

# Standard City of San José Consultant Agreement

(Capital Projects)

This Agreement is between the City of San José, a municipal corporation (“City”), and MOORE IACOFANO GOLTSMAN INC. (MIG), a California corporation (“Consultant”).

“This Agreement is made and effective upon full execution by both Parties 11-28-2022. (“Contract Date”).

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

- 1.1 **General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City.
- 1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
  - Exhibit B:** Compensation
  - Exhibit C:** Insurance Requirements
- 1.3 **Director:** “Director” means the Director of the Department of Transportation or the Director’s designee.
- 1.4 **Business Days:** “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.
- 1.5 **Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 **Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

The Agreement term is from the Contract Date to June 30,2024, inclusive, unless terminated earlier pursuant to Section 19 below.

### 3. SCOPE OF SERVICES

- 3.1 Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director’s satisfaction.
- 3.2 Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate to the Project but are not included in the Basic Services.
- 3.2.1 Authorization:** The City will not compensate the Consultant for any Additional Services without the Director’s prior written authorization.
- 3.2.2 Director’s Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the City.

### 4. DESIGN SERVICE REQUIREMENTS

- 4.1 General:** This Section applies to any design services the Consultant performs as part of the Basic Services or Additional Services.
- 4.2 Standard Documents:** The Consultant is, or will become, familiar with the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San Jose, Department of Public Works, Standard Details, dated July 1992 (and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively “Standard Project Documents”).
- 4.3 Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Consultant must be based on, and must incorporate, the Standard Project Documents.

### 5. CITY’S CONTRACT MANAGER

The City’s contract manager for this Agreement is:

Name: Natasha Opfell	Phone No.: (408) 975 3222
Department: Transportation	Email: <a href="mailto:natasha.opfell@sanjoseca.gov">natasha.opfell@sanjoseca.gov</a>
Address: 200 E. Santa Clara Street, 8th Floor, San José, CA 95113	

The Director can change the above contract manager by giving the Consultant written notice.

## 6. CONSULTANT'S STAFFING

**6.1 Consultant's Project Manager and Other Staffing:** Identified below are the following: (a) the Consultant's project manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Consultant must comply with the requirements of Subsection 17.2 below.

		<u>Required to File Form 700?</u>		
		<b>Yes Already Filed (Insert Date Filed)</b>	<b>Yes Need to File</b>	<b>No</b>
<b><u>Consultant's Project Manager</u></b>				
Name: Rishi Dhody	Phone No.: 510-514-8826			X
Address: 2055 Junction Ave Suite 205, San Jose, CA 95131, United States	E-mail: rdhody@migcom.com			
<b><u>Other Staffing</u></b>				
<u>Name:</u>	<u>Assignment:</u>	<u>Email:</u>		
Mukul Malhotra	Existing Conditions, Public Outreach, Analysis, Draft and Final plan, Project Management			X
Rishi Dhody	Existing Conditions, Public Outreach, Analysis, Draft and Final plan, Project Management			X
Paula Hartman	Existing Conditions, Analysis, Draft and Final plan			X

**6.2 Project Manager's Authority:** The Consultant's contract manager is authorized to act on behalf of the Consultant.

**6.3 Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

## 7. USE OF SUBCONSULTANTS

**7.1 Authority to Use:** Whichever of the following is marked applies to this Agreement:

The Consultant can **not** use any subconsultants without the Director's prior written approval.

- The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director’s prior written approval.

Subconsultant’s Name	Area of Work
1. Nelson Nygaard	Existing Conditions, Public Outreach, Analysis, Draft and Final plan, Project Management
2.VIVO	Public Outreach

- 7.2** **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

## 8. INDEPENDENT CONTRACTOR

- 8.1** **General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and shall not represent or act as the City’s agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2** **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively “Subcontractors”). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3** **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

## 9. STANDARD OF PERFORMANCE

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

## 10. COMPENSATION

- 10.1** **Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$451,000** (“Maximum Total Compensation”).
- 10.2** **Intentionally Omitted.**
- 10.3** **Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.
  - 10.3.1** **Compensation Table:** **Exhibit B** sets forth a compensation table establishing the manner in which the City will pay the Maximum Compensation to the Consultant (“Compensation Table”).

The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

**10.3.2 Schedule of Rates and Charges:** If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

**10.3.2.1 Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay Consultant Premium Pay.

**10.3.2.2 No Increases:** The City will *not* increase the Schedule of Rates and Charges during the Agreement term.

**10.3.2.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

**10.4 Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.

**10.4.1 Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

**10.4.2 Basis of Compensation (Column 2):** Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee basis.

**10.4.3 Invoice Period (Column 3):** Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10<sup>th</sup> Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all work to the Director's satisfaction.

