each end of the bridge. Plans will also include a preliminary bridge general plan that shows the plan, elevation and typical section of the proposed bridge, including abutment locations and final span length.

A preliminary estimate of probable construction costs will be prepared based on the items and quantities of work shown in the preliminary plans and other anticipated improvements. The opinion will be based on current market unit costs, the magnitude of the quantities, our experience with similar local projects, Caltrans cost data and the engineer’s judgement.

**Task 2 Deliverables:**
- Updated Project Base Map
- Draft and Final Foundation Reports
- Foundation Review Letter
- Hydraulics Evaluation Technical Memorandum
- Construction Staging Area Exhibit
- Draft and Final CDFW Permit Applications
- 35% Plans and Opinion of Probable Construction Cost

**TASK 3: FINAL DESIGN**

3.1 **CONSTRUCTION DOCUMENTS (BCA and RJA)**
Based on the approved 35% Pedestrian Bridge Plans, the design team will prepare the Construction Documents package.

The scope and fee noted below for the Final Design are based on the assumption of a simple span structure approximately 65-feet long, with a 10-foot clear width prefabricated steel truss superstructure supported on concrete abutments and cast-in-drilled hole piles. It is also assumed that the bridge will
not carry any utilities, and that no utility relocation will be needed for the project. The prefabricated steel truss will be constructed of painted or weathering steel and will have a concrete deck for ease of maintenance.

The Construction Documents package for the pedestrian bridge will include specifications and construction plans and will conform to City and AASHTO Standards. Final design calculations will be prepared for the bridge foundations and will be submitted along with the plans and specifications, for City staff review. An opinion of probable construction cost for the bridge structure will also be provided.

A. **Design Criteria for Bridge Design:**
Final pedestrian/bicycle bridge design will be performed in accordance with the AASHTO LRFD Guide Specifications for the Design of Pedestrian Bridges, as well as applicable AASHTO Bridge Design Specifications with California Amendments, and other Caltrans Design Manuals. Design will be based on the "Load and Resistance Factor Design" method with design live loads of 90 psf for pedestrians, and a 10,000 pound live load for a maintenance or safety vehicle. Seismic design will be performed in accordance with current Caltrans Seismic Design Criteria.

B. **Approach Trail Design:**
Design of the trail approaches to the bridge will be in accordance with City Standards, AASHTO and other applicable requirements, and Caltrans Standard Specifications. Final bridge profile, alignment, and grading plans will be developed, as well as retaining walls, new/existing trail conformance details, erosion control details, and details for replacement in-kind of existing structures and landscaping, as required.

C. **Plan Sheets and Details:**
The plan sheets will be prepared in AutoCAD. Plans will be prepared in English units and will be consistent with Caltrans Standards. All plans will be signed by the civil engineer or structural engineer (registered in the State of California) in responsible charge of the design. Two submittals will be made during the preparation of the Construction Documents, when the documents are 65% complete and when the Final documents are complete. Each submittal will incorporate the review comments from the previous submittal by the design team, City staff and other reviewing agencies.

D. **Technical Specifications (Special Provisions):**
Technical Specifications (Special Provisions) for the specific items of bridge construction included in the Construction Documents will be edited to suit the project using Caltrans Standard Special Provisions 2015, and will reference the Caltrans Standard Specifications 2015. A performance specification for the manufacture of the prefabricated bridge structure will also be included. If needed, applicable City Standards will be incorporated into the document. It is assumed that the specifications for bridge construction will be provided in book format.

E. **Opinion of Probable Construction Cost (Estimate):**
An opinion of probable construction cost for the bridge will be provided at each final design submittal stage indicated below. Caltrans standard bid item numbers and descriptions will be used wherever possible. Estimates of unit costs will be based on current Caltrans construction cost data, as well as current bid data for similar projects in the area, if available. It should be noted that the Consultant cannot guarantee the actual cost of work to be performed by others due to issues like market and bidding conditions at the time of project advertisement, contractor means and methods, profit margins, etc. which may affect the project costs.
F. **Quality Assurance Review:**
An internal quality assurance review of the bridge plans, specifications, and estimate will be conducted concurrently with review of the 65% design submittal by the City and other agencies. Because of this, the 65% design submittal is noted as “unchecked” and the Final design submittal as “checked”. The Consultant’s quality assurance program provides for independent checking of individual structural design tasks, as well as an independent review by experienced senior staff. The purpose of this review is to provide oversight to specific bridge design details by professionals who are not closely involved in the design, and to review the constructability, cost-effectiveness and completeness of design features relative to the normal standard of professional care.

