



CITY OF CUPERTINO

REQUEST FOR QUALIFICATIONS

FOR

**DESIGN PROFESSIONAL FOR BICYCLE
IMPROVEMENT PROJECTS**

FOR

PUBLICLY BID AND BUILT PROJECTS

RFO Issue Date:

March 7, 2018

Submittal Due Date:

Wednesday, March 28, 2018

OFFICE OF THE DIRECTOR OF PUBLIC WORKS

CITY HALL • 10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

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REQUEST FOR QUALIFICATIONS CITY OF CUPERTINO

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1. DESCRIPTION AND SCOPE

The 2016 Cupertino Bicycle Transportation Plan (Plan) was adopted by City Council in June 2016. The Plan aspires to encourage and accommodate more people to bike. Through implementation of projects recommended in the Plan, the City is working toward establishing and constructing a comprehensive bicycle transportation network.

The City of Cupertino invites Statement of Qualifications (SOQ) submittals from qualified design professionals to provide engineering services for publicly bid and built bicycle transportation projects. Potential work could include bicycle facilities designed to current Caltrans Class I-IV standards, bicycle/pedestrian grade separated crossings, traffic calming features, pedestrian and bike safety enhancements, traffic signal and related electrical design, transportation impact analyses, and other technical reports and analyses.

The types of Services may include but are not limited to:

- Design roadway geometric layout including signs and pavement markings, using sound engineering design principles and applicable design guidelines.
- Design and prepare plans, specifications, and engineering cost estimates for engineering and electrical plans such as roadway improvements, traffic signal, street light, landscape median and irrigation, and misc. traffic control devices. Coordinate with utility companies for design and infrastructure information, if necessary.
- Perform traffic signal warrants, timing and/or synchronization studies based on City approved models, software and methods.
- Prepare and design creative complete street solutions that incorporate all roadway users.
- Prepare and design traffic calming, pedestrian and bicycle enhancements to address vehicular, pedestrian and/or bicycle safety concerns.
- Engage in public outreach including but not limited to: represent and/or assist the City by attending neighborhood, Bicycle & Pedestrian Commission, and City Council meetings; identify and communicate with stakeholders; develop agenda and handout materials; make presentations; listen and address concerns; develop and present alternatives; and seek buy-ins on preferred design.

- Provide bid and construction support. Work may include but is not limited to, design alternatives and estimated costs, review and respond to requests for information (RFI's), prepare addendums, review submittals, create plan revisions due to conflicts, and prepare as-builts.

Overview of Initial Project

Stevens Creek Boulevard Separated Bike Lane Project

Included in the Plan is a list of proposed bikeway projects, ranked in priority order and separated into three Tiers, with Tier 1 containing the highest priority projects. Ranked #1 on the priority project list was the installation of Class IV bike lanes along the entire length of Stevens Creek Blvd. The project will design the Class IV bike lane on Stevens Creek Boulevard from Wolfe Road to the Eastern City Limit.

The proposed Class IV bike lane along Stevens Creek Blvd would consist of a raised concrete buffer approximately two-feet wide separating the bike lane from the adjacent vehicle lanes. This buffer could be cast-in-place or pre-cast concrete, and would likely include appropriately-spaced vertical elements to highlight the buffer. Breaks in the buffer would be provided at all driveways, and additional striping provided within the bike lane at all driveway crossings to highlight the potential conflicts for both bicyclists and vehicles.

In order to minimize conflicts between right-turning vehicles and bicyclists, at locations where there is a heavy volume of right-turning vehicles a separate bicycle signal phase and dedicated vehicle right-turn lane is recommended, that would require right-turning vehicles to stop while bicyclists are given a green light to proceed. The number of through lanes would be reduced to two. Signals to be design with a bicycle phase include:

- Eastbound at Miller Avenue
- Westbound at Wolfe Road
- Eastbound at Finch Avenue
- Westbound at Tantau Avenue

The City is in the process of applying for a grant to fund Stevens Creek Boulevard Separated Bike Lane Project from DeAnza Boulevard to Wolfe Road. Should the City be awarded the grant, the initial project will be revised to include this segment. The Class IV bike lane between DeAnza Boulevard to Wolfe Road will include two (2) in-lane bus stops and bicycle phases included at the following signals:

- Eastbound at DeAnza Boulevard
- Westbound at DeAnza Boulevard

2. SUBCONSULTANTS

The City has strong interest in the quality of subconsultants that the lead consultant may choose to hire for assistance on this project. The City is committed to securing high quality work and to produce a document that will provide successful project outcome.

3. SELECTION PROCESS

The City qualifications review panel will assess each SOQ submission according to Attachments C, Consultant Rating Form. **Consultants with total scores eighty (80) or more points will be included on the prequalified lists of Transportation Engineering consultants.**

4. PRE-QUALIFIED LIST and INTERVIEWS

Qualified Consultants shall remain on the City's pre-qualified lists for approximately a two year period. The City, *at its sole discretion*, will select Consultants from the list based on (1) the best fit for a particular project (2) volume of existing City work, and (3) past performance on City/public projects.

In certain cases, the City may request that several firms on the prequalified list participate in a project specific interview to better determine the "best fit" among firms with similar qualifications. The City will provide interview invitations and selection information on a project specific basis as the need occurs. **All consultant costs associated with the project interview are the consultant's responsibility.**

The City reserves the right to reject any and all consultants.

The City reserves the right to issue a master services agreement with one or more pre-qualified firms.

Business License Requirements: The consultant and their subconsultants must hold or obtain business licenses in the City of Cupertino for any work within City limits, if the City of Cupertino is the only business within the City of Cupertino, no business license is required, per City of Cupertino Municipal Code.

5. SELECTION CRITERIA

Some of the criteria for selection of the consultants are listed below, not necessarily in order of importance:

- Be licensed in the State of California;
- Prior experience performing similar work
- Qualifications of key staff persons who will carry out the work
- Work program for carrying out the assignments and ability to adhere to schedules and budgets
- Ability to provide a range of desired services
- Ability to meet the City's schedule for the project
- Special knowledge material to the project and its execution
- Experience in working successfully with agencies and regulators having jurisdiction over the projects
- Experience in Cupertino and the south San Francisco Bay area
- Firm organization and location
- *Ability to accept the City's Hold Harmless Indemnity requirement and to provide general and professional liability insurance in the required amounts, both as specified in the sample agreements*
- References and recommendations

6. QUALIFICATIONS SUBMITTAL, INSTRUCTIONS AND FORMAT

Statement of Qualifications (SOQ) submittals are due by noon on Wednesday, March 28, 2018. Qualifications may be mailed or delivered to **City of Cupertino, City Hall, Public Works Department, 10300 Torre Avenue, Cupertino, CA 95014, Attention: David Stillman, labeled: Transportation Engineering Design Services Request for Qualifications**. Please submit two (2) printed and bound copies (8 1/2"x11") and an electronic copy in pdf format on a USB drive. Two sided copies are acceptable and encouraged. **Late, emailed, or faxed submittals will be *immediately* considered non responsive without further review and eliminated from consideration.** Questions may be directed to David Stillman, Public Works Transportation Manager, at 408-777-3249, or via email, DavidS@Cupertino.org

The City reserves the right to reject any or all submittals, waive any irregularities, and select firms which, in its opinion, best serve the City's interests. **The Consultant is responsible for *all* costs associated with the Statement of Qualifications submission.**

The qualifications submittal shall not exceed fifteen (15) sheets of paper (30 pages double sided), excluding table of contents, cover letter, resumes for key personnel, and any promotional materials. The City prefers a quality submission over quantity and succinct, responsive proposals are welcomed. **Submissions will not be returned.**

All Consultant SOQ submissions shall provide the following general information: Business type (corporation, partnership, sole proprietorship) firm's organization structure, background, general qualifications, licensed professionals, licensed subconsultants, and recent experience with public works projects in California, particularly in the City of Cupertino and the San Francisco Bay Area.

Additional specific required information:

- a. An original, wet signed cover letter of interest with overview of qualifications, point of contact, phone number, e-mail, and including a statement that the Consultant accepts the attached City of Cupertino standard design professional services agreement, and design professional master agreement, including specifically listing City's Hold Harmless Indemnity requirements and insurance coverage requirements, without modification.
- b. Location of the office(s) where the services are performed
- c. Special firm knowledge or capabilities
- d. Principal staff involved in public projects, role of each, and key personnel resumes including license number(s). Relevant information includes related public sector experience; dates, approximate project cost and project duties/responsibilities. Firm personnel shall be referenced to personnel resume included in an appendix.
- e. Provide a minimum of (5) project examples in the past three (3) years that best represent the firm's qualifications and capabilities. Information regarding the project location, short description, firm scope of services, firm project manager, subconsultants, project budget, and final construction cost is required along with a single client contact for each.
- f. Provide a minimum of (3) public sector projects in California, ideally, in the San Francisco Bay Area, over the past three (3) years that best represent the firm's qualification and capabilities. **Note: Public sector experience stated here may be used to satisfy three of the project required (e) above.** Information regarding the project location, project scope, firm scope of services, firm project manager, subconsultants, project budget, and final construction cost is required along with a single client contact for each.
- g. Provide a list of subconsultants used in the public projects in (f) above along with the firm resume, principal licensed staff, and qualifications relative to their individual discipline.

- h. Provide current labor category rate schedule valid for the approximately two year qualification period.
- i. *Confirmation that the required City standard /insurance levels are acceptable and can be satisfied without modification.*

Prior to negotiating a contract with the selected firm for a particular project assignment, City will ask the proposer to submit the expected level of services to be provided by each subconsultant, broken down by task or phase and the corresponding fees.

7. PROFESSIONAL SERVICES PROPOSAL

Consultants selected for *specific projects* shall submit a professional services proposal in response to a City Request for Proposal. Each consultant proposal shall include a **detailed cost breakdown of the total proposed fee, including any subconsultant work, by proposed hours and rates, broken down by task, and any additional costs anticipated to complete the project.** The proposal shall be based on project fact finding with the City and the final scope of services definition. The final consultant project scope and fee shall be a negotiated agreement using the Consultant's professional services proposal as the Basis of Estimate (BOE).

If the City starts negotiations with a firm and is unsuccessful within 10 working days to negotiate an agreement, the City may initiate negotiations with another firm as needed.

8. CONTRACT REQUIREMENTS

Once project scope and fee are negotiated, the Consultant shall execute a standard City of Cupertino design professional services agreement or a City of Cupertino design professional master agreement, which will define basic contractual relationships with attachments that specify the scope of services, compensation schedule, and deliverable schedule. A sample City standard design professional services agreement for single projects is attached to this RFQ as "Attachment A" and a sample of City standard design professional master agreement is attached to this RFQ as "Attachment B". Please note that insurance requirements are identified in "Exhibit D" for each of the agreements. *The Consultant must specifically agree, in writing, to accept the standard form of design professional service agreement and the design professional master agreement, including specifically the City's Hold Harmless Indemnity requirements and insurance coverage requirements, without modification, in the SOQ submission cover*

letter (6a) or in the SOQ. Firms failing to provide this statement shall be considered 'non responsive' and eliminated from further consideration.

9. ATTACHMENTS

The following attachments are provided with the RFQ package:

- Attachment A, Sample of Cupertino Standard Design Professional Services Agreement (Single) with Exhibits A, B, C and D
- Attachment B, Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D
- Attachment C, SOQ Consultant Rating Form for Design Professional
- Attachment D, Stevens Creek Boulevard Separated Bike Lane Project Conceptual Plan

END OF REQUEST FOR QUALIFICATIONS

ATTACHMENT A
Cupertino Standard Design Professional Services Agreement (Single)
with Exhibits A, B, C and D

DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)
WITH

1. PARTIES

This Agreement is made and entered into as of _____
 (“Effective Date”), by and between the City of Cupertino, a municipal corporation (“City”), and
 _____ (“Consultant”),
 a Select one _____ for _____
 _____ (“Project”).

2. SERVICES

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

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

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

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

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on _____,
 unless terminated earlier as provided herein (“Contract Time”).

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

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

4. COMPENSATION

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

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

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

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

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

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time Consultant may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant shall hold in confidence all City information and use

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it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement (“Work Product”), will be the exclusive property of the City and shall not be shown to a third-party without prior written approval by City

7.2 Copyright. To the extent permitted by Title 17 of U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its SubConsultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not “works for hire”, Consultant and SubConsultants hereby assign to City all copyrights to the Work Product when and as created. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

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

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

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

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

8. RECORDS

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

8.2 Consultant will provide City full access to Consultant’s books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or

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audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section survives the expiration/termination of this Agreement.