**10.4.3.1 Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

**10.4.3.2 Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

**10.4.3.3 Monthly Invoices Based on Fixed Fee:** If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the task(s) completed the previous month

involve the Consultant performing construction administration services, the percentage of work completed during the previous month will be measured based on the percentage of construction completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

**10.4.4 Compensation (Column 4):** Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

**10.4.4.1 Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a “not-to-exceed” or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director’s sole discretion) *may* use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

**10.4.4.2 Fixed Fee:** If “fixed fee” is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

**10.5 Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

**10.5.1 Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

**10.5.2 Maximum Amount of Reimbursable Expenses:** The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

**10.5.3 Expenses That Are Reimbursable:** Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a mark up is specified

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City’s project manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City’s project manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has	No Markup

	received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 10%

**10.6 Compensation Table – Part 3:** Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

**10.6.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified mark up not to exceed 5 percent.

**10.6.2 Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant’s actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

**10.6.3 Maximum Amount:** The City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

**10.7 Compensation Table – Part 4:** Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.

**10.8 Tax Forms Required:** The following are conditions on the City’s obligation to process any payment pursuant to this Agreement:

**10.8.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**10.8.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

## 11. INDEMNIFICATION

**11.1 Indemnification:** The Consultant will defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities (collectively “Indemnifiable Event”) to the extent such Indemnifiable Event arises out of, pertains to, or relates to any of the following: **(a)** the Consultant’s negligent performance of any Services, **(b)** any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its subcontractors, anyone directly or

indirectly employed by either the Consultant or any of its subcontractors, or anyone that they control, **(c)** any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any Services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement, or **(d)** any breach of this Agreement.

11.2 Omitted.

11.3 **Applicable Law/Duty to Defend:** The Consultant's indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, must defend any suit or action that is subject to the Consultant's indemnity obligations.

11.4 **Insurance:** The City's acceptance of any insurance in accordance with Section 12 of this Agreement does not relieve the Consultant from its indemnity obligations. The Consultant's indemnity obligations apply whether or not the insurance required by this Agreement covers any damages or claims for damages.

11.5 **Survival:** The Consultant's indemnity obligations survive the expiration or earlier termination of the Agreement.

## 12. INSURANCE REQUIREMENTS

12.1 **General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

12.2 **Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.

12.3 **Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

## 13. OWNERSHIP OF WORK PRODUCT

13.1 **Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Consultant or any other person engaged directly or indirectly by the Consultant to perform the Consultant's services pursuant to this Agreement: reports, drawings, plans, data, software, models, elevations, sections, details, schedules, diagrams, specifications, studies, surveys, information, sketches, and documents or other materials developed or discovered (collectively "Work Product").

13.2 **Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.

13.3 **City's Reuse:** Notwithstanding Subsection 13.1, the City's reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.

13.4 **Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.



## 14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

## 15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and
  - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## 16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Conditions of Prohibition:** The prohibition in Subsection 16.1 is subject to the following conditions:
- 16.2.1 Reasonable Accommodation:** The prohibition is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.
- 16.2.2 Compliance Reports:** The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer

may require the Consultant to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.

- 16.2.3 Waiver:** The Compliance Officer may waive any of the requirements of this Section if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.
- 16.2.4 Violation:** A violation of the prohibition or any part of this Section 16 constitutes the following: (a) a material breach of this Agreement, (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.
- 16.3 Subcontracts:** The Consultant shall include the requirements of this Section in each subcontract that it enters into in furtherance of this Agreement.

## 17. CONFLICT OF INTEREST

- 17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.
- 17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Sections 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700, to do each of the following:
- Disclose the categories of economic interests in Form 700 as required by the Director;
  - Complete and file the Form 700 no later than 30 calendar days after the person begins performing the services under this Agreement, and complete and file all subsequent Form 700s, in conformance with the requirements specified in the California Political Reform Act; and
  - File the original Form 700 with the City's Clerk with a copy submitted to the Director.
- 17.3 Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the City:
- The Consultant's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;

- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## 18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

**18.1 General:** The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled “Prohibition of City Funding for Purchase of Single serving Bottled Water,” and City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy.”

**18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City’s policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

**18.3 Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City’s website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Consultant’s work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

## 19. TERMINATION

**19.1 For Convenience:** The Director may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days’ after the date of the written notice.

**19.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material



- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 21.12 Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 21.13 Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

**IN WITNESS WHEREOF, the City and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.**

**NOTE:** The Consultant must sign one of the following representations. **The City will not process this Agreement unless the Consultant has signed one of the provisions.**

*Daniel S Jacobano*  
Email: daniell@migcom.com  
Date: 11/24/2022 GMT

The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.9 of this Agreement.

City of San José

By

*Sarah Zarate*

Email: sarah.zarate@sanjoseca.gov  
Date: 11/28/2022 GMT

Name: Sarah Zarate  
Title: Dir City Manager's Office

Consultant

By

*Daniel S Jacobano*

Email: daniell@migcom.com  
Date: 11/24/2022 GMT

Name: Daniel Iacofano  
Title: Chief Executive Officer, President, MIG

**Approval as to Form (City Attorney):**

**Form Approved by the Office of the City Attorney**  
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

**Approved as to Form:**  
Attorney  
Matthew Tolnay

*Matthew Tolnay*

Email: matthew.tolnay@sanjoseca.gov  
Date: 11/28/2022 GMT

Name: Matthew Tolnay  
Title: Deputy City Attorney

By

*Christopher Beynon*

Email: chrisb@migcom.com  
Date: 11/28/2022 GMT

Name: Chris Beynon  
Title: Assistant Treasurer, MIG

## EXHIBIT A: SCOPE OF BASIC SERVICES

(Capital Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

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**General Description of Project:** The Consultant's Work Plan builds upon the City's task structure and presents a detailed, logical series of phases and tasks, with information from each step creating the foundation for the next. The Consultant's approach will ensure that the City has a creative, economically feasible, and sustainable strategy for ensuring that King Road (Study Area) can be revitalized to become a dynamic, successful, and safe corridor for the community. The Consultant will work closely with the City. The process is organized around key deliverables and milestones, allowing adequate review and comment time for both the community/stakeholders and City staff. The King Road Complete Streets Plan aims to make King Road, one of San José's highest bus ridership corridors and a Vision Zero Priority Safety Corridor, a safer and more inviting place to walk, bike, and take transit ("Project").

