

STANDARD CONSULTANT AGREEMENT

This Agreement is between the City of San José, a municipal corporation ("City"), and BFK Engineers, Inc., a California corporation ("Consultant").

This Agreement is made and entered into this ____ day of _____ 20__ ("Contract Date").

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

SECTION 1. AGREEMENT SCOPE

General: This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City for the following project:

Project Name: Charcot Avenue Extension Over I-880 ("Project")

Project Location: East of Paragon Drive, west of I-880, continue to the intersection of Silk Wood Lane and Old Oakland Road, east of I-880, North San Jose

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: Schedule of Performance

Exhibit D: Insurance Requirements

1.3 Director: "Director" means the Director 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.

SECTION 2. AGREEMENT TERM

2.1 Term: The Agreement term is from the Contract Date to June 30, 2017, inclusive, unless terminated earlier pursuant to Section 19 of this Agreement.

2.1.1 Director's Authorization: The Director may authorize up to two (2) six-month extensions to the Agreement at no additional cost.

2.2 Retroactive Services: Whichever of the following is marked applies to this Agreement:
☒ The Consultant did **not** provide any services before the Contract Date.

SECTION 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 Consultant cannot perform 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.

SECTION 4. DESIGN SERVICE REQUIREMENTS

- 4.1 **General:** This Section applies to any design services the Consultant performs.
- 4.2 **Standard Documents:** The Consultant is, or will become, familiar with the City of San José, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San José, 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.

SECTION 5. CITY’S PROJECT MANAGER

The CITY’s project manager for this Agreement is:

Name: Stacey Lu-Santos	Phone No.: 408.975.3271
Department: Transportation	E-mail: Stacey.lu@sanjoseca.gov
Address: 200 E. Santa Clara St., T8 San José, CA 95113-1905	

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

SECTION 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"), the Consultant must comply with the requirements of Subsection 17.2 of the Agreement.

		<u>Required to File Form 700?</u>	
		Yes	No
<u>Consultant's Project Manager</u>			
Name: Natalina Bernardi	Phone No.: 408.467.9100		
Address: 1650 Technology Drive, Suite 650, San Jose, CA 95110	E-mail: nbernardi@bkf.com		
<u>Other Staffing</u>			
<u>Name:</u>	<u>Assignment:</u>		
1. Gordon Sweet	Deputy Project Manager		
2. Luis Garcia	Quality Assurance/Quality Control Engineer		

6.2 Project Manager's Authority: The Consultant's project 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.

SECTION 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. David J. Powers & Associates, Inc.	Environmental Engineering
2. Hexagon Transportation Consultants	Traffic Engineering
3. Apex Strategies	Community Outreach
4. Biggs Cardosa Associates, Inc.	Structural Engineering
5. Parikh Consultants, Inc.	Geotechnical Engineering
6. Alliance Engineering Consultants, Inc.	Electrical Engineering
7. Gates + Associates	Landscape Architecture

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.

SECTION 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.

SECTION 9. STANDARD OF PERFORMANCE

- 9.1** 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.

SECTION 10. COMPENSATION

- 10.1** The compensation to be paid to Consultant for professional services shall not exceed Nine Hundred Ninety One Thousand Three Hundred Sixty Seven Dollars (**\$991,367**). The rate and schedule of payment is set out in Exhibit B, entitled "Compensation," which is attached hereto and incorporated herein. There shall be no reimbursable expenses under this Agreement.
- 10.2** Consultant agrees that in the performance of this Agreement, Consultant shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this Agreement:
- 10.2.1** It is the policy of the City that City's funds should not be used for the purchase of single-serving bottled water.
- 10.2.2** The following circumstances shall constitute exceptions to City Council Policy 1-19:
- a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
- 10.2.3** Consultant acknowledges and agrees that an invoice seeking reimbursement from City for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by City and signed by the department head of the City department administering this Agreement.
- 10.3** Consultant shall not be compensated for any services performed prior to the commencement of the Initial Term of the Agreement.

- 10.4 Method of Payment:** Each month, Consultant shall furnish to the City a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.
- 10.5 Tax Forms Required:** The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

10.9.1 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.

10.9.2 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.

SECTION 11. INDEMNIFICATION

- 11.1 Obligation:** The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:
- The Consultant's negligent performance of all or any part of the Basic Services and any Additional Services; or
 - 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; or
 - 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
 - Any breach of this Agreement by the Consultant or any Subcontractors.
- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City as set forth in Section 2778 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations

under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

- 11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

SECTION 12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit D** 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 D**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit D**.

SECTION 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) immediately when and as created by the Consultant or any of its Subcontractors pursuant to this Agreement: drawings, plans, elevations, sections, details, schedules, diagrams, specifications, studies, reports, surveys, data, information, models, sketches, and other similar documents and materials (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:** 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.

SECTION 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.

SECTION 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.

SECTION 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 Reasonable Accommodation:** The prohibition in Subsection 16.1 above is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.

- 16.3 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.

- 16.4 Violation:** A violation of the prohibition in Subsection 16.1 above 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.

- 16.5 Subcontracts:** The Consultant shall include Subsections 16.1 through 16.4, inclusive, of this Agreement in each subcontract that it enters into in furtherance of this Agreement.
- 16.6 Waiver:** The Compliance Officer may waive any of the requirements of this provision 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.

SECTION 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 8311-83116), the Consultant shall cause each person identified in Attachment B of an Approved Service Order 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 date the Consultant executes the Approved Service Order; 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 apparent 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 apparent 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.

SECTION 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: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. 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.

SECTION 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 breach by the Consultant. If the Director terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the .

19.3 Delivery of Work: If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.

19.4 Compensation: The City will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached

to this Agreement.

- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

SECTION 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent. A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
Department of Transportation,
Attn: Ray Salvano
Address: 200 E. Santa Clara St., Tower 8
San Jose, CA 95113
(408) 975-3706
Ray.Salvano@sanjoseca.gov

To the Consultant: BKF Engineers, Inc.
Attn: Natalina V. Bernardi
Address: 1650 Technology Dr., Ste. 650
San Jose, CA 95110
nbernadi@bkf.com

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

SECTION 21. MISCELLANEOUS

- 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 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 a federal or state court in 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.

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 make one of the following representations by placing its initials in the space provided. The City will not process this Agreement unless the Consultant has initialed one of the provisions.

_____ 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 22.3 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 10.8 of this Agreement.