9. ASSIGNMENT

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

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

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

a. Indemnity Obligations Subject to Civil Code Section 2782.8. With respect to the Services performed in connection with the Agreement, Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any and all liability, claims, actions, causes of action, demands or charges whatsoever against any Indemnitee, including any injury to or death of any person or damage to property or other liability of any nature (collectively, "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, officials, employees, agents or SubConsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation. In addition to its indemnity obligations, Design Professional will provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such Liability.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's

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negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation.

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

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

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

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

12. INSURANCE

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

13. COMPLIANCE WITH LAWS

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

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

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

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City’s rules governing gifts to public officials and employees.

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

14. PROJECT COORDINATION

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

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

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15. ABANDONMENT OF PROJECT

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

16. TERMINATION

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

17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

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

18. ATTORNEY FEES

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

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

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

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21. ENTIRE AGREEMENT

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

22. INSERTED PROVISIONS

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

23. HEADINGS

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

24. SEVERABILITY/PARTIAL INVALIDITY

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

25. SURVIVAL

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

26. NOTICES

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

To City of Cupertino 10300 Torre Ave. Cupertino CA 95014 Attention: _____ Email: _____	To Consultant: _____ _____ _____ Attention: _____ Email: _____
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27. VALIDITY OF CONTRACT

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

28. EXECUTION

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

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

CONSULTANT

CITY OF CUPERTINO
A Municipal Corporation

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

RANDOLPH STEVENSON HOM
Cupertino City Attorney

ATTEST:

GRACE SCHMIDT
City Clerk

ATTACHMENT A
SAMPLE OF EXHIBITS A, B, C & D FOR
STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT (Single)

Actual Exhibits will be negotiated at the time of the Agreement. This is just a sample to show format and basic structure of the EXHIBITS.

EXHIBIT "A"

The requirements for Basic Services are set forth in this Exhibit A, including general requirements and specific Tasks.

This is an exhibit attached to, and made a part of, the Agreement between the City of Cupertino City”) and XXXXX (“Consultant”) for the provision of professional Design Professional services (“Services”).

CONSULTANT shall perform professional services as detailed in the following sections related to the design, bidding and construction for a Public Works Project. (Hereafter referred to as “Project”)

SECTION 1. GENERAL

- A. General PROJECT Description:** The PROJECT involves design development, construction document preparation, bid support, and construction administration services for the project. The project will be for the construction of XXXXX. The amount available for construction of the PROJECT, including contingencies for design, bidding and price escalations, but excluding compensation to CONSULTANT, construction management consultant is approximately (\$XXX,XXX) XXXXXXX THOUSAND DOLLARS (“CONSTRUCTION BUDGET”).
- B. General Performance Requirements:**
1. The performance of all services by CONSULTANT shall be to the satisfaction of the CITY, in accordance with the express terms hereof, including but not limited to the terms set out in detail in this scope of services and the standard of care provisions contained in this AGREEMENT.
 2. The CITY’s Department of Public Works shall manage the PROJECT and this AGREEMENT. CONSULTANT shall receive final direction from the CITY’s Director of Public Works or his/her authorized designee (hereinafter collectively “CITY”) only. The CITY shall resolve any conflicting direction from other groups, departments or agencies.

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3. CONSULTANT shall coordinate this scope of services with the CITY as well as with other CITY consultants and contractors, as needed or as directed by the CITY. CONSULTANT shall schedule meeting and prepare meeting agendas and minutes for all PROJECT meetings during the design phase under the scope of work. All minutes of meetings are due to the CITY within five (5) working days after the meeting. CONSULTANT shall provide copies of such documentation to the CITY, and as directed by the CITY, to other appropriate agencies and entities. CONSULTANT shall coordinate all responses to comments through the CITY.
4. CONSULTANT shall designate and provide to the CITY the names of their team members for the PROJECT. The team members shall be satisfactory to the CITY. CONSULTANT shall not substitute any team members without the prior approval of the CITY.
5. CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly process of the work. The schedule for the performance included in EXHIBIT B, may be adjusted by mutual agreement.
6. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. CONSULTANT shall consult with the CITY, research applicable design criteria, and communicate with members of the PROJECT team.
7. When the CITY determines that the PROJECT requirements have been sufficiently identified, CONSULTANT shall prepare and update a PROJECT schedule for the CITY at the beginning of each TASK as defined in SECTION 2 - "TASK" of this EXHIBIT A. The PROJECT schedule shall identify milestone dates for decisions required of the CITY, design services furnished by CONSULTANT and CONSULTANT's SUBCONSULTANTS, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the PROJECT, deliverables to be furnished by CONSULTANT, completion of documentation provided by CONSULTANT, commencement of construction and substantial completion of the construction of the PROJECT, and as identified in the exhibits under this AGREEMENT.
8. CONSULTANT shall submit construction documents to the CITY, according to SECTION 2 - "TASKS", of this EXHIBIT A for purposes of evaluation and approval by the CITY. The CITY including the Department of Public Works Engineering and other City department as necessary will review the documents during each phase. CONSULTANT will meet with the CITY for progress review at various stages of the PROJECT. CONSULTANT will be responsible for causing the appropriate SUBCONSULTANT(S) to attend any meetings included in this SCOPE OF SERVICES. CONSULTANT shall make revisions to the construction documents as required for each task in a timely manner.
9. CONSULTANT shall assist the CITY, as requested by the CITY, in connection with the CITY's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the PROJECT, including submitting to the CITY's Building Department for a building permit if required.

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10. CONSULTANT shall prepare and present to the CITY an Organization Chart, Directory, and Communication Flow Chart at the PROJECT Kick-Off Meeting. This meeting shall introduce team members, establish routes of communication, and discuss the participants' roles, responsibilities, and authority.

C. Estimate of Probable Construction Cost: CONSULTANT shall be responsible to design the PROJECT and provide an Estimate of Probable Construction Cost consistent with the following procedures and requirements.

1. CONSULTANT shall be responsible for designing the PROJECT so that the Estimate of Probable Construction Cost is less than or equal to the CONSTRUCTION BUDGET established by the CITY for the PROJECT. The Project Construction Budget shall be provided by the CONSULTANT as a summary sheet with submittal of each required Estimate of Probable Construction Cost, showing comparisons of cost evolution for the PROJECT. As the design process progresses CONSULTANT shall update and refine the Estimate of Probable Construction Cost as required in SECTION 2 – “SCOPE OF SERVICES” of this EXHIBIT A. CONSULTANT shall advise the CITY in writing of any adjustments to previous Estimates of Probable Construction Cost indicated by changes in PROJECT requirements or general market conditions.
2. Should the Estimate of Probable Construction Cost exceed the CONSTRUCTION BUDGET, CONSULTANT shall, during the design phases of the project, revise, without additional cost to the CITY, the design documents and/or Construction Documents incorporating scope and quality changes to reduce the estimated costs for construction, to within the CONSTRUCTION BUDGET. CONSULTANT shall make changes only as approved by the CITY in writing. Reductions in scope may be required to meet the CITY’s budget, and the CITY will not unreasonably withhold permission for such reductions in scope order for the CONSULTANTS to meet the budget. Notwithstanding the foregoing, to the extent the Estimate of Probable Construction Cost exceeds the CONSTRUCTION BUDGET due to any program, design or budget changes, initiated and authorized by the CITY which are beyond CONSULTANT’s control, any changes required in the design documents, shall be considered as Additional Services as noted in EXHIBIT C of this AGREEMENT.
3. In preparing the Estimate of Probable Construction Cost, CONSULTANT, in consultation with the CITY, shall do each of the following: (a) include contingencies for design, bidding, and price escalations to determine which materials, equipment, component systems and type of construction are to be included in the PROJECT, and (b) make reasonable adjustments and/or to value engineer various items in all required submittal cost estimates of the PROJECT, including alternate bids, in order to adjust the estimated construction cost to be less than or equal to the CONSTRUCTION BUDGET.
4. If bidding has not commenced within 90 days after CONSULTANT submits the Construction Documents to the CITY, CONSULTANT shall adjust the Estimate

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of Probable Construction Cost to reflect changes in the general level of prices in the construction industry. This will be an additional service.

5. CONSULTANT shall identify, develop and incorporate into the Construction Documents "Add or Deduct Alternate" construction cost elements that may be chosen to meet the City's budget. Alternates shall be approved by the CITY before being incorporated into the Construction Documents.
6. Should the lowest responsive bid exceed the CONSTRUCTION BUDGET by more than ten percent (10%), CONSULTANT shall, if directed by the CITY, submit without additional cost to the CITY, revised Construction Documents reflecting changes, approved by the CITY, to reduce the Construction Costs to within the CONSTRUCTION BUDGET. The CITY acknowledges that the CONSULTANT does not control market conditions and agrees that they may allow reductions in scope in order to meet the CITY's construction budget.

SECTION 2. TASKS **These are just samples of TASKS. Actual TASKS will be negotiated at the time of the Agreement**

For each assigned Project, CONSULTANT may provide any or all of the following tasks and subtasks, as is required for the specific Project:

Task 1.0 Pre-Design Studies

- 1.01 **Project Analysis:** For budget programming purposes, analyze the Project proposal to identify and describe initial Project goals and objectives, develop a scenario to address Project goals and objectives, Project delivery process, and cost estimate to deliver the proposed Project.
 - 1.02 **Feasibility Study:** Perform a Feasibility Study for the proposed Project. Study will include a professional analysis of the ability of the agency to provide the desired improvements/outcomes within the available budget, and considering other defined constraints such as right-of-way. Other factors to be considered include constructability, time to design and construct, and environmental impacts. Study will also include the outcome of the proposed improvements including traffic impacts, maintenance implications, cost to construct, cost of right of way acquisition, conformance with the General Plan, construction impacts, impacts to specific properties, and other information that will assist the City in determining whether or not to construct the Project.
- 1.0 **Deliverables:** (all deliverables digital unless otherwise noted)
- 1.01 Project Analysis Report
 - 1.02 Feasibility Report

Task 2.0 Data Collection

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- 2.01 Existing Data Assembly:** CONSULTANT shall review Project data provided by the City including, but not limited to: topographic survey, geotechnical reports, traffic studies, CEQA documents, other environmental studies, tree surveys, arborist's reports, approved Master Plan(s), or other such data. The CONSULTANT shall be entitled to reasonably rely upon the accuracy and sufficiency of any information provided to the CONSULTANT by the City or the City's agents.
- 2.02** The CONSULTANT shall identify discrepancies or shortcomings among the existing data, and identify solutions for resolution, and propose generation of additional site information necessary to provide an accurate Project Base Map.
- 2.03** The CONSULTANT shall utilize existing data to the extent possible and inform the City immediately of problems associated with using existing data for Project base information.
- 2.04 Utility Coordination:** Coordinate with all utility owners who may have facilities within the Project area or that may be impacted by the Project work. Transmit preliminary plans for the identification of potential conflicts. Coordinate potholing by utility companies and owners as required.
- 2.05 Field Survey:** Perform field survey of existing control and monumentation. Locate existing survey monuments and accessible property corners and compute the existing right-of-way based on boundary evidence, records maps, and preliminary title reports. Prepare a calculated base map of the existing record right-of-way for use in design.
- 2.06 Topographic Survey:** Perform field Topographic Survey to obtain locations of utility surface facilities, inverts of accessible storm drain manholes, inlets, and sanitary sewer manholes. Obtain location and sizes of all trees and other existing features that may impact the Project design.
- 2.07 Geotechnical Report:** Perform a geotechnical field investigation and soil boring, perform laboratory testing and prepare a geotechnical report that includes boring logs and recommendations for grading, pavement structural sections, foundations, and slope stability as well as trench excavation and backfill requirements as appropriate for the Project work. Investigation may also include percolation and other tests related to storm water treatment / C3 requirements.
- 2.0 Deliverables:** (all deliverables digital unless otherwise noted)
- 2.01 Source Document Listing
 - 2.02 Proposal of Additional Investigative Actions
 - 2.03 Details of Problematic Data
 - 2.04 Summary of Utility Companies Contacted and Actions Taken

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- 2.05 Scaled Base Map in AutoCAD (current version) Format
- 2.06 Project Area Surface Features Added to Base Map in AutoCAD Format
- 2.07 Geotechnical Report

Task 3.0: Preliminary (35%) Design

- 3.01 **Meetings:** Participate in two (2) design team meetings with representatives of the City during the Preliminary Design phase and provide written meeting minutes to the City within two (2) business days.
- 3.02 **Alternatives Analysis:** Provide alternatives to accomplish the Project goals and objectives. Include a comparison of the alternatives that includes, at a minimum, achievement of goal(s), construction cost, maintenance implications/costs, energy use, construction impacts, and time to construct. Include identification of agencies or jurisdictions that would need to be coordinated with for each alternative.
- 3.03 **Preliminary Plans:** Prepare Preliminary Design Plans and submit them to the City for review and comment. The plans shall be prepared digitally using current AutoCad software. The plans shall be formatted per City standards and submitted with other Preliminary Design Documents as noted below.