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**MIG envisions this project to be completed by April 1<sup>st</sup> 2024. To meet the constrained schedule, MIG will provide one draft for each deliverable. The City will provide one set of consolidated, non-conflicting comments in electronic format with a preferred direction for each deliverable produced by MIG team.**

### Task No. 1: Existing Conditions and Data Collection

#### A. Services:

#### Task 1.1 Data Aggregation and Collection

The Consultant will gather information from the City and other public agencies and review existing studies and documents to ensure a common understanding of the Project.

The materials will include (but are not limited to):

- En Movimiento—East San José Multimodal Transportation Improvement Plan
- San José's Better Bike Plan
- Santa Clara Countywide Pedestrian Access to Transit Plan
- Caltrans Pedestrian and Bike Plans
- San José's Vision Zero Strategy
- 2040 Envision San José General Plan
- The Climate Smart Plan

Based on Consultant's review, Consultant will prepare a list of identified goals and strategies from these parallel processes or already adopted planning documents. Consultant will compile this list in a Goals and Policy Framework document that will include previously identified (and still relevant) vision, goals, design solutions, strategies, and implementation measures. The most critical element will be to present a summary of the larger planning effort, En Movimiento, initiated by the City to realize the mode shift and

Consultant: MIG. INC.

vehicle miles traveled (“VMT”) reduction goals articulated in its 2040 Envision San José General Plan and Climate Smart Plan around multiple Urban Village Planning Areas in East San José.

In addition, Consultant will gather relevant neighborhood profile, transportation, and demographics data in the Study Area. All data collection and analysis will be centered on racial equity and transportation justice principles.

The data collected in this task will inform the existing conditions chapter and the analysis in Task No. 3. Such data will likely include, but will not be limited to:

- Auto, bicycle, and pedestrian volumes
- Existing mobility options, availability, and landscape
- Transit service levels and ridership
- Transit facilities locations and quality
- Collision data
- Community Profiles
  - Demographic information from the U.S. Census, American Community Survey, and related sub-packages
  - History of neighborhood/Study Area
  - Anthropological/cultural analysis of neighborhoods in the project area
  - Existing transportation/land use/economic landscape
  - Public perception of transportation access and mobility options in the Study Area
- Trip origin-destination data
- On-street parking/curb inventory data
- Existing land use and planned growth
- Data that would be useful for pre- and post-project evaluation such as, but not limited to:
  - Vehicles speed and volume data
  - Bike/ped data
  - Transit data
  - Turn counts
  - ADT\*
  - Near miss data
  - Crash data

**Form Name:** Standard Consultant Agreement (Capital Projects)  
Exhibit A: Scope of Basic Services

**Form/File No.:** 1349238\_3/T-32026

**City Attorney Approval Date:** September 2022



**Consultant will provide City with the list of data. The City will provide all the data available in four weeks time from the contract date.**

### **Task 1.2 Draft Existing Conditions Chapter**

After assessing the existing conditions, Consultant will develop an Existing Conditions Summary presentation that clearly and concisely summarizes the work completed during Task No. 2. This will be a comprehensive inventory and analysis of the King Road conditions that will set the context for future safety and mobility improvements. Consultant will document both the existing conditions in the Study Area and identify transportation network gaps and opportunities. This chapter will also include information collected during the community leader interviews, data aggregation and collection, and the field review of existing conditions. The summary will consist of narratives, maps, tables, and other illustrative graphics identified in collaboration with the City. Consultant will create up to five (5) prototypical cross-sections and map views for segment of the corridor that illustrates different existing conditions in the Study Area. The summary will be prepared in PowerPoint, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

Consultant will host a project team charrette with City staff to review the draft summary and discuss Study Area existing conditions, constraints, and opportunities (either at Consultant's office or via Zoom). Discussion from the charrette will be used to refine the draft Existing Conditions Summary and help inform the development of corridor alternatives. The final summary will also be used during meetings and stakeholder engagement.

The chapter will be subject to one (1) round of review both internally within the City and by the Technical Advisory Committee (see Task 2.6). **The City will provide one set of consolidated, non-conflicting comments with a preferred direction in two weeks time.**

### **Task 1.3 Final Existing Conditions Chapter**

Based on the feedback received from the City review and the Technical Advisory Committee, Consultant will finalize the existing conditions report. This document will inform the analysis in Task 3 and summarize the existing conditions in the Study Area and identify transportation network gaps and opportunities.

The finalized existing conditions chapter will be developed so it can be shared with the community. The detailed technical analysis will form the appendix of the report that will be used for the City's internal review.

### **Task 1.4 Base Mapping**

Consultant will use City and County GIS data, Urban Footprint, and other data to create base mapping for the Study Area.