3.2 **65% DESIGN SUBMITTAL (65% PS&E – UNCHECKED)**

A. **65% Complete Plans:**
Based on comments received from the preliminary design submittal, the pedestrian bridge design will be advanced to the point that all major design issues and solutions are represented in the plan documents. Minor details may be missing from the bridge plan set at this milestone, but all plan sheets will be included in this submittal package. BCA will work with the City to resolve any remaining conflicts between the comments of different reviewers.

B. **65% Complete Technical Specifications (Special Provisions):**
A draft of the pedestrian/bicycle bridge technical specifications sections to be included for the final project specifications will be provided with the submittal. The technical specifications will reference City or Caltrans standard specifications sections for the various items of work.

C. **65% Opinion of Probable Construction Cost:**
The Preliminary Opinion of Probable Bridge Construction Cost will be updated to reflect the refinements from the Preliminary Design to the Unchecked Design Submittal.

D. **Response to Comments Memorandum:**
A memo with responses to the comments received from the Preliminary Design Submittal will be provided.

E. **Building Department Permit Package:**
Consultant will assist the City with preparation of the Building Permit submittal package, to include plans, specifications, and structural calculations as needed.

3.4 **FINAL DESIGN SUBMITTAL (100%PS&E and BID SET - CHECKED)**

A. **Quality Assurance Review:**
As noted above, an internal quality assurance review of the bridge plans, specifications, and estimate will be conducted concurrently with review of the 65% Submittal by the City and other agencies. This quality assurance review includes independent checking of individual design calculations and details, as well as an independent review by experienced senior staff. *This independent check will include a red, green and yellow check of the structural calculations and plans.*

B. **100% Final Plans – Draft Bid Set Documents:**
After completion of the agency and quality assurance review of the 65% Design Submittal, the Consultant will prepare the Final Contract Documents and provide the City and other agencies the opportunity to review the completed documents and direct minor revisions.
C. **Final Bid Set Documents:**  
After City review of the draft Bid Set Documents, any minor final revisions will be incorporated, and Final Bid Set Drawings and Specifications (Special Provisions) prepared in accordance with the City’s instructions. Final bid documents will be submitted for signature.

D. **Memorandum: Response to Comments:**  
A memo with responses to comments received from the 65% Design Submittal will be provided.

**Task 3 Deliverables:**  
- 65%, 100% and Bid Plan Sets in PDF Format  
- 65%, 100% Opinions of Probable Bridge Construction Costs  
- 65%, 100% and Bid Specifications in Word Format  
- Response to 35% and 65% Comments Memos in Word Format  
- CD Archive of Project Electronic Files

**TASK 4: BIDDING SUPPORT SERVICES  (BCA and RJA)**
For the purposes of this proposal, it is assumed that the Consultant will incorporate the City’s boilerplate specifications and bidding forms into the specifications document to be used for bidding. It is also assumed that the City will advertise the project for public bidding and manage the bidding process.

It is assumed that the City will advertise the project for bidding and distribute the plans to prospective bidders, and that the City will be designated to receive contractor inquiries. The Consultant will assist City as requested during the bidding. The work may include answering questions, providing consultation and interpretation of the pedestrian bridge construction documents, and assisting the City in preparation of up to two addends to the PS&E during the advertisement period. Attendance at a pre-bid meeting will also be provided, if requested.

**Task 4 Deliverables:**  
Specifications Document with Boilerplate and Bid Forms Incorporated

**TASK 5: CONSTRUCTION SUPPORT SERVICES  (BCA and RJA)**
The Consultant will perform the following the scope for pedestrian bridge construction support work:

- Attend preconstruction meeting.
- Review shop drawings and submittals.
- Review prefabricated bridge shop drawings and calculations.
- Answer clarification questions pertaining to the plans and special provisions, if needed.
- Review contractor RFI’s (Request for Information) and provide written response.
- Review construction inspection reports prepared by the Inspector.
- Attend periodic field visits, as required, to assist in the resolution of construction issues (four site visits assumed).
- Prepare record Bridge drawings for the City. The basis of the revisions shown on the record plans will be a red mark construction set of plans provided by the project Resident Engineer. These construction red mark plans shall show all revisions that were made during construction. Field verification of revisions indicated in the red mark plans is excluded.

**Task 5 Deliverables:**  
Record Bridge Drawings
TASK 6: SPECIAL INSPECTION SERVICES (BCA and EN CEO)

Construction inspections will be conducted in general conformance with the guidelines outlined in the Caltrans Construction Records and Procedures Manual, and other relevant Caltrans construction and inspection manuals. The structural inspector will observe the construction work for conformance with the construction documents, and will perform inspections as required by the applicable Caltrans guidelines.