The Preliminary Plans will include the major items of work needed to accomplish the Project goals.

The sheets to be provided for this Preliminary Plan submittal may include:

- Title/Index Sheet
- Demolition Plans
- Improvement Plans
- Typical Cross Sections
- Preliminary Street Alignment Plans and Profiles
- Preliminary Utility Plans
- Striping Plans
- Planting
- Details

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3.04 Preliminary Estimate: Prepare a Preliminary Estimate of Probable Construction Cost based on items and quantities of work shown on the Preliminary Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.

3.0 Deliverables: (all deliverables digital unless otherwise noted)

3.01 Meeting Notes

3.02 Project Alternatives Analysis

3.03 Preliminary Plans

3.04 Preliminary Construction Cost Estimate

Task 4.0 Construction Document Development

4.01 Meetings: Participate in two (2) design team meetings with representatives of the City during the Construction Document phase and provide written meeting minutes to the City within two (2) business days.

4.02 65% Construction Documents: The 65% Construction Documents shall be a refinement of the Preliminary Design documents and are to be based on comments received for the Preliminary review. The 65% Plans, Draft Technical Specifications, and 65% Cost Estimate shall be submitted together.

4.03 65% Plans: Prepare 65% Design Plans and submit them to the City for review and comment. 65% plans shall include any sheets not previously submitted (erosion control, draft details, etc.). Advance the design to the point that all major design issues and solutions are represented in the plans. The following types of plans may be prepared:

- Title Sheet, Legend and Notes
- Typical Cross Sections
- Demolition Plans
- Street Improvement Plans and Profiles
- Utility Plans and Profiles
- Construction Details
- Traffic Handling and Construction Area Signs

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- Signing and Striping Plans
- Erosion Control Plans
- Cross Sections

- 4.04 Draft Technical Specifications:** Prepare Draft Technical Specifications and submit them to the City for review and comment. The Technical Specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 4.05 65% Cost Estimate:** Prepare a 65% Estimate of Probable Construction Cost based on items and quantities of work shown on the 65% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.
- 4.06 95% Construction Documents:** The 95% Construction Documents shall be a refinement of the 65% Design Documents and are to be based on comments received for the 65% review. The 95% Plans, Final Technical Specifications, and 95% Cost Estimate shall be submitted together.
- 4.07 95% Plans:** Prepare 95% Design Plans and submit them to the City for review and comment.
- 4.08 Final Technical Specifications:** Update the Draft Technical Specifications and submit the Final Technical Specifications to the City for review and comment. The technical specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 4.09 95% Cost Estimate:** Prepare a 95% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 95% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.
- 4.0 Deliverables:** (all deliverables digital unless otherwise noted)
- 4.01 Meeting Notes
 - 4.03 65% Design Plans
 - 4.04 Draft Technical Specifications
 - 4.05 65% Construction Cost Estimate
 - 4.07 95% Design Plans
 - 4.08 Final Technical Specifications

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4.09 95% Construction Cost Estimate

SAMPLE

ATTACHMENT A

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Task 5.0: Final (100%) Construction Documents

5.01 100% Construction Documents: The 100% Construction Documents shall address any comments received for the 95% review. The 100% Plans, Technical Specifications, and Cost Estimate shall be submitted together on digital media, either a flash drive or a CD/DVD.

In addition, provide two (2) complete wet signed, stamped sets of Construction Documents and Technical. The submitted documents shall be in reproducible, hard copy format.

City will review the 100% Construction Documents for confirmation that responses to all previously provided comments are appropriately integrated. CONSULTANT is to make any changes to the 100% plans that are requested by City.

5.02 100% Plans: Prepare 100% Design Plans and submit them to the City.

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

5.04 100% Cost Estimate: Prepare a 100% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 100% Plans

5.0 Deliverables: (all deliverables digital unless otherwise noted)

5.02 100% Plans (digital + hard copies)

5.03 100% Technical Specifications (digital + hard copies)

5.04 100% Cost Estimate (digital + hard copies)

Task 6.0: Bid and Award Support

6.01 Bid Period Assistance: Provide the following bid phase services, at the City's request, through award of the construction contract:

- a. Attend the general contractor pre-bid meeting.
- b. Assist City in responding to bidders' questions and incorporation them in an addendum.
- c. Assist in the review and processing of substitution submittals during Bid phase.

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- 6.02 Addenda Preparation:** As requested by City, prepare addenda to Project documents including, but not limited to, new or revised Plans, new or revised Technical Specifications and/or removal of items from the Project Plans and/or Specifications and responding to questions and providing clarifications.
- 6.03 Project Document Conformance:** Update the Construction Document package to include all addenda issued during the Bid process and submit a Conformed Set of Drawings and Specifications to the City within ten (10) days of the contract award.

The CONSULTANT shall provide two (2) complete wet signed, stamped Conform Sets of Construction Documents and Technical Specifications that includes the 100% Construction Documents Package and all bid addenda. The submitted documents shall be in reproducible, hard copy format.

In addition, the CONSULTANT shall provide complete electronic format Conform Set Construction Documents and Technical Specifications in 1) native file formats (AutoCAD, MS Word) and 2) pdf on a CD/DVD or flash drive media.

6.0 Deliverables: (all deliverables digital unless otherwise noted)

- 6.01b Written response to Bidders' questions
- 6.01c Written evaluation of substitution submittals
- 6.02 Project Addenda
- 6.03 Conformed Project Documents

Task 7.0: Construction Support

- 7.01 Submittal Review:** Review and approve or reject the Contractor's submittals within five (5) working days of receipt. The CONSULTANT may request additional review time for particularly complex or unusual submittals. The City shall not grant additional review time for standard construction item submittals. The CONSULTANT shall maintain a detailed record of all submittals and content supplied by the Contractor.
- 7.02 Requests for Information:** Review Contractor Requests for Information (RFI) and provide a written response to the Contractor with a copy to the City, within five (5) working days of receipt. The CONSULTANT's response may provide, with advance City approval, supplemental drawings and/or specifications necessary to clarify the RFI.
- 7.03 Change Orders:** Review and advise the City on requests by the City or Contractor for changes in the construction of the Project. The CONSULTANT shall review City prepared Contract Change Orders and, where necessary, prepare Drawings and

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Specifications to describe Work to be added, deleted or modified. The CONSULTANT shall maintain all records relative to changes in the construction.

7.04 Site Meetings: Attend up to two (2) site meetings in the Construction phase and provide meeting minutes to the City within two (2) business days.

7.05 Prepare As-Built: CONSULTANT to prepare final As-Built documents from Contractors mark ups and other contract changes.

7.0 Deliverables: (all deliverables digital unless otherwise noted)

7.01 Responses to submittals, submittal log

7.02 Responses to Requests for Information

7.03 Review comments for City prepared Change Orders

7.04 Meeting Minutes

7.05 As-Builts

Other Tasks/Services that may be assigned per Project needs:

- Plan line study
- Corridor study
- Community Outreach Support/Design Visualization
- Utility Coordination
- Permit Acquisition
- Traffic Signal Design
- Street Lighting Design
- Structural Design
- Green Street Infrastructure Design
- Complete Street Roadway Design
- Environmental Engineering
- Storm Water Conveyance and Treatment Design

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- Fiber Optic/Communication Design
- Aerial Photometric Survey
- Legal Descriptions and Plat Maps
- Planting and Irrigation Design
- Roadway Aesthetic Treatments

ADDITIONAL SERVICES

Consultant Services beyond the work in these tasks may be provided by CONSULTANT as Additional Services only if such Additional Services are authorized in writing by the CITY in advance. An Additional Services amount of XXXXXXXXXXXXX DOLLARS (\$ X,XXX.00) is made a part of this agreement. Additional services may be paid for as a negotiated maximum not to exceed amount or by a time and materials cost accounting with a maximum not to exceed.

SAMPLE

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EXHIBIT B
SCHEDULE OF PERFORMANCE

CONSULTANT shall complete all work by XXXXXXXXXX, 20XX.

This Schedule of Performance establishes the milestones for commencement and completion of the Tasks for Basic Services as specified in Exhibit A, Scope of Services. <edit or expand as needed, consistent with the requirements in Exhibit A, and modify “weeks” to “days” or “months” where applicable>

TASK #	TASK DESCRIPTION	DURATION
Task #1:	Pre-Design Studies	X weeks after Notice to Proceed (NTP) for this Task
Task#2	Data Collection	X weeks after Notice to Proceed (NTP) for this Task
Task #3:	Preliminary (35%) Design	X week after Notice to Proceed (NTP) for this Task
Task #4:	Construction Document Development	X week after Notice to Proceed (NTP) for this Task
Task #5:	Final (100%) Construction Documents	X week after Notice to Proceed (NTP) for this Task
Task #6:	Bid and Award Support	X week after Notice to Proceed (NTP) for this Task
Task #7:	Construction Support	X week after Notice to Proceed (NTP) for this Task

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EXHIBIT C
COMPENSATION

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

This Exhibit C on Compensation supplements the provisions of Section 4 of the Agreement on Compensation, as further specified in Section 4.

1. BASIC SERVICES BUDGET SCHEDULE

The following budget schedule will be used to determine monthly compensation for Basic Services based on the degree of completion, subject to confirmation and agreement by the City, and budget for each listed Task:

TASK #	TASK DESCRIPTION	TASK BUDGET
1	Pre-Design Studies	
2	Data Collection	
3	Preliminary (35%) Design	
4	Construction Document Development	
5	Final (100%) Construction Documents	
6	Bid and Award Support	
7	Construction Support	

Total for Basic Services: \$ _____

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Design Professional may not bill in excess of the Task Budget amount for any Task without prior written authorization from the City. The City has the discretion, but not the obligation, to reallocate the budgeted amounts for each Task, subject to the not to exceed limit specified in Section 4.

Optional Payment Schedule (applies only if box is checked)

The following payment schedule will be used to determine compensation for monthly invoices based on the degree of completion and budget for each listed Task, and, where applicable, separate milestones included within a Task:

TASK #	TASK (AND MILESTONE) DESCRIPTION	PERCENT OF TASK BUDGET
1	Pre-Design Studies	
2	Data Collection	
3	Preliminary (35%) Design	
4	Construction Document Development	
5	Final (100%) Construction Documents	
6	Bid and Award Support	
7	Construction Support	

2. HOURLY COMPENSATION FOR ADDITIONAL SERVICES

A. Hourly Rate Schedule. The City will compensate the Design Professional for satisfactory performance of duly authorized Additional Services which are subject to hourly billing, based on the hourly rate(s) set forth below, but subject to the compensation limits in Section 4 of the Agreement. The hourly rates are deemed to include all costs including, salary, wages, benefits, taxes, insurance, and the like paid to or on behalf of each individual providing the Services, and are also deemed to include profit, overhead, vehicle, equipment and supply costs and the like. The hourly rates do not include Reimbursable Expenses, which are addressed below and in Section 4 of the Agreement. These hourly rates will remain in effect for the Term of the Agreement unless changed by written amendment to the Agreement.

ATTACHMENT A
Cupertino Standard Design Professional Services Agreement (Single)
with Exhibits A, B, C and D

Design Professional Hourly Rates: SAMPLE POSITIONS

Principal	\$ ___
Senior Associate	\$ ___
Associate	\$ ___
Senior Project Manager	\$ ___
Project Manager 1	\$ ___
Project Manager 2	\$ ___
Construction Manager	\$ ___
Job Captain	\$ ___
Designer 1	\$ ___
Designer 2	\$ ___
Assistant Designer	\$ ___
Project Administrator	\$ ___
Accounting	\$ ___
_____ <other>	\$ ___
_____ <other>	\$ ___

B. Reimbursable Expenses. The following are allowed Reimbursable Expenses for authorized Additional Services compensated on an hourly basis (time and expenses), subject to the compensation limits in Section 4 of the Agreement: <modify as appropriate>

- Necessary subconsultant services
- Individual or multiple document reproductions that exceed 50 pages
- Drawing or bid set reproductions to the extent authorized by City
- Special software required by City specifically for the Project, excluding standard software programs such as Microsoft Office suite applications (i.e. Word, Excel, PowerPoint, Project, etc.), Adobe Acrobat, or standard photo editing programs
- Necessary travel expenses to the extent allowed by City policy, with mileage reimbursed per the current IRS standard mileage rate at the time of travel
- Safety equipment required by City policy or the Project scope of services
- Mass mailing notifications
- Special expenses for public meetings, such as refreshments, interpreters, security, valet parking, facility rental, tents or booths, easels, markers, paper, or presentation equipment

END OF EXHIBITS

EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

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

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
 Not required. Consultant has provided written verification of no employees.
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
 - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

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

Cupertino Standard Design Professional Services Agreement (Single)
with Exhibits A, B, C and D

Additional Insured Status

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

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage notice to City 30 days in advance or 10 days i

Waiver of Subrogation

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

Deductibles and Self-Insured Retentions

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

Acceptability of Insurers

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

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

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

Higher Insurance Limits

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

Adequacy of Coverage

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

**DESIGN PROFESSIONAL SERVICES AGREEMENT (MASTER)
WITH**

1. PARTIES

This Master Agreement is made and entered into as of _____
("Effective Date"), by and between the City of Cupertino, a municipal corporation ("City"), and _____ ("Consultant"),
a Select one _____ for _____
_____ ("Project").