City of San José

By _____
Name: TONI J. TABER, CMC
Title: City Clerk

Consultant

By _____
Name: NATALINA V. BERNARDI Date
Title: Principal / Vice President



Approved as to Form:

JON CALEGARI
Deputy City Attorney Date

EXHIBIT A: SCOPE OF BASIC SERVICES

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

General Description of Project for which Consultant will Provide Services: The City proposes to extend Charcot Avenue over I-880 from Paragon Drive on the west side of I-880 to the intersection of Silkwood Lane and Old Oakland Road on the east side of I-880 in order to provide east-west vehicular capacity and safe bicycle/pedestrian access.

The planning and design for the 880/Charcot Avenue extension over I-880 consists of three phases as outlined below and in accordance with California Department of Transportation (Caltrans) Project Development Procedures Manual (PDPM). The three phases generally include services related to preparation of the Project Initiation Document (PID), the Project Approval and Environmental Documents (PA&ED) and Plans, and Specifications and Cost Estimates (PS&E), all as required by Caltrans prior to construction.

- Phase 1: Planning analysis, technical reports and document preparation and community outreach necessary for the Caltrans PID, and PA&ED (CEQA only), public outreach and preliminary engineering (35% PS&E). This Agreement includes full funding for Phase 1 (Tasks 1 and 5).

More specifically, the Consultant shall provide the following services:

1. Project Management / Meetings

Consultant shall coordinate and attend a pre-PID meeting with the City and Caltrans to discuss the type of PID document necessary for the Project. In addition to pre-PID meeting, x additional meetings are included in this task.

Consultant shall manage the Project and Consultant Team including providing the resources to complete the job, monitoring the Project budget and schedule, conducting Project Team Meetings and implementing a Quality Assurance/Quality Control (QA/QC) program acceptable to the City. Consultant will coordinate and include, as necessary, the Valley Transportation Authority (VTA), Caltrans, FHWA and other regulatory agencies.

Consultant shall monitor, coordinate and schedule PID activities as described in the Caltrans Project Development Procedures Manual, (March 2012, as may be amended), including preparation of a Risk Management Plan in accordance with Caltrans Project Risk Management Handbook (May 2007, as may be amended).

Consultant shall provide general project administration and coordinate the design process with the appropriate local, regional, state, and/or federal jurisdictions and the Project team. Consultant will keep the City informed by close communications, monthly progress reports and updated Critical Path Method project schedules. Consultant will organize and coordinate trend meetings, design review meetings, comment resolution meetings and other necessary coordination meetings with the City, VTA and Caltrans. For these meetings, Consultant will prepare agendas, meeting minutes, data request logs, action logs and joint resolution reports. Agendas will cover cost, schedule and scope issues and be transmitted one week

prior to meetings, and minutes and logs distributed to attendees within two weeks following the meeting.

On a monthly basis, Consultant will review, prepare and submit status on budgets, progress schedule, and performance; and document any changes in design scope, cost or schedule. This information will be summarized in a monthly progress report. Additionally, all documentation related to the Project will be filed and maintained in accordance with the Caltrans Uniform Filing System, if required by the City's Cooperative Agreement with Caltrans.

2. Preliminary Investigations

2.1. Data Collection and Review

Consultant shall research, obtain and review all available documentation including the Draft PSR/PR issued in 2009. As the collected data is reviewed, information will be incorporated, as needed, to support the Project tasks. As-builts, base mapping, right of way and utility information, and existing traffic information will be used to provide further detail, supplement base sheets and serve to document the need and scope of the Project.

2.2. Base Mapping

In order to ensure that this work can proceed without delay, as a first order of work, Consultant will apply for a City and Caltrans Encroachment Permit and for any other required permits to allow for site investigations and studies to be performed. Consultant shall conduct field visits and possible topographic surveys as needed throughout the various phases of work and approval process in order to ensure that important features are not missed and that recently installed features are identified. The field investigations and site visits will focus on notable features that will be critical to the alternative analysis and design development. Consultant will set the project control and flight crosses to develop the aerial planimetric base maps. Additionally the datum and survey control will need to be verified prior to conducted topographic field surveys; Consultant shall conduct field topographic surveys, conforming to 1983 NAD (horizontal datum) and 1988 NAVD (Vertical Datum), to establish the base mapping and provide an accurate Project background.

Existing documentation will be used to establish the existing right of way based on record data. The right of way will be added to the Project base sheets from the record data information.

2.3. Utility Coordination

Consultant shall compile available utility occupation drawings, block maps, and third party utility as-built information of record to supplement the topographic base sheets. Consultant shall initiate discussions with the utility owners to confirm existing disposition, rights and potential relocations. Consultant will evaluate the disposition of existing and proposed utilities in accordance with Caltrans "Policy on High and Low Risk Underground Facilities within Highway Rights of Way" for the work within the State right of way; it is anticipated that there will be no utilities in violation of Caltrans standard requirements. Based on the Project disturbances and existing disposition of utilities, Consultant shall conduct investigations to verify utility relocations. Utility potholing is not included in Phase I scope of work.

Task 2 Deliverables

Project Base Sheets

Task 2 CITY Approval of Deliverables

CONSULTANT shall provide CITY with the deliverables for Task for information only. The Task deliverables will be used and incorporated into future Tasks.

3. Project Initiation Document (PID)

3.1. Traffic Engineering Performance Assessment (TEPA)

Consultant shall prepare a traffic analysis in accordance with Caltrans requirements for a Traffic Engineering Performance Assessment (TEPA) as discussed in the State of California, Department of Transportation, Project Development and Procedures Manual (Preparation Guidelines for PSR-PDS PIDS). Per the PSR/PDS guidelines, the preliminary traffic engineering studies should be limited to an assessment of readily available information and data, and macro-level analysis and evaluation. Consultant's effort shall produce preliminary traffic engineering findings and estimates in support of confirming:

- The potential scope of work and features
- Potential performance benefits and deficiencies
- The scope and magnitude of traffic engineering work (traffic forecasting, modeling, analysis and evaluation) to be performed during the Project Approval and Environmental Document phase

Consultant shall prepare the TEPA using existing information rather than offer revised traffic analysis during the PID phase of the Project.

A Traffic Management Plan (TMP) Check List shall be prepared to address the staging issues and costs associated with the Project alternative.

Per Caltrans current requirements, an Intersection Control Evaluation (ICE) analysis is required to be conducted as part of the preliminary traffic work for all new intersections. Since there are no proposed intersections within Caltrans right of way, an ICE analysis is not included in this scope of work.