The maps will include transportation infrastructure, building footprints, parcel lines, public ROW, and utilities. The maps will also include data such as land uses, roadway configuration including number of travel lanes, types of medians, bike lanes, parking lanes, locations where parking spaces back onto the corridor, sidewalks and sidewalk gaps, crosswalks, gaps in ADA accessibility, pedestrian signals, collision data, and trip generators. The City will review a preliminary list of available data compiled by Consultant and will assist in identifying additional data as part of this task.

Consultant will also conduct an onsite analysis to study the existing conditions in the Study Area and the immediate surrounding context, including land use and the overall character of the corridor. The site visit will help identify key issues, constraints, and opportunities; document existing site conditions; and identify the logical segments of the corridor that will be used throughout the project.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction for the base maps produced by the MIG team in one week time.**

**B. Deliverable:** The Consultant will provide the following to the City's Contract Manager:

- Data inventory list comprising GIS and aerial imagery; data aggregation, collection, and analysis (Email)
- Goals and Policy Framework (Word/PDF)
- Project Base Map (PDF/PPT)
- Existing conditions mapping, including existing transportation infrastructure, parcel lines, building footprints, and public ROW (GIS/PPT/PDF)
- Up to five (5) prototypical cross-sections for the Study Area (PPT/PDF)
- Log of site photographs of existing conditions (PPT/PDF)
- Draft Existing Conditions Chapter (PPT/PDF)
- Final Existing Conditions Chapter (PPT/PDF)
- Public-Facing Document Summarizing Existing Conditions Findings (PPT/PDF)

**C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 6 Months from the contract date.**

**Task No. 2: Public Outreach**

**A. Services:**

**Task 2.1 Outreach Strategy Development**

Consultant will develop a detailed outreach strategy and engagement plan that is anchored in culturally competent community outreach practices and centered around co-creation and transportation justice principles. Consultant will work in collaboration with City staff and community partners to define and implement the outreach and engagement approach for the Study Area. This outreach strategy will also establish success and target outreach metrics to monitor and evaluate all phases of outreach.

The plan will include outreach goals, identify target audiences and outreach methods, and include an engagement schedule. This includes identifying a list of stakeholders, key individuals, and groups sourced from stakeholder partners and City agencies. Consultant will create a project identity that brands the process for the community. The outreach strategy will enable language access and access for people with disabilities throughout all elements of outreach.

Consultant will prepare an Outreach Toolkit with pertinent materials that will help Consultant coach advisory committee members, key stakeholders, City staff, and other project champions to use the toolkits during briefings with their constituencies and groups.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.2 Stakeholder Identification**

To lay the groundwork for community engagement, Consultant and City staff will develop a preliminary list of intergovernmental and community stakeholders with a vested interest in, and/or influence and/or control over, transportation improvements in the planning area.

### **Task 2.3 Project Website and Outreach Collateral**

Consultant will develop content for a project website and multilingual outreach collateral material that will share basic information such as an updateable template for a Fact Sheet and a Frequently Asked Questions sheet to include key project information, goals, timeline, anticipated questions, upcoming meetings and opportunities for community participation and feedback, information cards for online surveys, and simple invitations to project events. The City will host the website, and all pages will be translated into three (3) languages: English, Spanish, and Vietnamese.

Throughout the course of the project, all materials will be uploaded in an accessible format to the website to support outreach and project communication needs.

Consultant will also develop an updateable template for promotional paper and digital flyers for print and digital distribution, and social media graphics for distribution on City and partner social media accounts; create posters and materials that present visualized graphics for use by partners and City staff at events, meetings, and workshops; and develop and provide materials and text that the City and partners can post on their websites.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.4 Preliminary Community Leader Interviews and Engagement Strategies**

In coordination with the City, Consultant will conduct stakeholder interviews with community leaders, advocacy organization representatives, and City staff to share the project overview and solicit input about how to approach engagement, outreach events, and communication with stakeholders in the Study Area. These interviews will inform, frame, and guide this planning effort and its engagement strategies. Consultant will conduct up to 6 (six) community leader interviews to inquire about fundamental concerns and to understand key constituencies. After the interviews are completed, Consultant will prepare a summary report of these interviews and identify next steps.

### **Task 2.5 Walk Audits**

Consultant will support City staff in multiple walk/ride/bike audits of the Study Area with City staff and community members to identify issues and opportunities related to bicycle and pedestrian travel, intersection operations, and traffic behavior (e.g., driver aggressiveness, travel speed, etc.) and assess existing conditions from the perspective of a pedestrian, cyclist, and/or transit rider.

The City will be responsible for conducting walk/bike audits with the community. Consultant will support City staff by providing graphic materials for the walk/bike audits and translating materials. Based on the feedback received, Consultant will develop a summary report of these efforts.

### **Task 2.6 Technical Advisory Committee Meeting**

Consultant will work with the City to identify City, VTA, Caltrans, and other government agency stakeholders who have an interest in the King Road corridor and invite them to serve on the Technical Advisory Committee ("TAC"), where Consultant will be consulted at key project milestones.

The TAC will meet four (4) times to review work products. The timing of TAC meetings will be finalized as part of the Engagement Plan. In addition to the scheduled TAC meetings, TAC members will be invited to participate in engagement events. Consultant will provide summary reports for these meetings.