2. SERVICES

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

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

3. TIME OF PERFORMANCE

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

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

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

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

4. COMPENSATION

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

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

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

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

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

5. INDEPENDENT CONSULTANT

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

5.2 Consultant Qualifications. Consultant warrants on behalf of itself and its Subconsultants that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best industry practices for similar services performed in the San Francisco Bay Area.

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

Select one

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

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

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

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

6. PROPRIETARY/CONFIDENTIAL INFORMATION

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

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant or its Subconsultants in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document or other information or work, in any medium (collectively, "Work Product"), prepared by Consultant in connection with this Agreement will be the exclusive property of the City and shall not be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of U.S. Code, all Work Product prepared/created by Consultant and its Subconsultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire", Consultant and Subconsultants hereby assign to City all copyrights to the Work Product when and as created. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

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

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

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

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

8. RECORDS

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

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

9. ASSIGNMENT

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

10. PUBLICITY / SIGNS

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

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

11. INDEMNIFICATION

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

a. Indemnity Obligations Subject to Civil Code Section 2782.8. With respect to the Services performed in connection with the Agreement, Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any and all liability, claims, actions, causes of action, demands or charges whatsoever against any Indemnitee, including any injury to or death of any person or damage to property or other liability of any nature (collectively, "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, officials, employees, agents or Subconsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation. In addition to its indemnity obligations, Design Professional will provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such Liability.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation.

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

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

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

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

12. INSURANCE

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

13. COMPLIANCE WITH LAWS

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

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

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

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

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

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

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

14. PROJECT COORDINATION

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

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

15. ABANDONMENT OF PROJECT

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

16. TERMINATION

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

Select one

17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

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

18. ATTORNEY FEES

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

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

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

21. ENTIRE AGREEMENT

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

22. INSERTED PROVISIONS

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

23. HEADINGS

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

24. SEVERABILITY/PARTIAL INVALIDITY

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

25. SURVIVAL

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

26. NOTICES

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

To City of Cupertino 10300 Torre Ave. Cupertino CA 95014	To Consultant: _____ _____ _____
Attention: _____	Attention: _____
Email: _____	Email: _____

27. VALIDITY OF CONTRACT

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

28. EXECUTION

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

Select one

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

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

CONSULTANT

CITY OF CUPERTINO

A Municipal Corporation

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

ATTEST:

RANDOLPH STEVENSON HOM
Cupertino City Attorney

GRACE SCHMIDT
City Clerk

SAMPLE

EXHIBIT A
SAMPLE SCOPE OF SERVICES FOR DESIGN PROFESSIONAL
MASTER AGREEMENT

Actual Exhibits will be negotiated at the time of the Agreement. This is just a sample to show format and basic structure of the EXHIBITS.

The CONSULTANT shall provide to the CITY's Department of Public Works Design Professional consulting services for various CITY projects.

CONSULTANT shall provide services under this Master Agreement on an "as needed" basis and only (1) upon written request from City's Director of Public Works or authorized Agent as defined in Section 8, Project Coordination and (2) as defined in a fully executed Service Order.

SECTION 1. GENERAL PROVISIONS

- A. The CONSULTANT shall perform all services to the satisfaction of the CITY'S Director.
- B. All of the services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among Design Professional consultants of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances. All documentation prepared by CONSULTANT shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines which are in effect at the time such documentation is prepared.
- C. All work performed under this AGREEMENT shall be authorized by a specific Service Order. Each Service Order given by CITY shall detail the nature of the specific services to be performed by the CONSULTANT, the time limit within which such services must be completed and the compensation for such services. Such details shall include a description of the project for which CONSULTANT shall perform the services, the geographic limits of the project, the type and scope of services to be performed, the format and schedule for deliverables, the schedule of performance, and the schedule of compensation. CONSULTANT shall not perform any services unless authorized by a fully executed Service Order. Any unauthorized services performed by CONSULTANT

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

shall be at no cost to the CITY.

- D. CONSULTANT shall manage its SUBCONSULTANTS, and administer the PROJECT. SUBCONSULTANTS will be identified on each Service Order and provide all required insurance as specified in this master agreement.
- E. CONSULTANT shall begin work under the service order only after receipt of the service order bearing the approval signature of the Director or the Director's designee and the signature of the City Attorney approving the service order as to form. Each authorized Service Order issued under this AGREEMENT by CITY shall be incorporated into the terms and conditions of this AGREEMENT.
- F. CITY will assign a Project Manager to facilitate each Service Order authorized under this AGREEMENT. CONSULTANT shall coordinate with the designated Project Manager on the performance of each Service Order.
- G. CONSULTANT shall be responsible for the coordination with CITY and federal, state and local agencies that are necessary for all services authorized under this AGREEMENT.

SECTION 2. BASIC SERVICES.

As authorized by a fully executed Service Order, CONSULTANT shall provide Design Professional services for various City Public Works Projects in accordance with the following:

A. General Performance Requirements

For each assigned Project:

1. CONSULTANT shall designate a Project Manager and provide to City the names of their team members for the Project. The team members shall be satisfactory to City. CONSULTANT shall not substitute any team members without the prior approval of City. City retains the right to reject team members assigned by CONSULTANT or require replacement of team members.
2. CONSULTANT shall effectively manage and administer the Project for the efficient, progressive, and proactive delivery of the Project.
3. CONSULTANT shall be responsible for managing and coordinating the work of all subconsultants and subcontractors.
4. CONSULTANT shall consult and coordinate with the City and communicate with members of the Project team.

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

5. CONSULTANT shall schedule meetings and prepare meeting agendas and minutes for all Project meetings. All minutes of meetings are due to the City within ten (10) calendar days after the meeting in a digital format and shall also be provided to other appropriate agencies and entities, as directed by City.
6. CONSULTANT shall communicate weekly with City's assigned Project Manager to provide an update on the current status of the Project and provide a brief written summary report.

SAMPLE

B. Specific Performance Requirements

For each assigned Project, CONSULTANT may provide any or all of the following tasks and subtasks, as is required for the specific Project:

Task 1.0 Pre-Design Studies These are just samples of TASKS. Actual TASKS will be negotiated at the time of the Agreement

- 1.01 **Project Analysis:** For budget programming purposes, analyze the Project proposal to identify and describe initial Project goals and objectives, develop a scenario to address Project goals and objectives, Project delivery process, and cost estimate to deliver the proposed Project.
 - 1.02 **Feasibility Study:** Perform a Feasibility Study for the proposed Project. Study will include a professional analysis of the ability of the agency to provide the desired improvements/outcomes within the available budget, and considering other defined constraints such as right-of-way. Other factors to be considered include constructability, time to design and construct, and environmental impacts. Study will also include the outcome of the proposed improvements including traffic impacts, maintenance implications, cost to construct, cost of right of way acquisition, conformance with the General Plan, construction impacts, impacts to specific properties, and other information that will assist the City in determining whether or not to construct the Project.
- 1.0 **Deliverables:** (all deliverables digital unless otherwise noted)
- 1.01 Project Analysis Report
 - 1.02 Feasibility Report

Task 2.0 Data Collection

- 2.01 **Existing Data Assembly:** CONSULTANT shall review Project data provided by the City including, but not limited to: topographic survey, geotechnical reports, traffic studies, CEQA documents, other environmental studies, tree surveys, arborist's reports, approved Master Plan(s), or other such data. The CONSULTANT shall be entitled to reasonably rely upon the accuracy and sufficiency of any information provided to the CONSULTANT by the City or the City's agents.

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- 2.02 The CONSULTANT shall identify discrepancies or shortcomings among the existing data, and identify solutions for resolution, and propose generation of additional site information necessary to provide an accurate Project Base Map.
 - 2.03 The CONSULTANT shall utilize existing data to the extent possible and inform the City immediately of problems associated with using existing data for Project base information.
 - 2.04 **Utility Coordination:** Coordinate with all utility owners who may have facilities within the Project area or that may be impacted by the Project work. Transmit preliminary plans for the identification of potential conflicts. Coordinate potholing by utility companies and owners as required.
 - 2.05 **Field Survey:** Perform field survey of existing control and monumentation. Locate existing survey monuments and accessible property corners and compute the existing right-of-way based on boundary evidence, records maps, and preliminary title reports. Prepare a calculated base map of the existing record right-of-way for use in design.
 - 2.06 **Topographic Survey:** Perform field Topographic Survey to obtain locations of utility surface facilities, inverts of accessible storm drain manholes, inlets, and sanitary sewer manholes. Obtain location and sizes of all trees and other existing features that may impact the Project design.
 - 2.07 **Geotechnical Report:** Perform a geotechnical field investigation and soil boring, perform laboratory testing and prepare a geotechnical report that includes boring logs and recommendations for grading, pavement structural sections, foundations, and slope stability as well as trench excavation and backfill requirements as appropriate for the Project work. Investigation may also include percolation and other tests related to storm water treatment / C3 requirements.
- 2.0 **Deliverables:** (all deliverables digital unless otherwise noted)
- 2.01 Source Document Listing
 - 2.02 Proposal of Additional Investigative Actions
 - 2.03 Details of Problematic Data
 - 2.04 Summary of Utility Companies Contacted and Actions Taken
 - 2.05 Scaled Base Map in AutoCAD (current version) Format

2.06 Project Area Surface Features Added to Base Map in AutoCAD Format

2.07 Geotechnical Report

Task 3.0: Preliminary (35%) Design

3.01 Meetings: Participate in two (2) design team meetings with representatives of the City during the Preliminary Design phase and provide written meeting minutes to the City within two (2) business days.

3.02 Alternatives Analysis: Provide alternatives to accomplish the Project goals and objectives. Include a comparison of the alternatives that includes, at a minimum, achievement of goal(s), construction cost, maintenance implications/costs, energy use, construction impacts, and time to construct. Include identification of agencies or jurisdictions that would need to be coordinated with for each alternative.

3.03 Preliminary Plans: Prepare Preliminary Design Plans and submit them to the City for review and comment. The plans shall be prepared digitally using current AutoCad software. The plans shall be formatted per City standards and submitted with other Preliminary Design Documents as noted below.

The Preliminary Plans will include the major items of work needed to accomplish the Project goals.

The sheets to be provided for this Preliminary Plan submittal may include:

- Title/Index Sheet
- Demolition Plans
- Improvement Plans
- Typical Cross Sections
- Preliminary Street Alignment Plans and Profiles
- Preliminary Utility Plans
- Striping Plans
- Planting

- Details

3.04 Preliminary Estimate: Prepare a Preliminary Estimate of Probable Construction Cost based on items and quantities of work shown on the Preliminary Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.

3.0 Deliverables: (all deliverables digital unless otherwise noted)

3.01 Meeting Notes

3.02 Project Alternatives Analysis

3.03 Preliminary Plans

3.04 Preliminary Construction Cost Estimate

Task 4.0 Construction Document Development

4.01 Meetings: Participate in two (2) design team meetings with representatives of the City during the Construction Document phase and provide written meeting minutes to the City within two (2) business days.

4.02 65% Construction Documents: The 65% Construction Documents shall be a refinement of the Preliminary Design documents and are to be based on comments received for the Preliminary review. The 65% Plans, Draft Technical Specifications, and 65% Cost Estimate shall be submitted together.

4.03 65% Plans: Prepare 65% Design Plans and submit them to the City for review and comment. 65% plans shall include any sheets not previously submitted (erosion control, draft details, etc.). Advance the design to the point that all major design issues and solutions are represented in the plans. The following types of plans may be prepared:

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- Title Sheet, Legend and Notes
- Typical Cross Sections
- Demolition Plans
- Street Improvement Plans and Profiles
- Utility Plans and Profiles
- Construction Details
- Traffic Handling and Construction Area Signs
- Signing and Striping Plans
- Erosion Control Plans
- Cross Sections

- 4.04 Draft Technical Specifications:** Prepare Draft Technical Specifications and submit them to the City for review and comment. The Technical Specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 4.05 65% Cost Estimate:** Prepare a 65% Estimate of Probable Construction Cost based on items and quantities of work shown on the 65% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.
- 4.06 95% Construction Documents:** The 95% Construction Documents shall be a refinement of the 65% Design Documents and are to be based on comments received for the 65% review. The 95% Plans, Final Technical Specifications, and 95% Cost Estimate shall be submitted together.
- 4.07 95% Plans:** Prepare 95% Design Plans and submit them to the City for review and comment.
- 4.08 Final Technical Specifications:** Update the Draft Technical Specifications and submit the Final Technical Specifications to the City for review and comment. The technical

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specifications are to reference City or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.