CONSULTANT shall study locations using macro-level analysis tools. The study intersections will be evaluated using Synchro software. The study intersections shall be the following:

1	Zanker Road and Trimble Road
2	Cadence Place and Montague Expressway
3	McCarthy Boulevard and Montague Expressway
4	Oakland Road/Main Street and Montague Expressway
5	Zanker Road and Charcot Avenue
6	Junction Avenue and Charcot Avenue
7	Oakland Road and Silk Wood Lane
8	Zanker Road and Brokaw Road
9	Junction Avenue and Brokaw Road
10	O'Toole Avenue and Brokaw Road
11	I-880 NB Off Ramp and Brokaw Road
12	Oakland Road and Brokaw Road

13	Paragon Drive and Charcot Avenue
14	Junction Avenue and Trimble Road
15	1st Street and Charcot Avenue
16	Oakland Road and Fox Lane
17	O'Toole Avenue and Paragon Drive
18	O'Toole Avenue and Charcot Avenue

Micro-simulation (detailed analysis) is not included in this scope of work. Average intersection delay and level of service will be presented for each study intersection. Queuing is not included in this scope of work.

The results shall be documented based on the report template presented in the PID guidelines. Consultant shall submit an Administrative Draft to the City for one round of review and written comments. The draft TEPA shall be submitted by Consultant to VTA and Caltrans for review and written comments. Consultant shall incorporate City comments.

3.2. Purpose and Need

The primary purpose and need of the Project needs to be defined in order to initiate the geometric alternative analysis and establish if the traffic operations support the Project goals. The purpose and need will be collaboratively developed by the Consultant, the City, VTA and Caltrans to ensure concurrence. Considerations in establishing the purpose and need include:

- Identify the Initial Transportation Deficiency
- Meet system strategies as defined in State, regional, and local plans, goals, and objectives
- Reflect Community Values

Once the initial purpose and need is established, Consultant shall evaluate alternatives to avoid or reduce environmental impacts and to select the alternative that causes the least overall environmental damage and that satisfies the transportation purpose and need. The purpose and need may be modified by Consultant (with the approval of City) during the course of the PSR/PDS development as other requirements and benefits arise.

3.3. Geometric Design Alternatives and Analysis

One build alternative was presented in the original PSR/PR. Consultant shall conduct an analysis to ensure that the alternative meets all the objectives and challenges that the Project presents. Consultant shall build upon the existing alternative with a more focused analysis of the design components that defines the Project footprint more clearly. Development of the geometric alternatives shall consider the City's transportation network and City, VTA and Caltrans standards and requirements, including Caltrans Highway Design Manual, Caltrans DIB 82, City of San José Geometric Design Guidelines, and VTA Technical Guidelines for Pedestrians and for Bicycles. Consultant shall design a bridge that adequately provides safe access to all modes of transportation.

3.4. Preliminary Environmental Analysis Report (PEAR)

CONSULTANT shall prepare a Preliminary Environmental Analysis Report (PEAR) that will serve as an attachment to the PSR/PDS. The PEAR provides the initial environmental evaluation of a project and the alternatives and estimates the scope, schedule, and costs

associated with completing environmental compliance. The PEAR will also be used to determine the anticipated level of environmental documentation that would be required under NEPA and CEQA for each of the alternatives under consideration.

The PEAR shall be written to comply with Caltrans' PEAR Handbook and will conform to the latest PEAR format, as published on the Caltrans Standard Environmental Reference (SER). The contents of the PEAR will be abbreviated and the majority of the work will be deferred until the PA&ED phase described below. No field work or new research will be conducted for the PEAR as the CONSULTANT relies on existing information prepared under previous studies.

The PEAR shall provide a brief qualitative description of potential environmental resources and issues that could affect selection of the recommended alternative, including the types of permits that may be required. Potential mitigation costs will also be identified at an order-of-magnitude level.

CONSULTANT shall identify the environmental technical studies and prepare the technical summaries required to support the environmental documentation phase of the Project as well as the key issues each study will need to address. The PEAR shall provide a list of the federal and state permits likely to be required for each alternative and will provide a cost estimate for each of the technical studies as well as an anticipated timeframe needed to prepare each study.

CONSULTANT shall prepare a draft and final PEAR for distribution of the PDT for review and return for comments. Once comments have been received and addressed, a final PEAR shall be prepared. Two (2) draft versions of the PEAR and one (1) final version of the PEAR will be included in this task.

3.5. Supporting PSR/PDS Documentation

In collaboration with the geometric design, several studies shall be performed by Consultant and the results documented. The following studies and work efforts shall be conducted to support the PSR/PDS Document.

3.5.1. Design Exceptions

In order to substantiate that a proposed geometric alternative is viable, any proposed advisory or mandatory design exceptions will need to be acceptable to Caltrans. In conjunction with the geometric analysis, Consultant shall review the existing and proposed geometric and vertical alignments to determine compliance with Caltrans Highway Design Manual standards and local jurisdictions standards. Even though there may be an existing non-standard condition, the project is expected to correct the condition or process a design exception.

Consultant shall review and complete the Design Information Bulletin Number 78 (DIB 78) – Design Checklist to ensure that all design exceptions are identified. Preliminary Fact Sheets for Mandatory and Advisory Design Exceptions will be prepared for Caltrans approval and will be forwarded to Caltrans Headquarters for concurrence. Although the fact sheets cannot be signed until the preferred alternative is selected, Consultant shall obtain consensus in determining if the detail associated with an alternative is acceptable through the PID and PA/ED process.

3.5.2. Structures and Geotechnical Evaluation

To support the development of viable alternatives and provide proper definition of the environmental footprint and accurate magnitude of costs, Consultant shall coordinate the structural and geotechnical aspects of work for consideration in the evaluation of the feasibility of the proposed structures.

The Project is challenged by soil conditions and proposed structures that can lead to settlement. The geotechnical and structural criteria will be established for alternative evaluation and development. Consultant shall prepare an Advanced Planning Study (APS) for the bridge and retaining walls so as to document the options and recommendations.

For the PSR/PDS documentation, available geotechnical information will be used to summarize geotechnical findings and will be included in the PSR/PDS write up. Consultant shall contact and coordinate with Caltrans Division of Engineering Services (DES) in preparing the DES Scoping Checklist.

3.5.3. Storm Water Data Report (SWDR) PID Level

Consultant shall perform a drainage assessment and analysis for the Project area to identify significant issues, address flood plains and establish general drainage requirements. The SWDR will include Treatment Best Management Practices Checklists. Conforming to water quality issues is a critical project element as it may require additional right of way or mitigation. Based on Consultant's knowledge of the area, hydromodifications are exempt due to the tidal action in the area but it is expected that water treatment will be required. During the PID phase, areas for quality treatment will be identified and balanced to avoid deficits.