Consultant will facilitate these meetings to discuss the planning process, outreach plans, strategies, and findings. The TAC can help connect the project with events in which Consultant can potentially include project outreach.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction from the TAC Meeting in two weeks time.**

## **Task 2.7 General Community Engagement Phase One**

### ***Pop-up outreach events***

Working with City staff, Consultant will schedule visits to key gathering spaces in the Study Area, such as supermarkets and schools, to meet people where they already spend time. Consultant will develop materials that can be easily used in a variety of outdoor and high-traffic areas, which may include posters or handouts to present a project overview and solicit input about primary mobility challenges along the King Road corridor. Some of the questions explored include:

- What are the greatest mobility obstacles and needs within the Study Area?
- What issues should be prioritized to maximize benefits to residents—such as safety, congestion, youth, elderly, public spaces, etc.?

Feedback from the pop-up events will be gathered via poster-sized maps and in-person survey questions. Responses will be documented and sorted according to location-specific comments and prioritization, and quantifiable data will be summarized so that it is consistent with the online survey responses (see Task 2.8 for online survey details).

Online pop-up events will be done in coordination with community-based organizations, neighborhood associations, and other interested parties. These events will take place during established online meetings such as monthly member events, neighborhood association meetings, and City Council member community updates.

Event notices will include multilingual email blurbs and flyers for project partners to share. Because pop-ups will take place where people already spend their time, no extensive mailers are required. Consultant will work directly with community organizations to distribute information and refer interested members of the public to the project website. Depending on pop-up locations and expected participants, the events will either be conducted in Spanish with Vietnamese and English translations available or in English with Spanish and Vietnamese translations available.

Consultant will develop summary reports in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### ***Individual Stakeholder Updates/Listening Sessions***

The City will conduct small, focused meetings to share project information/status updates and collect specific stakeholder feedback for the Study Area. Consultant will assist the City in providing materials for these small, focused meetings. The scope assumes the City will provide feedback to Consultant for the preparation of summary reports.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### ***Community Capacity-Building Sessions***

Consultant will leverage the length of the corridor by developing a Window of Workshops approach where we host a series of digital events over 1-3 days. The same format is used for each event, but each will focus on a specific area or zone. These meetings are intended to enhance community knowledge of the way that the City designs, funds, and implements transportation projects with the end goal of building civic participation capacity. These sessions will explore available transportation improvements to King Road at a more in-depth technical level so that the community can have a better understanding and a greater impact on how exactly transportation projects are funded, designed, and implemented.

Consultant will develop summary reports in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.8 Online Survey Phase One**

Consultant will develop Online Survey #1 using the Mapita Platform, which will be used to gather location-specific feedback about transportation needs and priorities in the Study Area. Consultant will rely on in-house bilingual planning staff to translate outreach and engagement materials in Spanish and Vietnamese. Other languages deemed necessary will be incorporated through the assistance of a translation service. The survey uses a map-based platform to allow for location-specific feedback. The survey will be shared via links and email networks, and the Consultant will develop email blurbs and flyers for project partners to share. A print version of the survey will be distributed at pop-up events and on VTA buses in the area.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the survey outline in two weeks time.**

After the survey is closed, the Consultant will develop a summary report in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

### **Task 2.9 Technical Advisory Committee Meeting Phase One**

Consultant will organize and facilitate a TAC meeting to provide an overview and summary of the planning process and present, discuss, and gather feedback about current problems and desired solutions. Consultant will prepare meeting materials, including agenda, presentation, and handouts, and provide a meeting summary.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction from the TAC meeting in two weeks time.**

### **Task 2.10 General Community Engagement Phase Two**

Consultant will leverage the length of the corridor by organizing community workshops where consultant will host a series of in-person and digital events in up to three (3) community meetings to present, discuss, and gather feedback about the conceptual design alternatives (see Task No. 3) for the Study Area. Community meetings will be held at convenient locations along the corridor to facilitate the

participation of a representative cross-section of residents from different communities. These meetings could include engaging with seniors from senior centers and youth groups in the community.

Consultant will develop summary reports in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

#### **Task 2.11 Online Survey Phase Two**

Consultant will develop Online Survey #2 using Mapita to gather location-specific feedback about transportation needs and priorities along the Study Area. Online survey #2 will present the tradeoffs associated with and gather community feedback about the different conceptual design alternatives for the Study Area.

Consultant will also develop a print version of the survey that will be distributed at Community Engagement Phase 2 and on VTA buses in the area.

Consultant will rely on in-house bilingual planning staff to translate outreach and engagement materials into Spanish and Vietnamese. Other languages deemed necessary will be incorporated through the assistance of a translation service. The survey will be shared via links and email networks, and Consultant will develop email blurbs and flyers for project partners to share.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the survey outline in two weeks time.**

After the survey is closed, Consultant will develop a summary report in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

#### **Task 2.12 Technical Advisory Committee Meeting Phase Two**

Consultant will organize and facilitate a TAC meeting to present, discuss, and gather feedback about the conceptual design alternatives for the Study Area. The feedback received during this meeting will be incorporated into the design alternatives. Consultant will prepare meeting materials, including agenda, presentation, and handouts, and provide a meeting summary.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction from the TAC meeting in two weeks time.**