4.09 95% Cost Estimate: Prepare a 95% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 95% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.

4.0 Deliverables: (all deliverables digital unless otherwise noted)

4.01 Meeting Notes

4.03 65% Design Plans

4.04 Draft Technical Specifications

4.05 65% Construction Cost Estimate

4.07 95% Design Plans

4.08 Final Technical Specifications

4.09 95% Construction Cost Estimate

SAMPLE

Task 5.0: Final (100%) Construction Documents
5.01 100% Construction Documents: The 100% Construction Documents shall address any comments received for the 95% review. The 100% Plans, Technical Specifications, and Cost Estimate shall be submitted together on digital media, either a flash drive or a CD/DVD.

In addition, provide two (2) complete wet signed, stamped sets of Construction Documents and Technical. The submitted documents shall be in reproducible, hard copy format.

City will review the 100% Construction Documents for confirmation that responses to all previously provided comments are appropriately integrated. CONSULTANT is to make any changes to the 100% plans that are requested by City.

5.02 100% Plans: Prepare 100% Design Plans and submit them to the City.

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

5.04 100% Cost Estimate: Prepare a 100% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 100% Plans

5.0 Deliverables: (all deliverables digital unless otherwise noted)

5.02 100% Plans (digital + hard copies)

5.03 100% Technical Specifications (digital + hard copies)

5.04 100% Cost Estimate (digital + hard copies)

Task 6.0: Bid and Award Support

6.01 Bid Period Assistance: Provide the following bid phase services, at the City's request, through award of the construction contract:

- a. Attend the general contractor pre-bid meeting.
- b. Assist City in responding to bidders' questions and incorporation them in an addendum.

- c. Assist in the review and processing of substitution submittals during Bid phase.

6.02 Addenda Preparation: As requested by City, prepare addenda to Project documents including, but not limited to, new or revised Plans, new or revised Technical Specifications and/or removal of items from the Project Plans and/or Specifications and responding to questions and providing clarifications.

6.03 Project Document Conformance: Update the Construction Document package to include all addenda issued during the Bid process and submit a Conformed Set of Drawings and Specifications to the City within ten (10) days of the contract award.

The CONSULTANT shall provide two (2) complete wet signed, stamped Conform Sets of Construction Documents and Technical Specifications that includes the 100% Construction Documents Package and all bid addenda. The submitted documents shall be in reproducible, hard copy format.

In addition, the CONSULTANT shall provide complete electronic format Conform Set Construction Documents and Technical Specifications in 1) native file formats (AutoCAD, MS Word) and 2) pdf on a CD/DVD or flash drive media.

6.0 Deliverables: (all deliverables digital unless otherwise noted)

6.01b Written response to Bidders' questions

6.01c Written evaluation of substitution submittals

6.02 Project Addenda

6.03 Conformed Project Documents

Task 7.0: Construction Support

7.01 Submittal Review: Review and approve or reject the Contractor's submittals within five (5) working days of receipt. The CONSULTANT may request additional review time for particularly complex or unusual submittals. The City shall not grant additional review time for standard construction item submittals. The CONSULTANT shall maintain a detailed record of all submittals and content supplied by the Contractor.

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7.02 Requests for Information: Review Contractor Requests for Information (RFI) and provide a written response to the Contractor with a copy to the City, within five (5) working days of receipt. The CONSULTANT's response may provide, with advance City approval, supplemental drawings and/or specifications necessary to clarify the RFI.

7.03 Change Orders: Review and advise the City on requests by the City or Contractor for changes in the construction of the Project. The CONSULTANT shall review City prepared Contract Change Orders and, where necessary, prepare Drawings and Specifications to describe Work to be added, deleted or modified. The CONSULTANT shall maintain all records relative to changes in the construction.

7.04 Site Meetings: Attend up to two (2) site meetings in the Construction phase and provide meeting minutes to the City within two (2) business days.

7.05 Prepare As-Built: CONSULTANT to prepare final As-Built documents from Contractors mark ups and other contract changes.

7.0 Deliverables: (all deliverables digital unless otherwise noted)

7.01 Responses to submittals, submittal log

7.02 Responses to Requests for Information

7.03 Review comments for City prepared Change Orders

7.04 Meeting Minutes

7.05 As-Builts

Other Tasks/Services that may be assigned per Project needs:

- Plan line study
- Corridor study
- Community Outreach Support/Design Visualization
- Utility Coordination
- Permit Acquisition

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

- Traffic Signal Design
- Street Lighting Design
- Structural Design
- Green Street Infrastructure Design
- Complete Street Roadway Design
- Environmental Engineering
- Storm Water Conveyance and Treatment Design
- Fiber Optic/Communication Design
- Aerial Photometric Survey
- Legal Descriptions and Plat Maps
- Planting and Irrigation Design
- Roadway Aesthetic Treatments

Task 8.0: Additional Services

CONSULTANT services not specifically identified in the Scope of Services shall be considered Additional Services. At the City's request, the CONSULTANT shall provide a fee proposal for specific additional services consistent with the professional rate schedule in Exhibit C.

END OF
EXHIBIT

EXHIBIT B

SERVICE ORDER PROCESS

The CONSULTANT shall provide services under this Master Agreement on an “as needed” basis and only (1) upon written request from the CITY’s Director of Public Works or authorized Agent as defined in Article 11 of the Master Agreement, Project Coordination, and (2) as defined in a fully executed Service Order.

SECTION 1 - SERVICE ORDER INITIATION

- A. The City Public Works Director or his designee shall provide written request for CONSULTANT services as defined in this agreement. The CONSULTANT and City shall meet to discuss the services after which the CONSULTANT shall provide a written proposal including specific scope of services, performance schedule, and compensation to the City. Scope of Services will reference Tasks from Exhibit A where possible.
- B. The City and CONSULTANT shall discuss the proposal in detail and agree upon the terms of the Service Order.
- C. The City shall prepare a Project Service Order consistent with the City’s standard form, Service Order, and Attachment A. The Service Order shall, at a minimum, include (1) specific scope of services, deliverables, schedule of performance, and compensation.

SECTION 2- SERVICE ORDER EXECUTION

- D. Both parties shall execute the Service Order as evidenced by the signatures of the authorized representatives defined in Article 11 of the Master Agreement, Project Coordination, and the date signed.
- E. The CONSULTANT shall begin work on the scope of services only after receipt of a fully executed authorized Service Order defining those services. CONSULTANT understands and agrees that work performed before the date of the authorized Service Order or outside the scope of services once a Service Order is signed and authorized shall be at no cost to the City.

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- F. The maximum compensation authorized by a single Service Order and/or the aggregate of Service Orders shall not exceed the maximum compensation set forth in Article 4 of the Master Agreement.

END OF
EXHIBIT

SAMPLE

EXHIBIT C

COMPENSATION

The City shall compensate the CONSULTANT according to the hourly rate(s) stated in this Exhibit which shall remain in effect for the Master Agreement schedule of performance unless changed by written amendment to the Master Agreement.

Each authorized Service Order under this Master Agreement shall identify the method of compensation consistent with the scope of services provided by the CONSULTANT. In any case, the CONSULTANT's total payment for each authorized Service Order shall not exceed the maximum compensation identified in that Service Order, unless authorized by a written amendment executed by the City and the CONSULTANT, and the total compensation for all authorized Service Orders shall not exceed the maximum compensation stated in Article 4, CONSULTANT Compensation, of the Master Agreement.

Work exceeding the total authorized amount for a Service Order or the total compensation for the Master Agreement shall be at no cost to the City.

CONSULTANT Hourly Rate(s)

The CONSULTANT shall be compensated according to the following hourly rate(s) for all work performed under authorized Service Orders:

CONSULTANT's Rates: Hourly Rates sample list

Principal	per hour
Civil Engineering	per hour
Senior Civil Engineering	per hour
Land Development Manager	per hour
Senior Planner	per hour
Senior Civil Engineer	per hour
Design Specialist	per hour
Project Planner	per hour
Project Civil Engineer	per hour
Project Arborist	per hour
Engineer, Planner	per hour
Assistant Engineer	per hour
Junior Engineer	per hour
Senior Technician	per hour

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Project Technician	per hour
Technician	per hour
Assistant Technician	per hour
Junior Technician	per hour
Project Support Staff	per hour

Reimbursable Expenses

Reimbursable expenses include the cost of items, other than direct labor, specifically required to perform the Services, excluding normal business operating expenses and overhead, which are included in the direct hourly rates set forth above. City will compensate CONSULTANT for such reimbursable expenses only with prior written authorization by the individual designated as the City Representative in Section 8, Project Coordination, of the Agreement. The City will reimburse the CONSULTANT for allowable reimbursable expenses for the documented actual cost only, with no surcharge or markup for CONSULTANT administration. Reimbursable expenses must be separately identified on the CONSULTANT invoice and documentation of each reimbursable expense must be submitted to the City upon request and maintained as required under Section 18, Records, of the Agreement. Allowed reimbursable expenses include, but are not limited to:

- Individual or multiple document reproductions that exceed 50 pages;
- Drawing or bid set reproductions;
- Special software required by City specifically for a project, excluding standard software programs such as Microsoft Office suite applications (i.e. Word, Excel, PowerPoint, Project, etc.); Adobe Acrobat; or standard photo editing programs.
- Travel expenses to the extent allowed by City policy, and subject to any limitation on allowable travel expenses under a Service Order, with mileage reimbursed per the current IRS standard mileage rate at the time of travel;
- Subconsultants required by project scope of services;
- Safety equipment required by City policy or the project scope of services;
- Mass mailing notifications;
- Special expenses for public meetings, such as refreshments, interpreters, security, valet parking, facility rental, tents or booths, easels, markers, paper, presentation equipment.

Method of Payment

ATTACHMENT B - Sample Cupertino Standard Design Professional Master Agreement with Exhibits A, B, C and D

The CONSULTANT shall submit an invoice to the City by the 5th business day of each month that clearly identifies the work performed in the previous month and authorized reimbursable expenses. All invoices from CONSULTANT shall be addressed to City at:

Attention:
City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
E-mail:

The invoice shall identify the applicable period of work, a description of the work performed consistent with the Service Order scope of services, the number of hours, hourly rate, reimbursable expenses, Service Order maximum compensation, Service Order compensation to date including invoice number, total invoice amount for current invoice, Service Order maximum compensation balance remaining.