3.5.4. Preliminary Right of Way and Utility Analysis

In order to complete the Right of Way Data Sheet for the PSR/PDS, an assessment of both the right of way and utility needs will be needed. Consultant shall perform a right of way analysis in conjunction with the design analysis. Identification and assessment of right of way needs directly impact the development of geometric alternatives, project support and capital costs. In addition to collecting right of way information, Consultant shall confirm zoning and land use information as it may affect base estimates for land values and relocation costs which will be confirmed with the City. The assessment of right of way needs will include fee acquisitions and identify utility easements and temporary construction easement acquisitions and relocations. This cumulative assessment will be the basis of preparing the preliminary right of way requirements for the alternative and the draft right of way data sheet.

Consultant shall evaluate the disposition of existing and proposed utilities. The utility requirements of each alternative will be delineated and described to include cost, utilities to be impacted and relocated.

3.5.5. Preliminary Cost Estimate and Schedule

Consultant shall prepare a cost estimate to include construction, right of way, utility and support costs for the project alternative based on items and quantities of work required for the feasible alternatives. Unit prices will be based on the magnitude of quantities, similar awarded local projects, similar Caltrans projects and engineering judgment.

Consultant shall also develop a schedule outlining the proposed programmed activities. The schedule will address the delivery of major milestones for the future phases of the Project with a concentration on of the PA&ED schedule.

3.5.6. Risk Management Plan

Consultant shall conduct a risk analysis and shall prepare a risk management plan. The risk management plan will be a “live” document that is updated continuously throughout the life of the Project. The risk management plan will highlight Project components with schedule impacts sensitive to changes in the assumptions in the PSR/PDS Document, such as right of way acquisition and utility relocations.

3.6 PSR/PDS Preparation

To finalize the development of a Draft PSR/PDS, Consultant shall compile existing information and developed work and summarize/draft the Draft PSR/PR in compliance with Caltrans Project Development Procedures Manual. The components in the body of the Draft PSR/PDS will include:

- Introduction covering project background, proposal, range of alternatives and costs
- Project purpose and need identifying underlying transportation deficiencies that need correction and project objectives to be met which address the transportation deficiencies
- Project deficiencies, including primary and secondary, which support the Project's purpose and need
- Address the coordination and consistency of the purpose and need with state, regional and local planning efforts
- Consideration of alternatives, including no-build, alternatives that meet current mandatory and advisory design standards, and minimum-build which meets the purpose and need for the Project
- Discussion of community and jurisdictional involvement
- Environmental determination and documentation, including type of document to meet CEQA and NEPA compliance, intended lead agency designation, and appropriate steps that are needed for FHWA approval
- Identification of potential or proposed sources of funding and project eligibility
- Discussion of capital (alternative cost) estimate as well as support estimates for PA&ED and PS&E
- Delivery schedule for significant milestones, including future tasks in PA&ED and PS&E
- Discussion of federal action or the use of federal funds
- District contact and project reviews

The PSR/PDS will also include the following attachments:

- | | | |
|--------------------------|------------------------|---------------------------|
| • Location/Vicinity Map | • Draft Fact Sheet | • Traffic Forecasting, |
| • Layouts (Plan/Profile) | Report for Exceptions | Analysis and Operations |
| • Typical Sections | to Mandatory/Advisory | Scoping/TMP Checklist |
| • PEAR | Design Standards | • Preliminary Drainage |
| • Planning Scoping | • Alternative Cost | Analysis |
| Checklist | Estimates | • Storm Water Data Report |
| • Risk Management | • Capital Support Cost | |
| Plan | Estimate | |

In compliance with the Projects' and the City's QA/QC Program, Consultant shall conduct a final review of the Draft PSR/PDS prior to submitting the document to the City, VTA and Caltrans for review and comment. Consultant shall submit an Administrative Draft PSR/PDS to the CITY for one round of review. Written comments will be addressed and a final draft prepared for submittal to Caltrans.

Following review and receipt of comments, Consultant shall organize, attend, and lead a JRT (Joint Resolution Team) comment/response resolution meeting to discuss conflicting comments and obtain necessary clarifications. In conjunction with comment resolution and in concert with the City, the BKF Team will attempt to balance the requirements and sort out the needs of the stakeholders for the forthcoming iterations and final PSR/PDS. Consultant shall circulate the PSR/PDS for final review and any resulting comments will be incorporated in a final/approved PSR/PDS.

Task 3 Deliverables

Traffic Engineering Performance Assessment
Traffic Management Plan
Alternative Analysis Matrix
Preliminary Environmental Analysis Report
Storm Water Data Report
Design Exception Fact Sheets if needed
Risk Management Plan
Draft PSR/PDS
Final PSR/PDS

Task 3 CITY Approval of Deliverables

CONSULTANT shall allow for 2 rounds of consolidated CITY comments on the deliverables for Task as follows:

The first round of CITY comments shall include responses to the first draft by all departments and agencies who provided comments, and this set of comments will be coordinated by the CITY's designated Project prior to issuing to CONSULTANT.

The second round of CITY comments shall be limited to commenting on the second draft with respect to the adequacy and correctness of the CONSULTANT's incorporation of the first round of comments into the draft deliverables and is not intended as an opportunity for individual departments and agencies to introduce new comments.

4. Project Approval and Environmental Document (PA&ED)

Following the PID process, the PA&ED task shall be initiated. Aside from a No Build alternative, one (1) Project (build) Alternative within the Caltrans right of way and a maximum of two (2) alternatives within City right of way, shall be brought forward and evaluated further during the PA&ED by Consultant. As outlined in the Caltrans PDPM, the Project Report (PR) shall be the document which "establishes the formal approval of a project." The primary focus in the PR is to identify and clearly define all the project elements. The PR will recommend a preferred alternative, which will reconfirm the magnitude of the project, utility relocations, right of way requirements, and environmental considerations.