#### **Task 2.13 General Community Engagement Phase Three**

Consultant will leverage the length of the corridor by organizing community workshops where we host a series of in-person and digital events with up to three (3) community meetings to present, discuss, and gather feedback about the preliminary conceptual designs for the Study Area. Community meetings will be held at convenient locations along the corridor to facilitate the participation of a representative cross-section of residents from different communities. These meetings could include engaging with seniors from senior centers and youth groups in the community. Consultant will develop summary reports in PowerPoint format which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.14 Technical Advisory Committee Meeting Phase Three**

Consultant will organize and facilitate a TAC meeting to present, discuss, and gather feedback about the preferred alternative with cost estimates for the Study Area. The feedback received during this meeting will be incorporated into the draft plan. Consultant will prepare meeting materials, including agenda, presentation, and handouts, and provide a meeting summary.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction from the TAC meeting in two weeks time.**

### **Task 2.15 General Community Engagement Phase Four**

Consultant will leverage the length of the corridor by organizing community workshops where we host a series of in-person and digital events with up to three (3) community meetings to present, discuss, and gather feedback about the preferred King Road Complete Streets conceptual design and implementation plan. Community meetings will be held at convenient locations along the corridor to facilitate the participation of a representative cross-section of residents from different communities. These meetings could include engaging with seniors from senior centers and youth groups in the community.

Consultant will develop summary reports in PowerPoint format which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.16 Technical Advisory Committee Meeting Phase Four**

Consultant will organize and facilitate a TAC meeting to present, discuss, and gather feedback about the draft plan for the Study Area. The feedback received during this meeting will be incorporated into the final plan. MIG will prepare meeting materials, including agenda, presentation, and handouts, and develop a meeting summary report for this meeting.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction from the TAC meeting in two weeks time.**

### **Task 2.17 Online Survey Final Phase**

Consultant will develop Online Survey #3 using Mapita to gather feedback about the preferred King Road Complete Streets draft plan. The survey will also provide an overview of the project in a user-friendly story map to explain how the concepts evolved from the community feedback.

The online survey will be promoted through community networks, flyers, and other creative outreach methods.

Consultant will rely on in-house bilingual planning staff to translate outreach and engagement materials into Spanish and Vietnamese. Other languages deemed necessary will be incorporated through the assistance of a translation service. The survey will be shared via links and email networks, and the Consultant will develop email blurbs and flyers for project partners to share.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the survey outline in two weeks time.**

After the survey is closed, the Consultant will develop a summary report in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

### **Task 2.18 General Community Engagement Phase Five**

The final phase of community engagement will focus on presenting the final King Road Complete Streets Plan. During this phase Consultant will solicit feedback from community members on the overall project engagement experience to improve engagement practices going forward.

Consultant will leverage the length of the corridor by organizing community workshops where we host a series of in-person and digital events with up to three (3) community meetings to present, discuss, and gather feedback about the final King Road Complete Streets Plan. Community meetings will be held at convenient locations along the corridor to facilitate the participation of a representative cross-section of residents from different communities.

The meetings will be conducted in the dominant language of participants and translation services will be provided to accommodate diverse participation and communication.

Consultant will develop summary reports in PowerPoint format, which will allow for a highly visual and concise document that is easily understood by the community and accessible in a digital format.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in one week time.**

### **Task 2.19 Stakeholder Feedback on Process and Communication**

City staff will conduct “exit interviews” with community leaders, advocacy organization representatives, and City staff to solicit feedback about the engagement effort. These interviews will provide guidance for improving future engagement. Consultant will develop materials for City staff to conduct these meetings.

**B. Deliverable:** The Consultant will provide the following to the City’s Contract Manager:

- Stakeholder list
- Outreach strategy plan
- Content for project website and project fact sheets
- Outreach materials such as posters, flyers, and postcards for print and digital distribution for all outreach efforts (PDF)
- Project Fact Sheet and FAQs (Word/PDF)
- Up to six (6) stakeholder interviews
- Synthesis of Community Leader Interviews & In-depth Engagement Strategy
- Walk/Ride Audit materials and assessments
- Engagement phase one materials, notes, and summary document
- Online survey for Phase One and summary memo
- Technical Advisory Committee Meeting Phase One and summary
- Engagement phase two materials, notes, and summary document
- Online survey for Phase Two and summary memo

**Form Name:** Standard Consultant Agreement (Capital Projects)  
Exhibit A: Scope of Basic Services

**Form/File No.:** 1349238\_3/T-32026

**City Attorney Approval Date:** September 2022



- Technical Advisory Committee Meeting Phase Two and summary
- Engagement phase three materials, notes, and summary document
- Technical Advisory Committee Meeting Phase Three and summary
- Engagement phase four materials, notes, and summary document
- Final online survey and summary
- Engagement phase five materials, notes, and summary document
- Materials for Stakeholder Feedback (“Exit Interviews”)

C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 16 months from the contract date.**

### Task No. 3: Analysis

**A. Services:** A multimodal corridor alternative must meet the City’s goals towards safety for all users, improve transit operations for VTA and people using transit, ensure people driving are operating their vehicles safely, ensure mobility for all ages and abilities, and enhance bicycle mobility and connectivity. Consultant’s passion towards safety, placemaking, and multimodal connectivity provides the necessary framework to identify improvements and elevate those that are best suited to meet the community’s and City’s goals: creating an attractive transportation space where people can feel comfortable both living and visiting; not just passing through at high speed in their cars. These core elements will underly all aspects of the Project Analysis.