All CONSULTANT payments shall be addressed to:

XXXXX Project Manager
Address:
Phone no.
E-mail:

END OF EXHIBIT

EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

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

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
 Not required. Consultant has provided written verification of no employees.
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
 - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

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

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Additional Insured Status

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

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

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

Deductibles and Self-Insured Retentions

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

Acceptability of Insurers

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

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

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

Higher Insurance Limits

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

Adequacy of Coverage

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

ATTACHMENT C
Consultant Rating Form For
DESIGN PROFESSIONAL SERVICES

CITY OF CUPERTINO

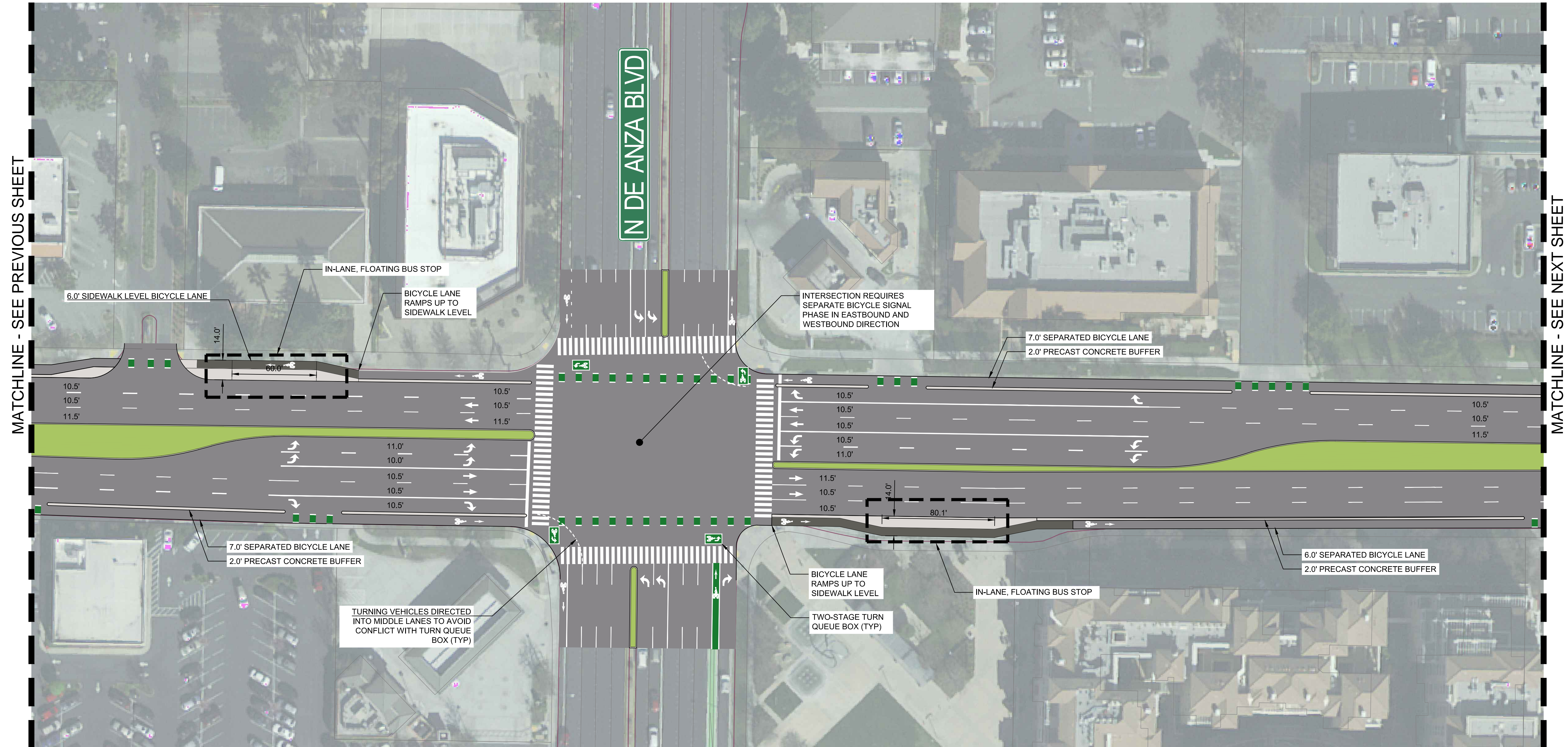
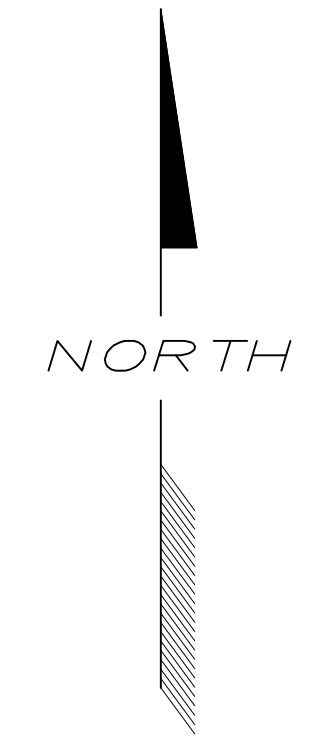
Consultant: _____

Review Date: _____

Panel Member: _____

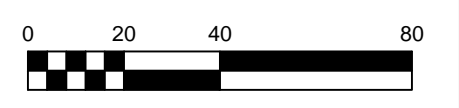
1	Consultant SOQ responsive to submission criteria and Consultant is licensed in the State of California. <i>Note: a zero score shall eliminate the consultant from further consideration.</i> (0-10)	<input type="text"/>
2	Consultant provided an original, wet signed, cover letter of interest with all required information. <i>Including statement regarding Hold Harmless Indemnity and Insurance coverage requirements.</i> (0 or 5)	<input type="text"/>
3	Consultant has qualified personnel available to perform the scope of services. (0-15)	<input type="text"/>
4	Consultant has experience directly related to the potential scope of services. (0-15)	<input type="text"/>
5	Consultant provided (5) representative project examples within the past three (3) years with required information. (0-15)	<input type="text"/>
6	Consultant provided (3) public sector projects in California/San Francisco Bay Area within the past three (3) years and provided the required information. (0-15)	<input type="text"/>
7	Consultant has qualified sub consultants available to perform the scope of services and provided the required information. (0-10)	<input type="text"/>
8	Consultant provided labor rate schedules valid for the two year qualification period. (0 or 10)	<input type="text"/>
9	<i>Consultant accepts the City of Cupertino standard professional form consultant agreement, and master agreement, including hold harmless indemnity and insurance requirements and general attachments, without modification. Note: a zero score shall eliminate the consultant from further consideration.</i> (0 or 5)	<input type="text"/>
Total Score (X/100)		<input type="text"/>

Attachment D
Stevens Creek Boulevard Separated Bike Lane Project Conceptual Plan



2120 UNIVERSITY AVE BERKELEY, CA 94704
PHONE: (610) 296-0740
www.tooledesign.com

STEVENS CREEK BLVD
CLASS IV BIKEWAY DESIGN
CITY OF CUPERTINO, CA



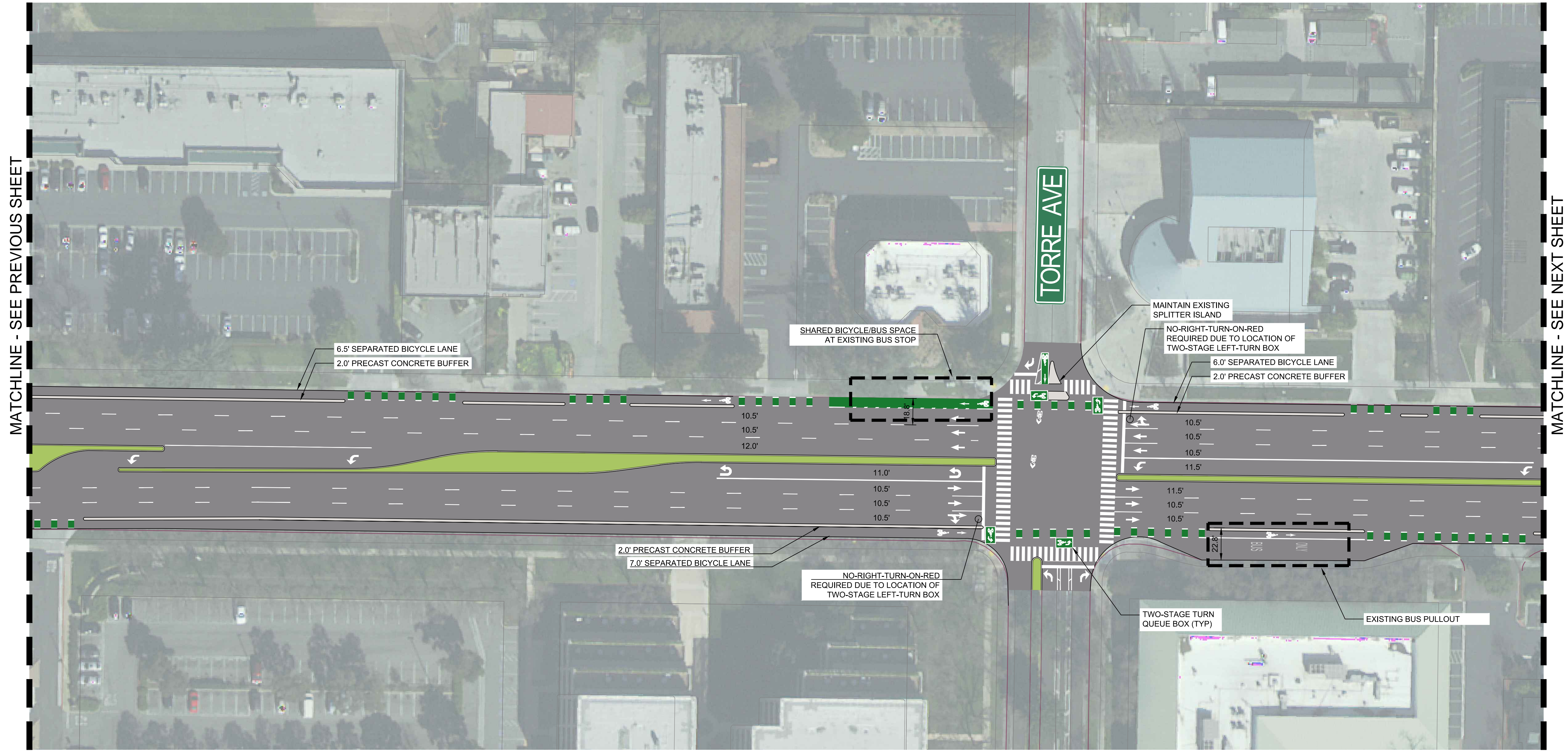
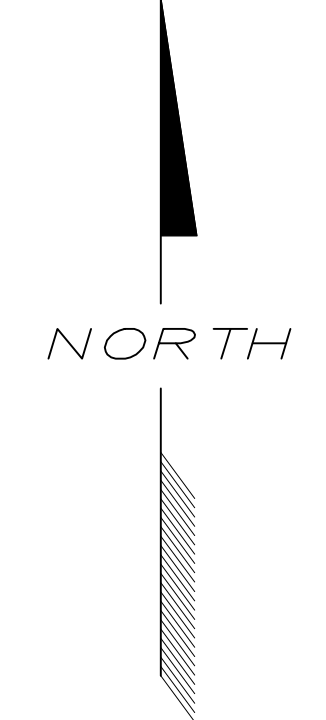
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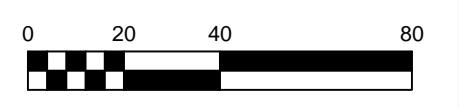