4.1. Draft Project Report (DPR)

By prioritizing the development of the design in the alternative analysis and PSR/PDS phase, a solid geometric base is developed for the DPR. Consultant shall reassess the geometrics and profile designs to ensure that all investigative study requirements are met. Information provided in the PSR/PDS phase shall be updated, augmented and include the following:

- Right of way needs will be known and documented in the Right of Way Data Sheet
- Utilities to be relocated or adjusted will be specified, and verified for right of way and costing purposes
- Stage construction plans will be developed for inclusion and provide support in developing the Transportation Management Plan (TMP). An assessment of the construction traffic impacts and mitigation will be conducted. In ensuring that all elements have been considered to mitigate traffic impacts during construction through the TMP, the TMP checklist will be reviewed and completed for the Project.
- Fact Sheet Exceptions to Mandatory and Advisory Design Standards will be finalized and submitted to Caltrans for review, concurrence, and approval.
- The preliminary drainage report (PDR), which covers the project's preliminary drainage and hydraulic components including floodplain analysis and location hydraulic study (as needed), will be developed
- Risk Management Plan will be updated with additional Project information

During this phase of work, additional reporting of the geotechnical and structural design is required. The proposed new overcrossing will also have new retaining walls on either end of the structure, which will contain embankment material. The walls are expected to be an MSE type or other non-standard Caltrans design type. Therefore the bridge foundation, embankments, slopes, placement of fill, and long term settlement considerations will be analyzed in the geotechnical reports.

A Preliminary Geotechnical Report (PGR) shall be prepared by CONSULTANT and shall contain preliminary geotechnical information used for preliminary engineering. Existing information will be reviewed, and although no field exploration work is proposed for this phase, a site review and data research will be conducted by CONSULTANT. The report will include preliminary recommendations for pavement sections (based on existing information), and identify future explorations and investigations necessary.

CONSULTANT shall prepare a Preliminary Foundation Report (PFR) for the proposed bridge structure and non-standard retaining walls. The PFR shall contain preliminary foundation recommendations based on review of existing and available as-built drawings, LOTBs and Foundation Reports. The potential geotechnical/geologic impacts and mitigations for the Project will be discussed on a broad basis, including but not limited to slope stability, geology, seismic impacts, erosion, groundwater conditions, etc. Generally, the geotechnical issues relevant to the Project will be presented in a qualitative manner, with no specific design recommendations. Certain design assumptions are made as to the type of retaining wall, type of foundations, approximate pile lengths, and approximate slope angles, etc. The potential mitigation measures are also provided in a discussion format, and will be helpful in defining the overall design program and evaluation of costs.

CONSULTANT shall prepare a Structures Feasibility Assessment and Advanced Planning Study (APS) to document structural scope and costs of the Project. The APS will be prepared for the build alternative. The plan sheet for each structure will show general structure layout details and estimated cost, and be supported by the PFR, PGR, APS

checklists, design memorandum, and a detailed itemized cost estimate. APS sheets will be added and developed for the non-standard retaining structures only

With all the elements completed, the DPR can be finalized. The items above will be used to ensure that the following are addressed:

- Present the project's goals, purpose, and need
- Provide the results of the traffic analysis, including an accident rate analysis
- Provide a discussion on the benefits of the project
- Include post-construction storm water quality treatment elements
- Incorporate environmental findings and recommendations
- Identify all utilities within the right of way
- Confirm right-of-way requirements including acquisitions, temporary construction easements and public utility easements, and established corresponding costs
- Verify that other proposed work is coordinated with future projects in the vicinity
- Prepare an Advanced Planning Study for the structure work
- Prepare the Preliminary Storm Water Data Report , including Hydromodification considerations
- Include the Preliminary Drainage Report
- Provide a Risk Management Plan Assessment

With the results of these individual project tasks, the cost estimate and schedule will be confirmed and the Draft PR finalized. A brief description and explanation of rejected alternatives will be provided and a preferred alternative recommended. The viable alternatives will be evaluated in the Draft Environmental Document, concurrently.

4.2. Value Engineering

Per Caltrans and FHWA guidelines, since the estimated total project cost (capital and support) for each of the two viable build alternatives is below \$50 million, a Value Analysis (VA) study is not included in the scope of work.

4.3. Preliminary Design (30% PS&E Design)

In support of the PS&E phase to follow the PA&ED, the project plans developed in the PR will be reflective of a 30% design level. Consultant shall continue to incorporate and update information throughout PA&ED to proceed with preliminary design. Consultant shall develop the preliminary roadway plans as part of a 30% PS&E. These plans include the typical cross sections, profiles including superelevations, and layout drawings of the proposed Project for the final design. Work developed in the preliminary phase will be further detailed. Signing and striping plans, as well as drainage plans, will be developed to complement the roadway plans. The drafting guidelines will be confirmed with the City and implemented accordingly. The plans will also show the location of utilities, including underground and overhead utilities. The work will be coordinated with the stage construction plans to provide the required construction area while maintaining traffic and access around and within the project area during construction. The structural design plans will be developed to a General Plan level for further detailing and conformity to the roadway work.

4.4. Final Project Report

In conjunction with the public circulation period of the draft environmental document and in concert with the City's efforts, Consultant shall balance the requirements and sort out the needs of the stakeholders for the final PR. All gaps or revisions in the design, caused by changes or pending design and policy decisions, will be specifically targeted prior to the

submission of the final PR. During the preparation of the final PR, Consultant shall closely monitor the progress of the critical activities and the progress of the final environmental document. These activities must be integrated into the overall design process. Consultant shall assemble and distribute the FPR for City's and Caltrans' final review. Any resulting comments will be incorporated. A finalized PR ready for signature will be available and ready when the final environmental document is signed.

4.5. Quality Control

To facilitate approvals and project delivery, CONSULTANT shall implement a quality assurance program as a concurrent integration of specific project planning and review steps throughout the design process. Upon completion of the quality control review, documents will be submitted to City and Caltrans for review.

Task 4 Deliverables

Preliminary Geotechnical Report
Preliminary Foundation Report
Advanced Planning Study
Design Exception Fact Sheets if needed
30% Design Plans
Draft Project Report
Final Project Report

Task 4 CITY Approval of Deliverables

CONSULTANT shall allow for 2 rounds of consolidated CITY comments on the deliverables for Task as follows:

The first round of CITY comments shall include responses to the first draft by all departments and agencies who provided comments, and this set of comments will be coordinated by the City's designated Project prior to issuing to Consultant.

The second round of City comments shall be limited to commenting on the second draft with respect to the adequacy and correctness of the Consultant's incorporation of the first round of comments into the draft deliverables and is not intended as an opportunity for individual departments and agencies to introduce new comments.

5. Environmental Document

The environmental document will be prepared during the PA&ED phase. Based on a review of the preliminary project plans and prior technical reports, it is assumed that the appropriate environmental document will be an Initial Study (IS) leading to a Mitigated Negative Declaration (MND). The preparation of an IS will fulfill the requirements of the California Environmental Quality Act (CEQA). Compliance with the National Environmental Policy Act (NEPA) will not be needed per City direction. The City will be the Lead Agency under CEQA.