Building from the existing conditions analysis and the feedback established in partnership with the community in Phase 1, Consultant will use a collaborative and iterative process to identify a Preferred Conceptual Design for the King Road corridor. The Preferred Conceptual Design should address the issues and gaps identified previously. Consultant will initially develop up to three (3) conceptual design alternatives.

#### Task 3.1 Preliminary Conceptual Designs

Sound conceptual design is rooted in Project goals with an eye towards safety, future implementation, practicality, affordability, and communicating project tradeoffs with stakeholders and the public. Consultant will produce concept-level plans for up to three (3) corridor configurations identified by project analysis, utilizing creative methodologies to blend engineering and planning in order to clearly communicate the benefits and implications to all project stakeholders. Consultant will draw upon its breadth of experience from planning to construction to produce concepts that, when passed on to a final design team, will be implementable and feasible without losing the intent of the concept work. Considerations for all users and modes for each design alternative will clearly express the tradeoffs between different user groups required to implement each concept.

Consultant will provide corridor-wide roll plots in addition to or in lieu of traditional engineering plan sets. Roll plots will be drawn in a manner that conveys to all project participants what a final configuration may look like while simultaneously being based in standard engineering practices, allowing for both public outreach and further engineering to occur without additional project costs. Additional materials including renderings and cross-sections will be developed to support Project understanding, outreach, and analysis.

Summaries of findings for the concepts for up to three (3) corridor configurations will include an assessment of benefits and trade-offs with the City performing internal review. Finalized versions of each will carry into future phases.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the conceptual plans in two weeks time.**

### **Task 3.2 Operational/Feasibility Analysis**

Consultant will provide the City an operational analysis to demonstrate the overall network feasibility of how King Road corridor will perform within the overall transportation environment. This includes qualitative and quantitative estimations utilizing roadway performance modeling to develop level of service, travel times for various modes, and delay throughout an operational day.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in two weeks time.**

### **Task 3.3 Identify Preferred Conceptual Design Alternative**

A preferred corridor plan must meet the City goals as previously outlined with an emphasis on safety and placemaking. Challenging tradeoffs may be required and Consultant will provide support to the City in communicating these benefits to the community. After receiving feedback and buy-in from the City, project stakeholders, and members of the community, the MIG Team will assemble the appropriate documentation to finalize the corridor evaluation and provide the City a sound justification for King Road improvements.

The final deliverable will include a 10% conceptual level design, including roadway geometries that meet project goals, and a project report summarizing key findings. This design can be phased in nature, allowing for early implementation of key safety and project elements as funding becomes available should the City prefer this strategy. **The City will provide a AutoCad base of existing conditions for MIG team to develop the 10% layout for the preferred conceptual design.**

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the 10% conceptual design in two weeks time.**

### **Task 3.4 Conceptual Design And Cost Estimate**

Consultant has developed a composite cost methodology used successfully on projects nationwide to provide a reasonable estimate of capital costs at a high-level of analysis. This methodology includes engineering and design assumptions complementary to developed, urban environments, such as the King Road Study Area, to account for costs of items requiring further design and engineering typically not covered within a conceptual design scope. This methodology provides a higher level of accuracy and confidence in early-level estimates while reducing risk for the City.

Baseline costs are established using regional data from projects either under construction or built, including the City, Caltrans, VTA, BART, and other Bay Area agencies. Partnering with the City and other King Road stakeholders, updates to this methodology can be made quickly and efficiently to reflect the needs of the Study Area by providing a more holistic cost estimate at an early stage of design.

In addition to detailing order-of-magnitude costs, transit improvements, right-of-way, and other roadway changes, Consultant is able to, upon City request, identify potential funding sources and methods that may include specific federal grant programs, special benefits or local improvement districts, regional transportation funding, other partner agency funding, and more innovative financing strategies, such as value-capture options and public/private partnerships.

Draft and final deliverables will include a spreadsheet for three (3) conceptual and one (1) preferred corridor alternative. The City will be provided with adequate time to perform necessary internal review and comment on cost estimates during the project's duration.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction on the cost estimate in two weeks time.**

**B. Deliverable:** The Consultant will provide the following to the City's Contract Manager:

- Preliminary conceptual design alternatives and cost estimates
- Feasibility and operational analysis
- Public outreach and Technical Advisory Committee feedback
- Preferred design alternative and updated report
- 10% conceptual geometric plans for the preferred alternative
- Cost estimate for final proposal design

**C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 16 Months from the contract date.

#### **Task No. 4: Draft and Final Plan**

**A. Services:** Consultant will prepare a Draft and Final Plan for the Study Area that presents the vision, overarching goals, design, and implementation strategies for the Study Area in a manner that is understandable to multiple audiences, including decision-makers and the public. The Plan will include an executive summary and rely heavily on graphics and maps to explain the design concepts (most of which were prepared during earlier tasks). It will summarize key points from interim work products developed in Tasks 1 through 3, including existing conditions, outreach, and development and refinement of alternatives. The technical memos and other appropriate analyses will be included as appendices to the report so that the full suite of project data, analysis, and community input is collected and accessible to interested readers. Illustrations for final recommendations in this report will be refinements of those included in the Preferred Alternative, including a full illustrative corridor plan, street sections, 3D simulations/ photo simulations, and other graphics. **The City will provide one set of consolidated, non-conflicting comments on the draft and final plan in two weeks time.**

#### **Task 4.1 Draft Plan**

After completion of the previous tasks, an administrative draft King Road Complete Street Plan will be prepared. The Plan will consist of two (2) documents:

- 1) A primary public-facing document providing an executive summary; existing conditions chapter; overview of the planning and public engagement process; discussion of primary goals, strategies, and benefits to transportation and public life; identification of funding and implementation approaches; and depictions of top priority projects.
- 2) An accompanying transportation study document will provide additional detail, with focus on numerical data analysis; transportation forecasting and modeling outputs; and other support documentation.