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MATCHLINE - SEE NEXT SHEET



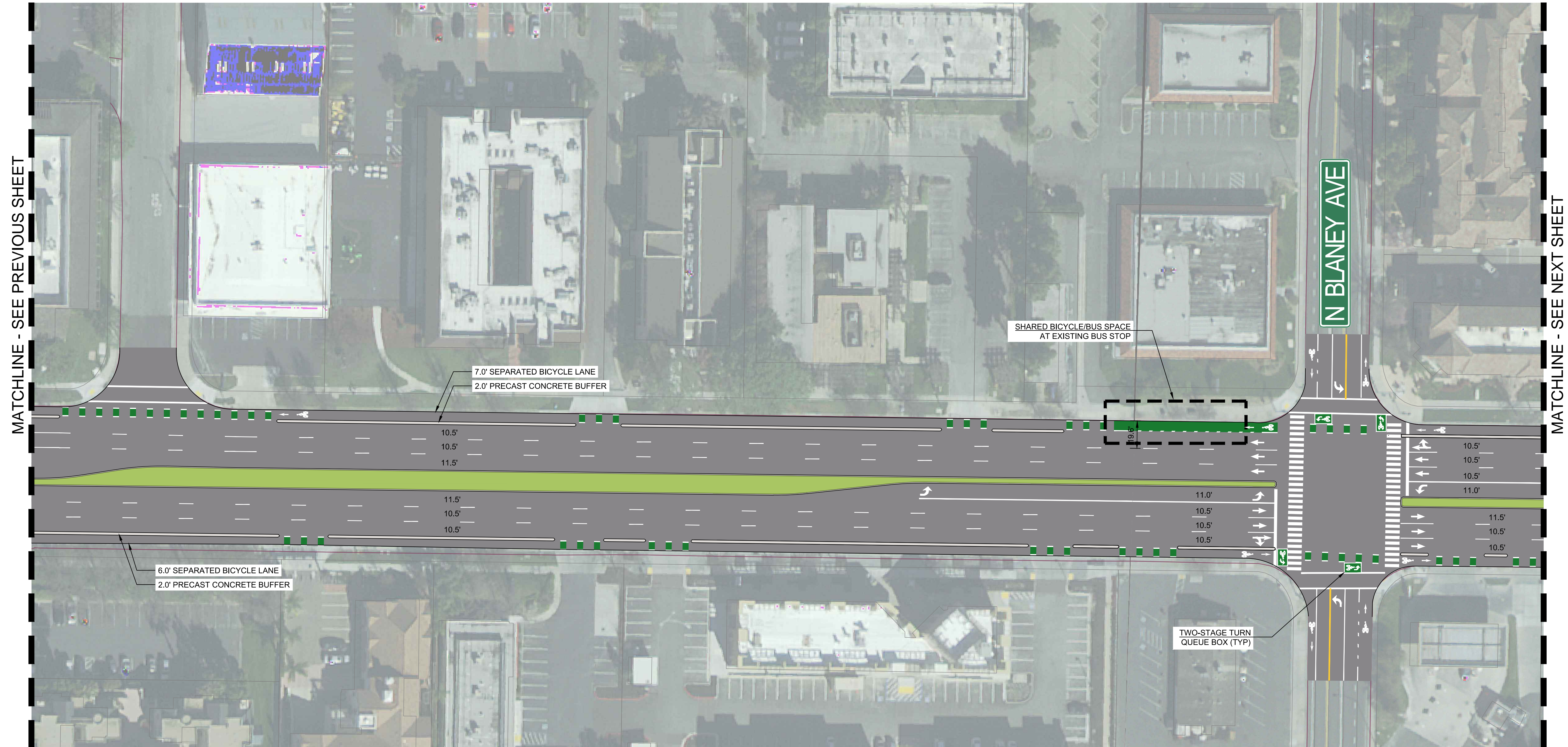
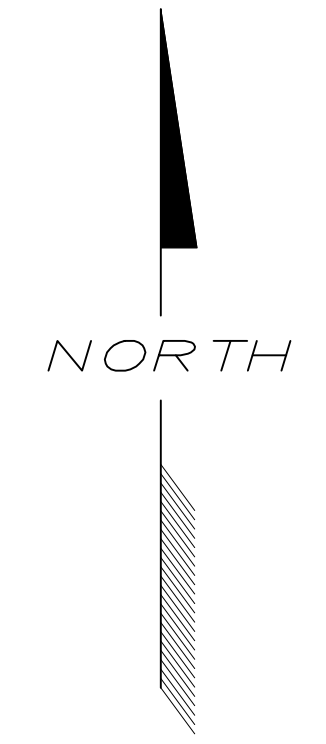
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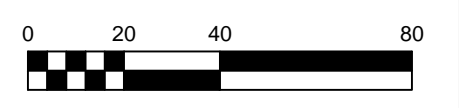
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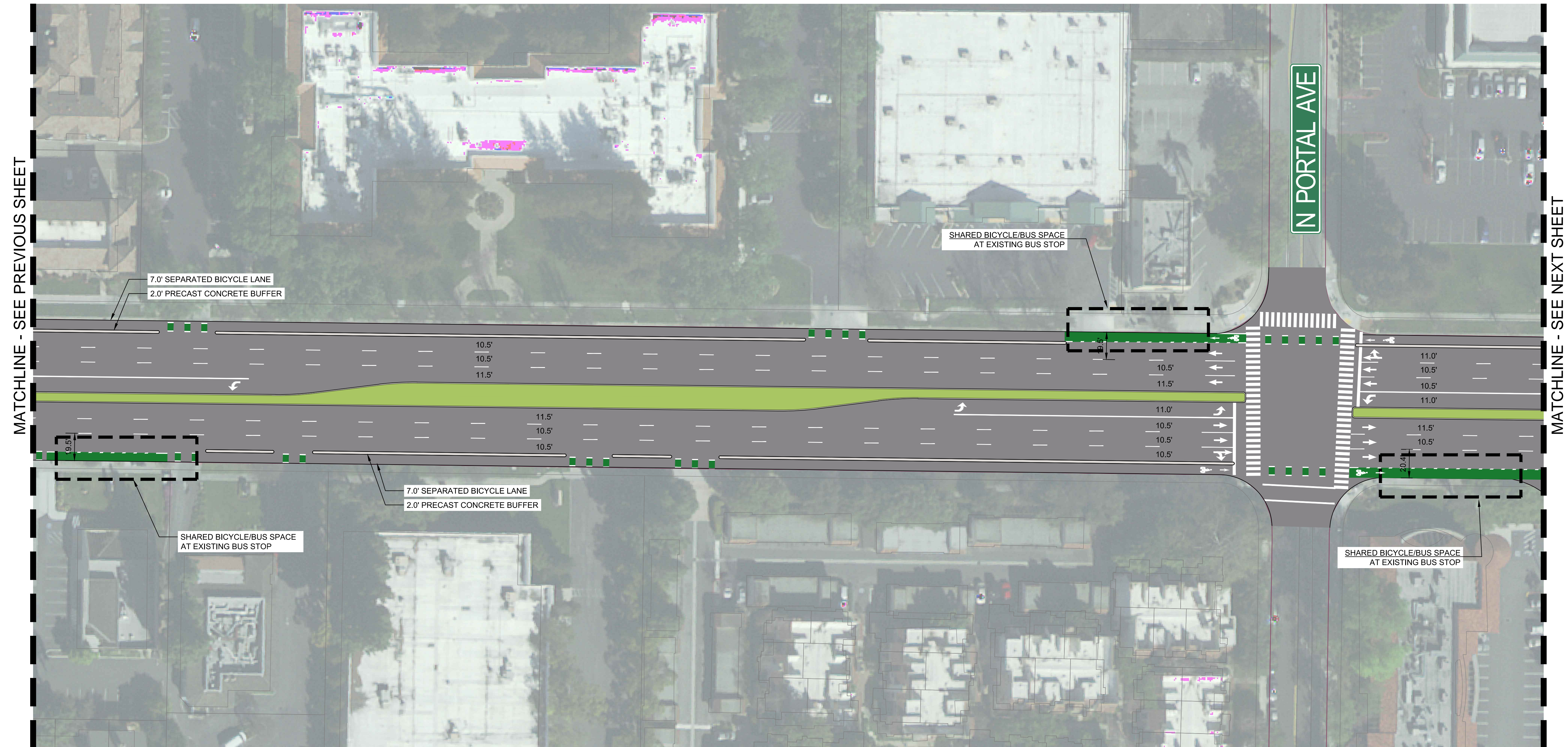
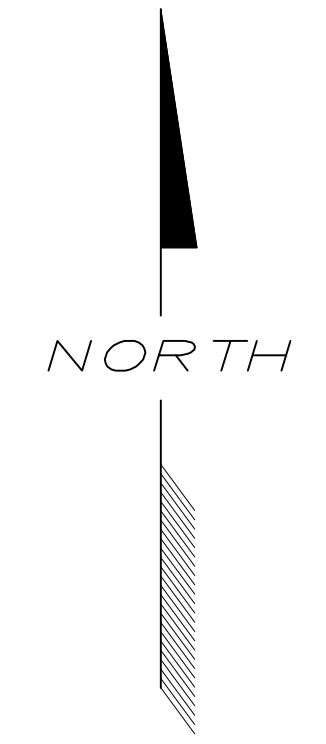