5.1. Technical Studies / Report

5.1.1. Visual Impact Assessment (VIA)

CONSULTANT shall prepare a VIA to document changes to the visual/aesthetic environment that will result from the Project. The VIA will follow FHWA and Caltrans guidance for the analysis of highway projects. For the VIA, the Consultant shall develop

three visual simulations of the proposed Project which can also be used for community meetings and the open house.

5.1.2. Preliminary Geology Report (PGR)

CONSULTANT shall prepare a PGR which will contain preliminary geotechnical information used for preliminary engineering. Existing information will be reviewed, and although no field exploration work is proposed for this phase, a site review and data research will be conducted. The PGR will define the general site soil, rock, and groundwater conditions, implications/issues pertaining to project planning and design, and provide preliminary design criteria and recommendation for necessary investigations for the PS&E phase.

5.1.3. Initial Site Assessment (ISA)

CONSULTANT shall obtain record documentation to assess potential hazardous materials sites. The ISA shall identify additional investigations to be performed during the PS&E phase.

5.1.4. Storm Water Data Report

CONSULTANT shall update the SWDR prepared in the PID phase in accordance with Caltrans SWDR guidelines. Preparation of the SWDR will define the appropriate types of Best Management Practices (BMPs) for the Project including costs for the BMPs and identify additional right of way to accommodate temporary and permanent BMPs.

5.1.5. Cultural Resources Report

CONSULTANT shall undertake a records search including a review of site records, survey reports, National and California register listings, as well as other relevant documents from the Northwest Information Center of the California Historical Resources Information System, administered by Sonoma State University, Rohnert Park. The area of study will be the Area of Potential Effects (APE) plus a one-quarter-mile buffer. The review will provide information on whether any portions of the project area have been recently surveyed, and whether any previously recorded resources exist within the study area.

CONSULTANT shall conduct all necessary consultation with the Native American Heritage Commission and all Native American groups/interested parties identified by the Commission, including letters and maps describing the project, and follow-up calls.

CONSULTANT shall undertake a field survey of the project footprint to look for evidence of cultural materials. Extended Phase I fieldwork (backhoe trenching and/or coring), is also included in this scope. However, it is assumed that the results of the testing will be negative (i.e., no cultural resources are present).

A cultural resources report will be prepared by CONSULTANT that describes the findings of the research and the fieldwork. If impacts from the project are anticipated to be significant, mitigation measures will be described.

This scope does not include the evaluation of buildings within or adjacent to the project alignment for their potential historical significance.

5.1.6. Biological Report

CONSULTANT shall conduct a single reconnaissance-level field survey of the project site to document the biological conditions on the site. This information will be gathered for the purpose of characterizing the botanical resources and wildlife habitat values of the project site. The dominant biotic communities of the site, which are entirely landscaped, characterized based on dominant plants and associated wildlife, will be described.

The reconnaissance-level field survey will also determine the site's potential to support special-status plant and animal species. During the survey, CONSULTANT shall also describe the approximate boundaries of potentially sensitive or regulated habitats, such as wetlands and other waters of the U.S./State, and areas covered by the Valley Habitat Conservation Plan, on and immediately adjacent to the project site, if any. This information will be adequate to quantify approximate impacts on these habitats for CEQA assessment purposes. No additional species-specific surveys are part of the scope.

Upon the completion of the field survey, CONSULTANT shall prepare a report that describes existing biological conditions, including special-status species with the potential to occur on the site and any potentially sensitive/regulated habitats that occur on the site; potential impacts on existing biological resources; and any conceptual mitigation measures necessary to mitigate potentially significant impacts to less-than-significant levels under CEQA. Based on the location of the project site relative to sensitive habitats, the biological issues addressed in the report will primarily focus on the potential for work to disturb nesting birds/bats, which are known to occur in the vicinity. Graphics to be prepared will only include site/vicinity and CNDDB maps. The report will not include preparation of a special-status species table.

5.1.7. Paleontological Investigation Report (PIR)

Known records of prior fossils recovered will be searched by CONSULTANT for a one-mile radius around the project boundaries. A formal record search will be requested from the University of California Museum of Paleontology (UCMP). In addition, available online databases and literature will be searched.

The Project footprint will be mapped onto a geology base map, and background research performed to establish context and existing conditions.

CONSULTANT shall prepare a PIR in accordance with Volume 1, Chapter 8 of the Caltrans Standard Environmental Reference (SER). The report will consist of an introduction, including the project description and excavation parameters; results of the record searches and background research; and recommendations, constraints, and coordination requirements.

CONSULTANT shall also prepare a Paleontology Technical Report. The report will include background context, paleontological significance criteria, sensitivity analysis, impact analyses, and paleontological resource mitigation recommendations. The sensitivity analysis will be conducted using the federal Potential Fossil Yield Classification (PFYC) System since the PFYC system represents the best current professional practice of paleontology and results in rankings with management recommendations.

5.1.8. Noise Study Report

CONSULTANT shall prepare a traffic noise study to assess potential impacts resulting from construction and operation of the project with respect to CEQA guidelines. The following tasks will be included in the noise assessment:

- **Measure Existing Noise Levels.** Existing noise levels will be monitored at up to 5 representative receiver locations along the study area to quantify existing worst-hour noise levels and to provide data for model calibration purposes. Residential land uses located along Silkwood Lane and the associated single-family residential neighborhood will be the focus of the noise analysis. The remainder of the land uses within the project limits appear to be non-noise sensitive commercial land uses. These data will be compared to data previously collected by others in 2009. The 2009 data will be used to the extent feasible.
- **Establish Significance Thresholds.** Applicable state and local noise-related plans, policies, and standards will be summarized. Based on the regulatory requirements and widely accepted methods for determining a “substantial increase” in ambient noise, significance criteria for evaluating project impacts will be established.
- **Calculate Future Noise Levels.** Noise modeling will be conducted to calculate future traffic and construction noise levels throughout the project corridor. Traffic noise levels will be modeled with SoundPLAN and/or FHWA’s TNM traffic noise model to calculate the overall traffic noise levels and the noise increase attributable to the project. The model will be calibrated to measured noise and traffic conditions and then used to predict future noise levels, taking into account future traffic volumes, lane configurations, and speeds. Construction noise will be calculated utilizing the Roadway Construction Noise Model (RCNM).
- **Assess Impacts.** Noise and vibration impacts that could result from construction and operation of the project will be assessed. Predicted future traffic and construction noise and vibration levels will be compared to applicable significance thresholds established by the City of San José General Plan and Municipal Code, as well as other industry-standards as appropriate. The potential increase in traffic noise in the surrounding community will also be evaluated.
- **Develop Mitigation Measures.** If future noise levels exceed the significance criteria developed for the project, we will recommend measures to be included in the design of the project to reduce noise levels to acceptable levels. Mitigation will be presented for project construction activities and for operational noise impacts resulting from the project.