After receipt of consolidated comments, a public Draft Plan will be prepared.

#### **Task 4.2 Finalize Plan**

In partnership with the City, Consultant will develop the draft and final King Road Complete Street Plan. The Draft Plan will be posted on the project website and shared with stakeholders for comments.

After public circulation, Consultant will summarize stakeholder comments and share them with the City. Consultant will then revise the Draft Plan into a Final Plan based on one consolidated set of comments. The Final Plan will be produced featuring high-impact graphics and enhanced visualizations and be translated into Spanish and Vietnamese.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in two weeks time.**

#### **Task 4.3 Implementation and Next Steps**

Upon completion of all project tasks, Consultant will assemble all relevant plans, documents, assumptions, and estimates for King Road, and summarize these planning materials in a format presentable to City officials, members of the community, stakeholders, and technical audiences. These materials will undergo a final resolution period to guide the final deliverable that can be used by the City to advance King Road into preliminary design.

**The City will provide one set of consolidated, non-conflicting comments with a preferred direction in two weeks time.**

**B. Deliverable:** The Consultant will provide the following to the City's Contract Manager:

- Draft King Road Complete Street Plan
- Final King Road Complete Street Plan
- Overview document and presentation to key stakeholders

**C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 16 Months from the contract date.**

#### **Task No. 5: Project Initiation and Management**

**A. Services:**

##### **Task 5.1 Project Initiation Meeting**

Consultant will meet with City staff for a Project Initiation Meeting (virtual) to refine the work program, schedule, and deliverables, and to confirm overall project objectives and the structure for the planning process. This meeting will include an interactive discussion with City staff about the project boundaries; key assets, opportunities, and challenges; vision for the Study Area; and the overall public and stakeholder engagement process. Consultant will develop a draft 16-month Project Schedule that outlines the proposed approach and phasing

The schedule provides opportunities for community and City staff review and comment on each major milestone deliverable. This process will allow for the efficient review of materials while also ensuring the project remains on schedule.

### **Task 5.2 Project Management Meetings**

Consultant Project Manager will coordinate with the City's designated Project Manager for the King Road corridor throughout the duration of the project. This task includes ongoing project management, coordination calls and emails, bi-monthly conference calls, team meetings (virtual), interagency field review, and other project-related meetings. Consultant will participate in monthly meetings (virtually) with the City's Project Manager. These meetings will be planned on alternate weeks so the Consultant has the opportunity to check-in with the City twice a month for the project.

### **Task 5.3 Monthly Progress Reports and Invoices**

Consultant will provide monthly progress reports to the City that include the status of milestone products, the project budget, and the overall schedule.

**B. Deliverable:** The Consultant will provide the following to the City's Contract Manager:

- Project Initiation Meeting (virtual)
- Refined Work Program and Schedule (PDF)
- Participation in bi-monthly meetings (virtual) with Project Manager for a total of 48 meetings.
- Monthly Progress Reports and Invoices (Email; PDF)

**C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 16 Months from the contract date.**

**EXHIBIT B: COMPENSATION**  
(Capital Projects)

**Section 1 – Compensation Table**

Part 1 – Compensation for Basic Services						
Column 1	Column 2		Column 3			Column 4
Task Nos.	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Completion of Task(s) Work	<input type="checkbox"/> Completion of	\$ 27,000.00
2	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Completion of Task(s) Work	<input type="checkbox"/> Completion of	\$ 145,010.00
3	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Completion of Task(s) Work	<input type="checkbox"/> Completion of	\$ 28,130.00
4	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Completion of Task(s) Work	<input type="checkbox"/> Completion of	\$ 45,670.00
5	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Completion of Task(s) Work	<input type="checkbox"/> Completion of	\$ 26,655.00
Part 2 – Reimbursable Expenses						
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input checked="" type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:			\$6,000.00
Part 3 – Subconsultant Costs						
<input type="checkbox"/> Subconsultant costs are <i>not</i> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.			<input checked="" type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:			\$172,365.00
Part 4 – Additional Services						
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.			<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:			\$0
<b>Maximum Total Compensation (sum of Parts 1 through 4):</b>						<b>\$450,830.00</b>

Where should we enter Direct Costs (total \$6,000)?

**Section 2 – Schedule of Rates and Charges**

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services rendered.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

**B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and



3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

### **D. Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
  - b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, or agents.

- d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, and agents.

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

**F. Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov):

Certificate Holder  
City of San Jose—Finance  
Risk Management & Insurance

200 East Santa Clara Street, 14th Floor Tower  
San Jose, CA 95113-1905

**G. Subcontractors**

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.