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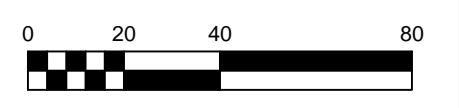
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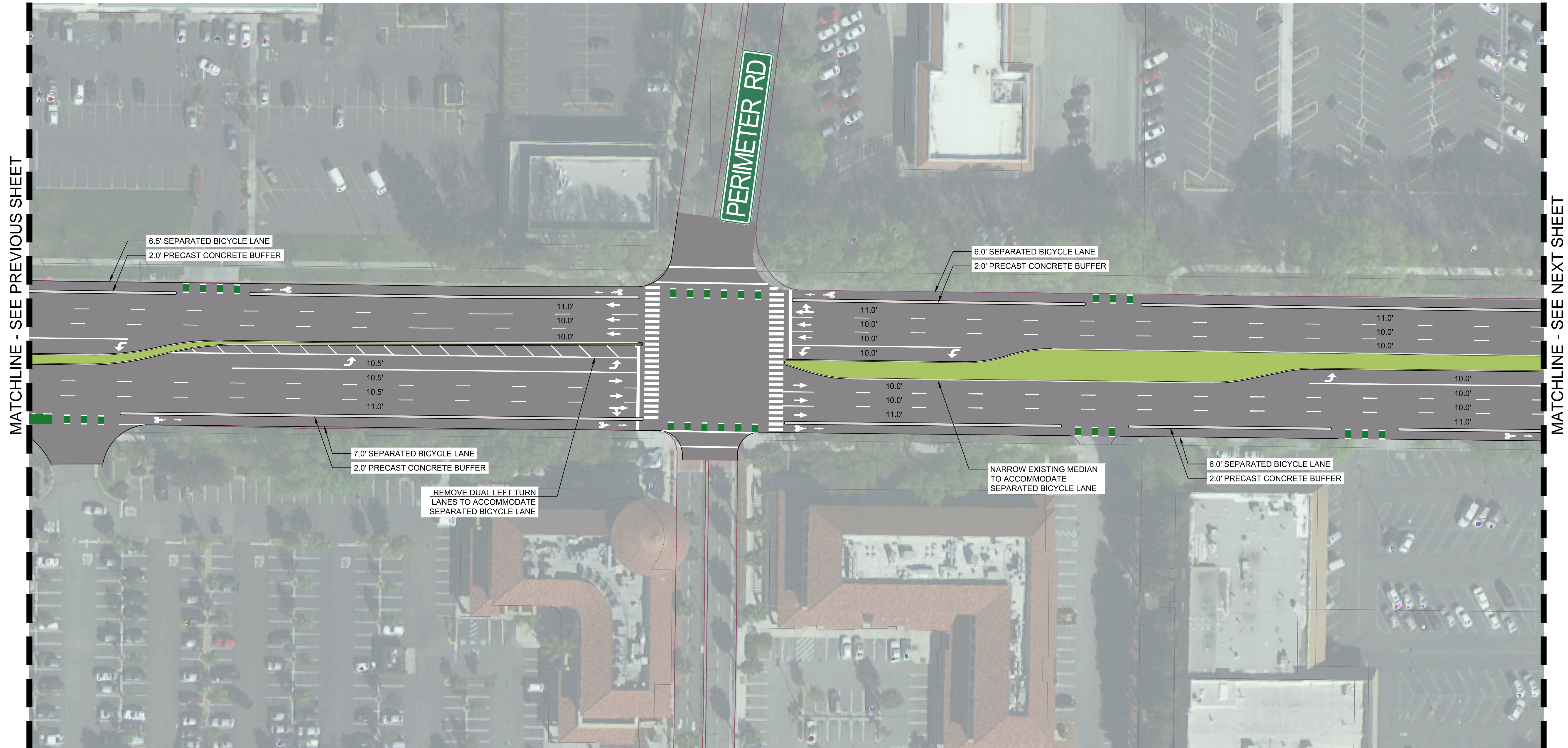
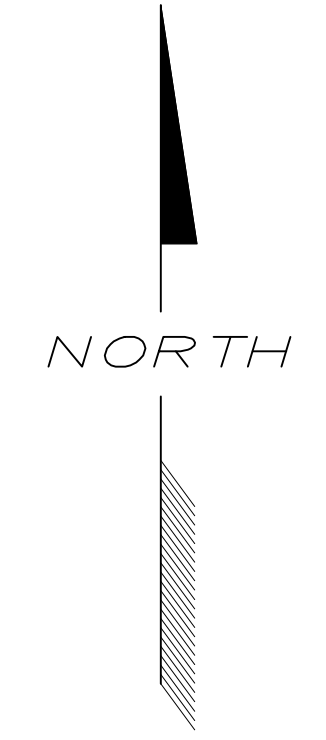
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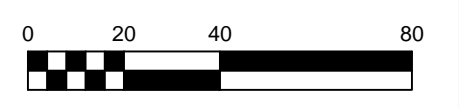
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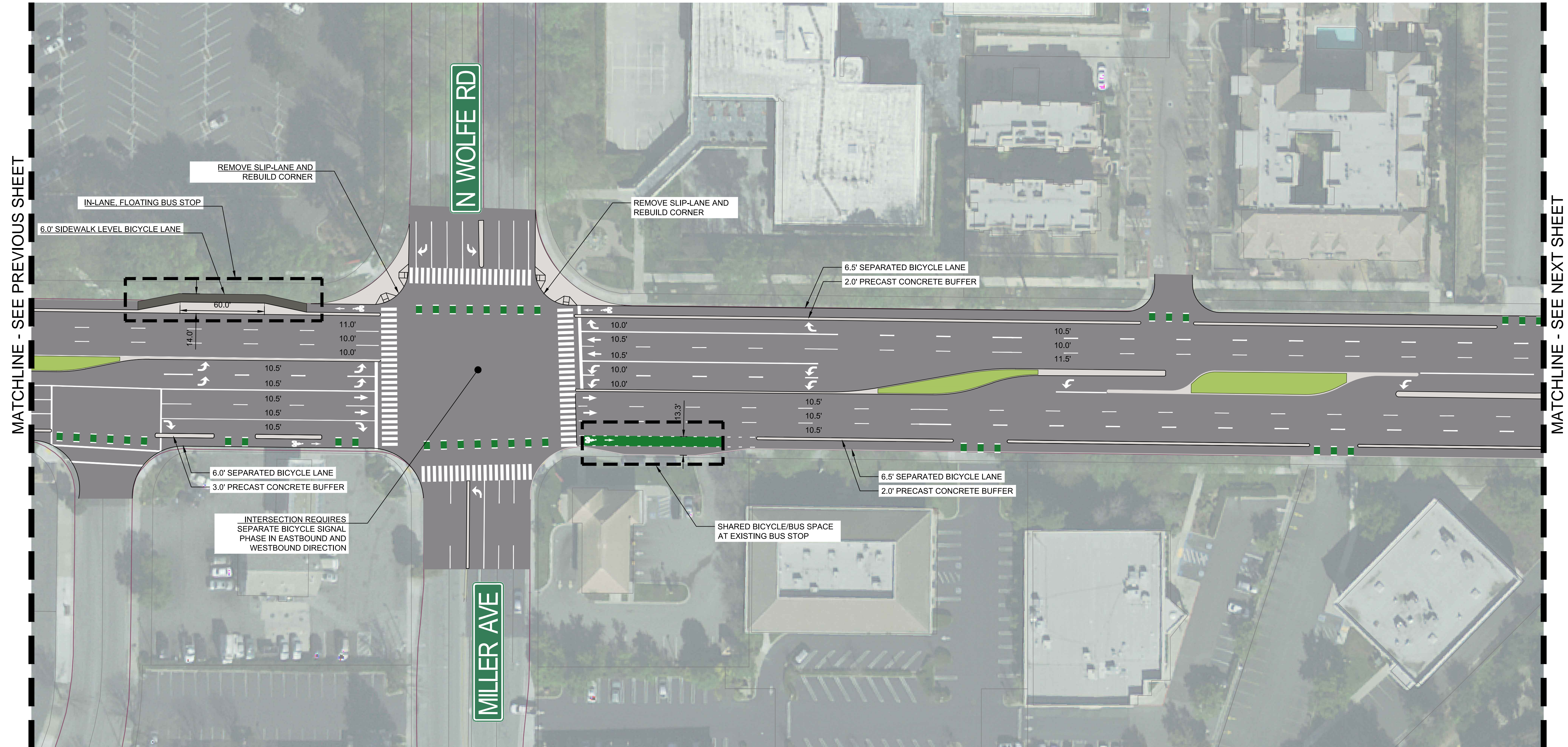
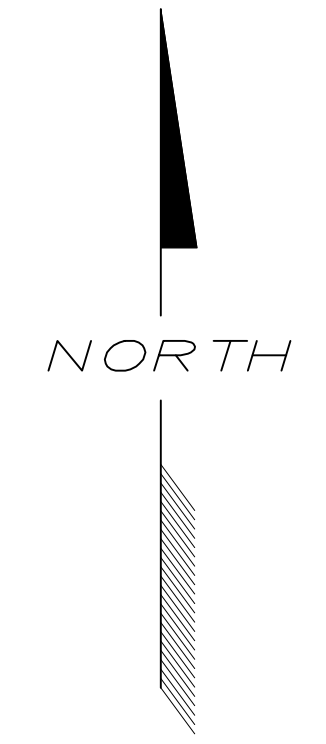
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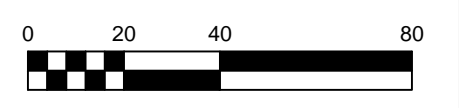
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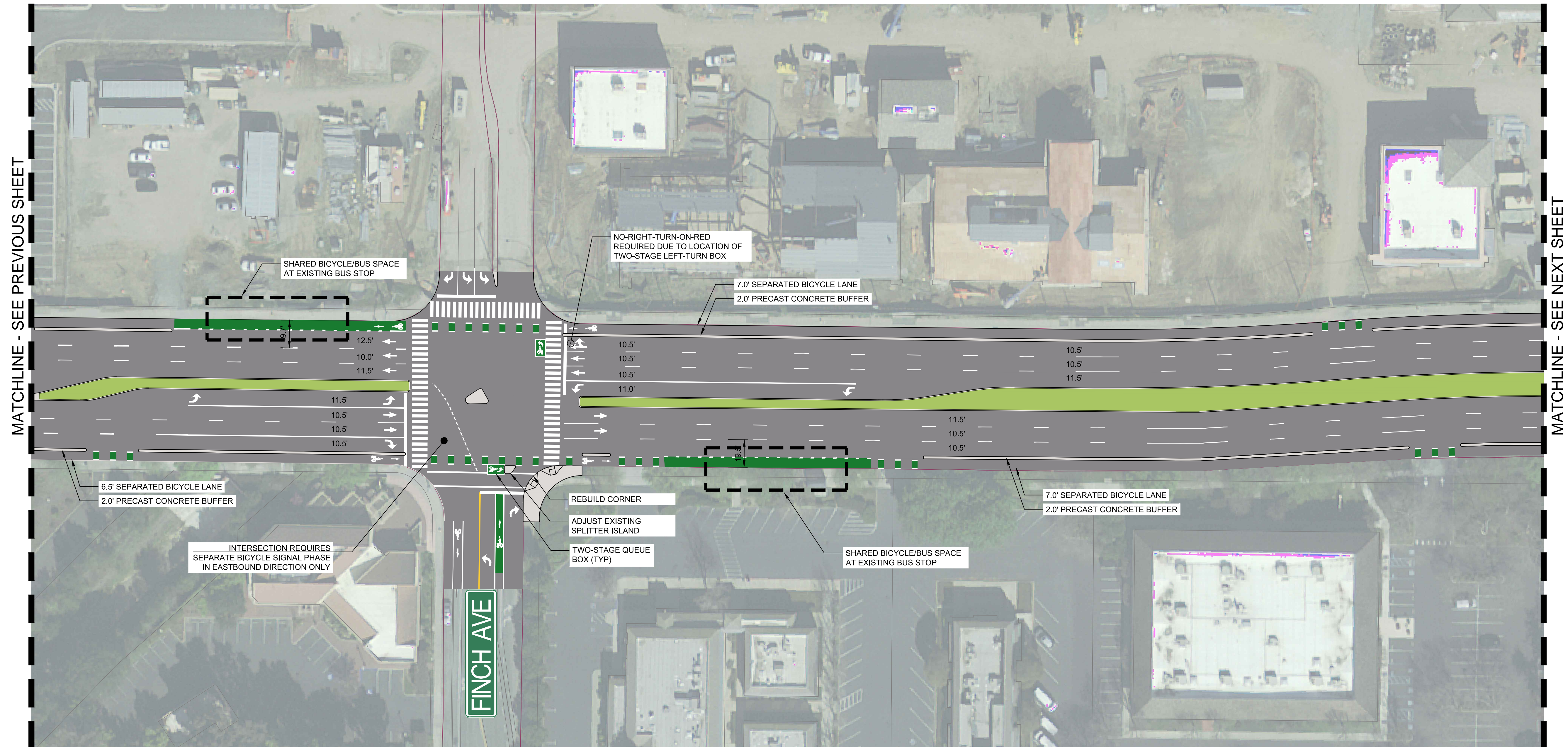
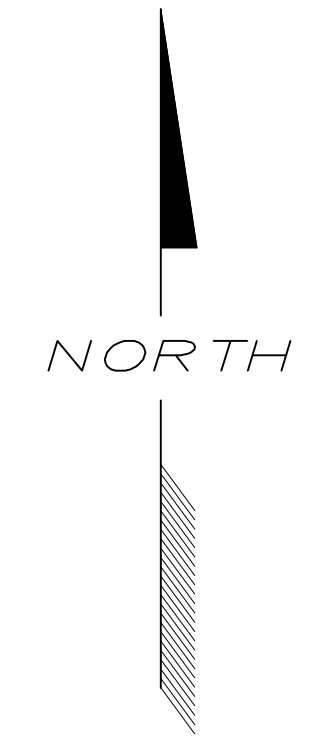
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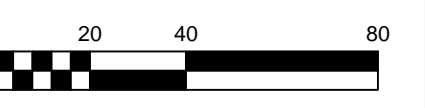
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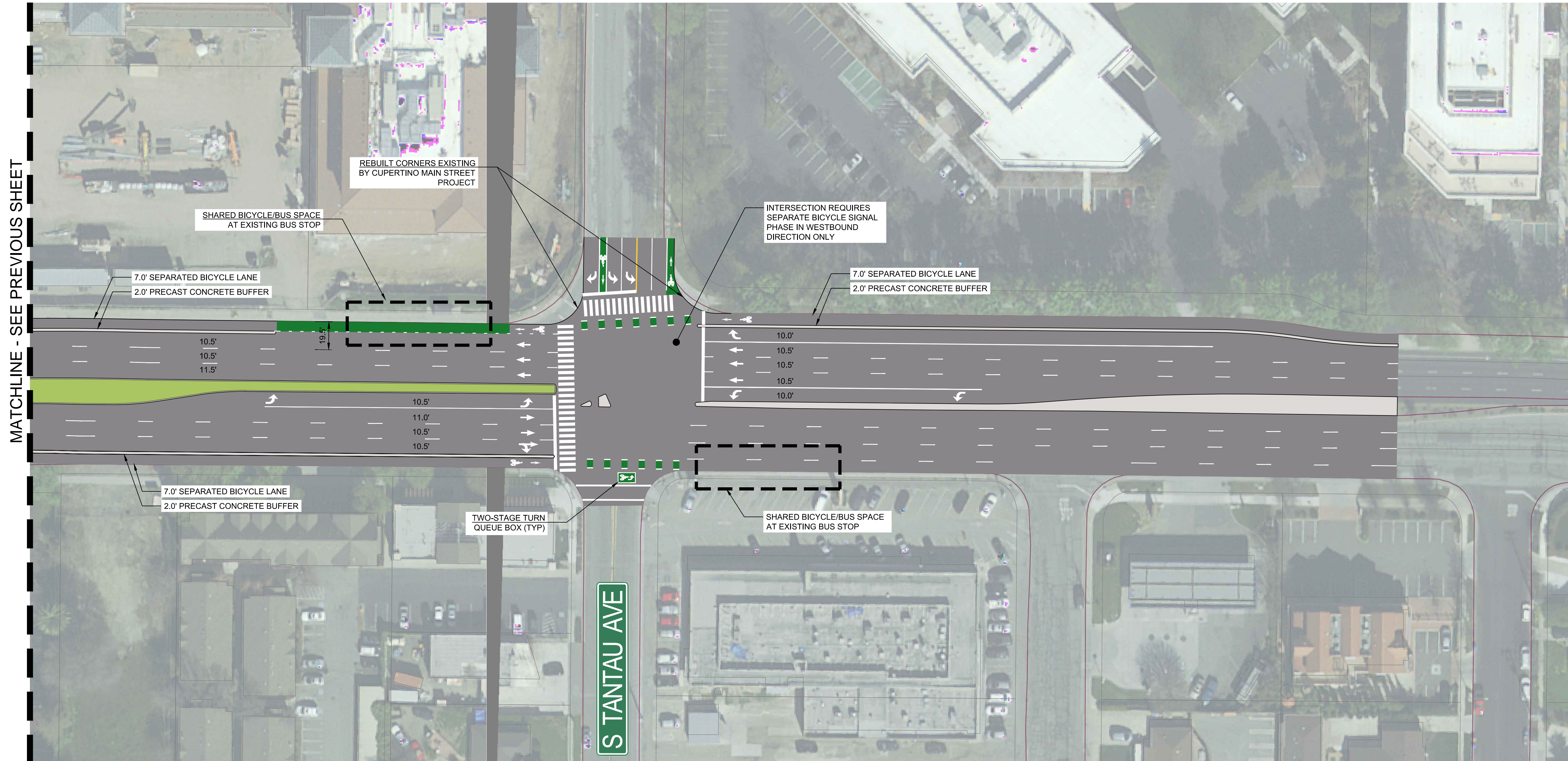
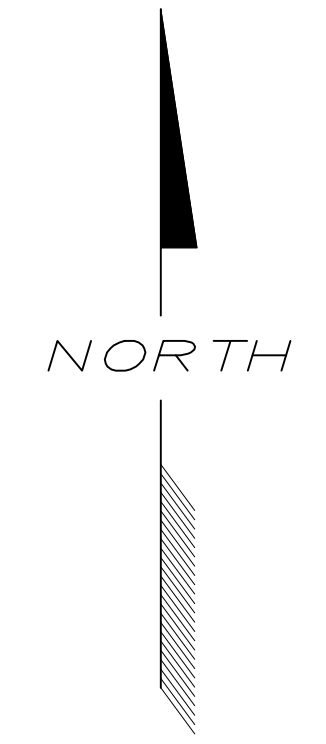
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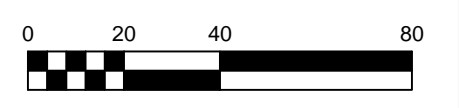
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