The following is the anticipated scope of services that would require inspection on the pedestrian bridge structure, consistent with the Caltrans CRAP manual and relevant construction and inspection manuals. A detailed scope of work is provided below and a detailed breakdown of estimated inspection hours and costs is attached.

Required Inspections

Pile Construction
- Observation of all pile drilling and placement activities.

Reinforcing Steel
- Verify that mill certificates show reinforcing steel to be in compliance with project specifications.
- Provide periodic inspection of the placement of all reinforcing steel.

Concrete
- Review concrete prequalification for concrete designated by compressive strength of 3600 psi or greater. This is to include witness of trail batch and resultant concrete cylinder testing or review of certified test data.
- Provide continuous inspection during the placement of all concrete, including testing of slump and concrete temperature, and preparation of compressive test cylinders (minimum of three 6x12 cylinders for every concrete placement).
- Provide periodic inspection during the installation and removal of concrete formwork.
- Verify that deck concrete is cured per the project specifications.

Engineered Fill Placement
- Provide inspection during placement of engineered fill.

Wall Backfill
- Provide continuous inspection and compaction testing during abutment wall backfilling operations.

Prefabricated Bridge
- Provide continuous inspection during the placement of grout for abutment anchor bolts.
- Provide continuous inspection during prefabricated bridge erection.

Steel Railing
- Provide periodic inspection during the installation of steel railing posts in the wingwalls.

Meetings
- Attend pre-construction meeting.
- Attend meetings onsite as needed.

Reports
- Prepare appropriate inspection reports.
- Perform final walk-through and generate punchlist items.


**Duties and Responsibilities of the Structural Inspector**

- The structural inspector will inspect the work assigned for conformance with the applicable design drawings and specifications.
- The structural inspector will furnish inspection reports to the City or the City’s designated representative, and the structural engineer of record. All discrepancies will be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the proper design authority and to the City’s representative.
- The structural inspector shall submit a final signed report stating whether the work requiring bridge inspection was, to the best of the inspector’s knowledge, in conformance with the approved plans and specifications.

**Task 6 Deliverables:**
- Inspection Reports
- Final Punchlist
- Final Acceptance Report

**ASSUMPTIONS AND EXCLUSIONS**

**Preliminary Engineering, Final Design, Bidding and Construction Support Services**

- The project will be developed as one complete project without phasing or separate plan packages, and the work scoped herein will be undertaken in 2017 and 2018.
- All plans will be prepared in accordance with current City/Caltrans drafting standards, format, and conventions.
- Special Provisions for bridge construction will be prepared based on Caltrans 2015 Standard Specifications and Special Provisions, and will be in book format.
- Review will be limited to one round for each design submittal, and comments on the plans, technical provisions, and opinion of estimated construction cost will be provided to the Consultant in the form of one consistent set of mark ups and/or written comments.
- It is assumed that the bridge will be placed in the location shown on the Vesting Tentative Map.
- It is assumed that a Stormwater Control Plan is not required, and is therefore not included.
- Post-construction BMPS and SWCP are not included. These may be provided as additional services if requested.
- NPDES preparation or processing, including NOI and SWPPP, are not included. These may be provided as additional services if requested.
- CDFW Permit fees must be submitted with the permit application, and are not included in the attached design fee, as it is assumed the City will pay these fees. It is estimated that the permit fees will be $4198 for a bridge that costs $200,000 to $350,000 to construct.
- Electrical and mechanical engineering services are not included.
- Utility coordination and design services are not included.
- Traffic studies, reports, traffic signal design and traffic control plans are excluded.
- Construction traffic control plans are excluded.
- Provision of title reports is excluded.
- Plats and legal descriptions for easements (temporary or permanent) are excluded. These may be provided as additional services if requested, once the owners and agencies agree on the terms and conditions.
• Development, processing or recording of any exhibits, plats or maps of any kind is excluded. These may be provided as additional services if requested.
• A Final or Parcel Map, or a Record of Survey are not included. Setting of right-of-way monumentation is not included. These may be provided as additional services if requested.
• Right-of-way acquisition services are excluded.
• Services for assistance with City/SCVWD Joint Use Agreement are excluded.
• Construction staking services are excluded.
• Field verification of mark ups for record drawings is excluded.
• Preparation of up to two addenda during bidding period services are included.
• Please see the detailed scope above for additional assumptions.