5.1.9. Air Quality Study

CONSULTANT shall prepare an air quality study. Assuming the CITY is the CEQA Lead Agency, an Air Quality Technical Report that meets Federal Highway Administration and Caltrans requirements for SIP conformity are not necessary. This study will then follow methods recommended in the Bay Area Air Quality Management District’s (BAAQMD) CEQA Air Quality Guidelines. The study will include the following:

- **Setting.** Briefly describe setting conditions. Develop baseline conditions that describe meteorology/climate of the project area, existing air quality conditions, federal, state and local air quality rules and regulations, and approved air quality plans. Air pollutants and their impact on human health will also be described.
- **Regional Air Quality Impacts.** Identify any applicable SIP conformity requirements for the project that pertain to air quality. Model changes in emissions associated with construction and operation using the appropriate versions of the CalEEMod

and EMFAC models. The operational analysis will be based on the availability of traffic data. Compare emissions to significance thresholds. If project is included in the TIP, then operational emissions will only be provided for information purposes only. Transportation projects included in a TIP found to conform to the region's air quality planning assumptions are assumed to have less-than-significant regional air quality impacts.

- **CO Hot Spot Analysis.** Conduct a qualitative Hot Spot CO analysis based on the screening guidance provided by BAAQMD that is based on traffic volume.
- **Community Risk Impacts.** Both construction and operation of the project will be evaluated for impacts associated with toxic air contaminants (TACs) that could be emitted during construction and operation of the project. Since residences are near the project, a health risk assessment is proposed that will include emissions modeling based on CalEEMod and dispersion modeling using AERMOD and meteorological data for San Jose. Operational impacts associated with traffic using the new roadway will be based on BAAQMD local roadway screening tables. This analysis will provide predicted levels of increased cancer risk, annual PM_{2.5} concentrations and non-cancer hazards.
- **Assess Project GHG Emissions.** Changes to greenhouse gas emissions will be based on the CalEEMod and EMFAC modeling described above. These emissions will be evaluated against BAAQMD thresholds and City policies (i.e., GHG Reduction Strategy).

5.1.10. Traffic Operations Analysis Report (TOAR)

CONSULTANT shall prepare a TOAR to support the Environmental analysis and PR. The traffic analysis will consist of a long-term evaluation of the potential traffic impacts due to the Charcot Avenue Extension over I-880 on surrounding roadways and intersections. The key transportation facilities will be evaluated for the following scenarios:

Existing Conditions: Existing Year 2014 traffic volumes

Year 2040 No Project Conditions: Year 2040 forecasted traffic volumes and planned transportation network improvements without the Charcot Avenue Extension over I-880 project.

Year 2040 Project Conditions: Year 2040 forecasted traffic volumes and planned transportation network improvements with the addition of the roadway network adjustments associated with the Charcot Avenue Extension over I-880 Project.

The traffic study will provide the evaluation necessary for purposes of completing a Traffic Operations Analysis Report in support of the Caltrans PA&ED. The analysis will be based on existing (Year 2014) traffic volumes and traffic projections using the City of San José CUBE traffic forecasting model and will include:

- **Existing Conditions Report** – Utilizing new peak-hour intersection and Average Daily Traffic (ADT) counts, existing conditions on the study intersections and roadway network. The evaluation and reporting of existing conditions will include existing vehicle composition and collision history on the study roadways.

- **Model Network Refinement** - The CITY's CUBE model roadway network coding will be reviewed to ensure planned roadway improvements and the proposed Charcot Avenue extension project are reflected accurately.
- **Traffic Forecasts** - Traffic forecasts for existing and future Year 2040 conditions with and without the Charcot Avenue Extension over I-880 will be completed.
- **Year 2040 No Project and With Project Conditions** - Future conditions along each of the studied intersections and roadway segments will be evaluated. The evaluation will include:
 - Peak-hour intersection level of service analysis
 - Roadway segment ADT
 - A comparison of vehicle-miles-traveled (VMT)

5.2. Draft Environmental Document (DED)

Consultant shall prepare a Draft IS. The document's content and format will comply with the latest CEQA guidelines and the City's standard format. The Draft IS will describe the project and will incorporate the results of the environmental technical reports. The IS chapters will consist of the following:

- Cover Sheet, General Information, Title Sheet, Proposed Mitigated Negative Declaration (MND), and Table of Contents
- Chapter 1 – Proposed Project
- Chapter 2 – Affected Environment, Environmental Consequences, and Avoidance, Minimization, and/or Mitigation Measures
- Chapter 3 – Comments and Coordination
- Chapter 4 – List of Preparers

Other appendices will be included, as appropriate to document relevant information such as Clean Air Act Conformity determinations and consultation with the Native American Heritage Commission regarding cultural resources.

5.3. Public Outreach

Consultant shall prepare a Communication and Outreach Plan (Plan) that captures the objectives and provides the strategy and tools necessary in promoting understanding and consensus. The Plan will include two public meetings at key milestones during the Project to solicit preliminary input and comment regarding key design issues and potential Project impacts, and later on evolutions of the design. The meetings and discussion will be facilitated through the use of illustrative plans, visual simulations, sections and perspectives prepared by Consultant and which clearly communicate design concepts. As a record of the discussion, meeting summaries will be prepared and used for future reference and documentation supporting the PAED.

It is assumed that the City and Caltrans will hold an Open House/Public Hearing during the circulation of the Draft IS. CONSULTANT will facilitate the presentations by providing a summary of environmental issues/findings that would be part of a PowerPoint (or similar) presentation and graphic information including clear exhibits to illustrate the Project elements and improvements.

5.4. Final Environmental Document

Following the conclusion of the public circulation period of the Draft IS, Consultant shall initiate work on the Final IS. The primary component of this effort will consist of 1)

responding to comments received on the Draft IS, 2) making text revisions as necessary, and 3) documenting the public review process. The content and format of the Final EA/IS will comply with the latest Caltrans AO, as published on the Caltrans SER. Chapters and appendices will be the same as that shown above for the Draft EA/IS. The Final IS will include a signed version of the Mitigated Negative Declaration.