*Special Inspection Services*

• If the BCA team is not hired to perform structural inspections, structural observation services will be required to be performed by the Engineer of Record for certain critical elements of the bridge construction.
• No welding is expected or accounted for in this proposal.
• No utilities or utility inspection are expected or accounted for in this proposal.
• The bridge construction is expected to be completed by December 31, 2018.
• It is our understanding that the above project is subject to prevailing wages, and the attached charge rate schedule reflects this assumption.
• It is assumed that the cast-in-drilled-hole piles for the approach retaining walls will be completed in 5 days or less.
• The fee provided for inspection services represents our best estimate of the costs involved. The inspection service costs are highly dependent on the construction schedule, the Contractor’s operations, the Contractor’s proficiency, and the Contractor’s performance. For these reasons, we recommend that the City establish a contingency budget for structural inspection. This budget can then be utilized if more inspection effort is required.
• The Consultant bears no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor, or for the Contractor’s safety precautions and programs, nor failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of the work by the Contractor.
• The Consultant makes no guarantees for and shall have no authority or control over the Contractor’s performance or failure to perform the work in accordance with the contract documents.

Please refer to the following pages for our hours and fee proposal for this project.
### ESTIMATED HOURS AND COST FOR PEDESTRIAN BRIDGE DESIGN SERVICES:
**CITY OF MILPITAS CENTRE POINT PEDESTRIAN BRIDGE AT THE PENITENCIA EAST CHANNEL**

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<th>Principal</th>
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<th>Senior</th>
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<th>Project Engineer</th>
<th>Senior CAD Draft</th>
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<th>Total Design Fee</th>
<th>Total General Support and Inspection Fee</th>
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**Note:** Includes O&M, future efforts required for the handing and releasing by Aggiard Consultants

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#### Project Breakdown:

1. **PRELIMINARY DESIGN PHASE**
   - **Project Administration**
     - 2 total hours
     - Total BCA Hours: 2
     - Total Design Fee: $11,120
     - Total General Support and Inspection Fee: $12,120
   - **Coordination and Design Meetings with Design Team**
     - 3 total hours
     - Total BCA Hours: 3
     - Total Design Fee: $13,120
     - Total General Support and Inspection Fee: $144,520
   - **Draft Meeting and Design Review Meeting with City**
     - 1 total hour
     - Total BCA Hours: 1
     - Total Design Fee: $11,120
     - Total General Support and Inspection Fee: $12,120

2. **Conceptual Design**
   - **Preparation of Preliminary Design Calculations**
     - 20 total hours
     - Total BCA Hours: 20
     - Total Design Fee: $23,760
     - Total General Support and Inspection Fee: $258,720
   - **Preparation of Preliminary Design Calculations**
     - 2 total hours
     - Total BCA Hours: 2
     - Total Design Fee: $2,720
     - Total General Support and Inspection Fee: $28,800
   - **Preparation of Preliminary Design Calculations**
     - 2 total hours
     - Total BCA Hours: 2
     - Total Design Fee: $2,720
     - Total General Support and Inspection Fee: $28,800
   - **Preparation of Preliminary Design Calculations**
     - 2 total hours
     - Total BCA Hours: 2
     - Total Design Fee: $2,720
     - Total General Support and Inspection Fee: $28,800
   - **Preparation of Preliminary Design Calculations**
     - 2 total hours
     - Total BCA Hours: 2
     - Total Design Fee: $2,720
     - Total General Support and Inspection Fee: $28,800

3. **Construction Support Services**
   - **Drafting Support Services**
     - 4 total hours
     - Total BCA Hours: 4
     - Total Design Fee: $4,800
     - Total General Support and Inspection Fee: $51,840

---

**TOTAL HOURS AND COSTS**

- **SUMMARY**
  - **Total BCA Hours:** 20
  - **Total Design Fee:** $23,760
  - **Total General Support and Inspection Fee:** $258,720
- **BIA DESIGN FEE:**
  - $19,320
  - **TOTAL BCA COST:**
    - $22,080
    - **TOTAL DESIGN FEES:**
      - $21,120
      - **TOTAL GENERAL SUPPORT AND INSPECTION FEES:**
        - $258,720

---

**Notes:**
- Includes O&M for future efforts, required for handing and releasing by Aggiard Consultants.
- **Total Net to Pay:** $179,121
- **Total Net to Pay:** $179,121

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**Exhibit B**

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**Total Net to Pay:** $179,121

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**Total Net to Pay:** $179,121
## I. SCOPE OF SERVICES ITEM

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**TOTAL**                                              **$56,500**
## Lower Peninsular Creek Pedestrian Bridge

### LABOR HOURS

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### Construction Services

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### EXPENSES

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**TOTAL ESTIMATE COST:** $18,357

**COMMENT ASSUMPTIONS:**
1) Soils and groundwater assumed to be non-hazardous.
2) Delineries include draft geotechnical report, final geotechnical report, grading and improvement plan review letter, foundation plan review letter, final construction report.
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J Zentner, Principal in Charge
C Long, Project Manager/Project Biologist
B Davis, QA/QC
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**Total Budget** $34,934