Task 5 Deliverables

Traffic Operations Analysis Report
Initial Site Assessment Phase I
Storm Water Data Report
Cultural Resource Report
Biological Report
Paleontological Investigation Report
Paleontology Technical Report
Noise Study Report
Air Quality Report
Draft Initial Study
Final Environmental Document

Task 5 CITY Approval of Deliverables

CONSULTANT shall allow for two rounds of consolidated CITY comments on the deliverables for Task as follows:

The first round of CITY comments shall be include responses to the first draft by all departments and agencies who provided comments, and this set of comments will be coordinated by the CITY's designated Project prior to issuing to CONSULTANT.

The second round of CITY comments shall be limited to commenting on the second draft with respect to the adequacy and correctness of the CONSULTANT's incorporation of the first round of comments into the draft deliverables and is not intended as an opportunity for individual departments and agencies to introduce new comments.

Exhibit B: Compensation

A. MAXIMUM AMOUNT

The maximum amount of compensation the City shall pay to the Consultant under this Agreement for professional services shall not exceed Nine Hundred and Ninety One Thousand Three Hundred and Sixty Seven Dollars (\$991,367). Any work performed for which payment would result in a total exceeding the maximum amount shall be at no cost to the City.

B. MANNER OF PAYMENT

City shall pay the Consultant for work performed under this Agreement on a lump sum basis, upon successful completion to the satisfaction of the Director of Transportation ("Director") of each Task listed below. The lump sum amount compensates the Consultant for all its costs necessary to complete the work, including professional services and reimbursable expenses. Consultant shall complete all work listed in each Task for the lump sum amount listed below. Upon completion of a percentage of the work for each Task to the Director's satisfaction, the Consultant shall invoice the City for the percentage of the lump sum amount for that Task. The City shall pay the lump sum amount within thirty (30) days of the Director's approval of the Consultant's invoice.

<i>Task</i>	<i>Deliverables</i>	<i>Task Total</i>
Task 1	Project Management	\$48,709
Task 2	Preliminary Investigations	\$42,553
Task 3	Project Initiation Document (PID)	
3.1	Traffic Engineering Performance Assessment (TEPA)	\$25,200
3.2	Purpose and Need	\$682
3.3	Geometric Design Alternatives and Analysis	\$9,015
3.4	Preliminary Environmental Analysis Report (PEAR)	\$25,641
3.5	Supporting PID Documentation	\$93,082
3.6	PID Preparation	\$92,383
Task 4	Project Approval and Environment Document (PA&ED)	
4.1	Draft Project Report	\$224,646
4.2	Value Engineering	\$10,502
4.3	Preliminary Design (30% PS&E Design)	\$54,837
4.4	Final Project Report	\$10,167
Task 5	Environment Document	
5.1	Technical Studies / Report	\$139,407
5.2	Draft Environmental Document (DED)	\$69,907
5.3	Public Outreach (2 public meetings)	\$22,539
5.4	Final Environmental Document	\$31,973
Task 6	Additional Services	\$90,124
	TOTAL	\$991,367

PROFESSIONAL PERSONNEL SERVICE FEES

PERSONNEL**HOURLY RATES****ENGINEERING**

Associate	\$187.00
Project Manager	\$177.00 - \$183.00
Engineer IV	\$164.00
Engineer I, II, III	\$115.00 - \$133.00 - \$151.00

PLANNING

Planner I, II, III	\$115.00 - \$133.00 - \$151.00
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SURVEYING

Associate	\$187.00
Project Manager	\$177.00-\$183.00
Surveyor I, II, III, IV	\$115.00 - \$133.00 - \$151.00 - \$164.00
Survey Party Chief	\$153.00
Survey Chainman	\$99.00
Apprentice I, II, III, IV	\$61.00 - \$81.00 - \$89.00 - \$95.00
Instrumentman	\$128.00

DESIGN AND DRAFTING

Technician I, II, III	\$112.00 - \$118.00 - \$130.00
Drafter I, II, III, IV	\$87.00 - \$96.00 - \$104.00 - \$114.00
Student Engineer/Surveyor	\$61.00

CONSTRUCTION ADMINISTRATION/QSP-QSD/INSPECTION

Senior Construction Administrator	\$173.00
Resident Engineer	\$128.00
Field Engineer I, II, III	\$115.00 - \$133.00 - \$151.00

SERVICES AND EXPENSES

Project Assistant	\$72.00
Clerical/Administrative Assistant	\$61.00

Exhibit C: Schedule of Performance

Work shall commence immediately upon full execution of this Agreement. All work under this Agreement shall be completed on or before June 30, 2017. Consultant shall schedule work such that tasks are completed in accordance with the schedule established in this Exhibit C:

Due Date, on or before	Deliverables
6/15/15	Project Kick off Meeting
8/30/15	Project Base Sheets
10/02/15	Alternative Analysis Matrix Draft Reports – TEPA, PEAR, SWDR, Design Exceptions, RMP
11/13/15	Final Reports – TEPA, PEAR, SWDR, Design Exceptions, RMP
12/15/15	Draft PSR/PDS
4/18/16	Final PSR/PDS
6/30/16	Traffic Operations and Analysis Report
9/15/16	Geometric Alternatives Design Exception Fact Sheets
11/30/16	Environmental and Project Report Technical Reports
1/15/17	Draft Project Report Draft Initial Study
4/30/17	Final Project Report Final Environmental Document

The Initial Term of this Agreement may, at the sole discretion of the Director, be extended for two six months as described in Section 2.1.1 of the Agreement. In the event the City exercises its option to extend the Agreement, the schedule of performance set forth in this EXHIBIT C may be extended by City. The dates set in the schedule of performance above may be modified by written authorization of the Director of Transportation or the Director's designee, provided that all deliverables shall be fully completed and accepted by City prior to the expiration of this Agreement.

Exhibit D: 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 the 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 CG 0001
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
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance
4. Professional Liability Errors and Omissions insurance for all professional services

There shall be no endorsements 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 General 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.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Professional Liability Errors and Omissions \$1,000,000 per occurrence / Aggregate Limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and consultants; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D. **Other Insurance Provisions**

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

1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, agents and consultants are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and consultants.
- b. The CONSULTANT's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and consultants. Any insurance or self-insurance maintained by the City, its officials, employees, agents or consultants shall be excess of the 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 to the City, its officials, employees, agents, or contractors.
- d. Coverage shall state that the 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 officials, employees, agents and consultants.

2. Workers' Compensation and Employers Liability

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

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, 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 the City with certificates of insurance and with original 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.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Consultant's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance
200 E. Santa Clara Street, 14th floor
San Jose, CA 95113-1905

G. **Subcontractors**

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