

**CONSULTANT SERVICES AGREEMENT
BETWEEN CITY OF SUNNYVALE AND BELLECCI & ASSOCIATES, INC.
FOR WATER LINE REPLACEMENT 2019 PROJECT**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and BELLECCI & ASSOCIATES, INC. ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary for research and preparation of materials for a project known as Water Line Replacement 2019 Project; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Anoop Reddy Admal to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

- (a) CONSULTANT shall commence services upon receipt of a Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.
- (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "A-1."

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Five Hundred Fifty Seven Thousand Five Hundred Eleven and No/100 Dollars (\$557,511) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by the CITY of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated in the Compensation Schedule and shall reference the project title. The final invoice must contain the final cost and all credits due CITY. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work.

5. No Assignment of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional

in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), CONSULTANT agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. In no event shall the cost to defend charged to the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

The City requires that all contractors maintain insurance requirements on the Pacific Insurance Network System (PINS). CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

17. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Jennifer Ng, Assistant Director of Public Works/City Engineer
Department of Public Works
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: BELLECCI & ASSOCIATES, INC.
Attn: Anoop Reddy Admal
7077 Koll Center Parkway, Ste. 210
Pleasanton, CA 94566

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

22. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through

the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

32. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

BELLECCI & ASSOCIATES, INC.
("CONSULTANT")

APPROVED AS TO FORM:

By _____

Name/Title

City Attorney

By _____

Name/Title

Exhibit A Detailed Scope of Work

I. General

Bellecci & Associates, Inc (CONSULTANT) will provide professional services for design and preparation of bid documents and construction support for the Water Line Replacement 2019 Project (Project). The scope of work generally includes preparation of: preliminary design, design development, bid documents, and bidding/construction support for Public Works competitive bidding. Ancillary work includes permit application/acquisition from Caltrans and County of Santa Clara, statewide NPDES General Permit for Construction Activities, construction cost estimating, schedule monitoring, preparation of reports and recommendations, and project management.

II. Project Information

A. Description

The Project consists of replacing approximately 13,750 lineal feet of water mains, including valves and fire hydrants; tie-in of new mains to existing mains, replacement of service laterals up to existing water meters, replacement of non-radio-read water meters and replacement of Fire service laterals from water main to the backflow or back of walk.

B. Location

There are twelve (12) project locations listed below:

1. Charles Street from W. Iowa Avenue to the south property line of the Demonstration Garden (approx. 210 ft.)
2. S. Taaffe Street from W. El Camino Real (Caltrans Right-of-Way) to W. Olive Avenue (approx. 920 ft.)
3. S. Frances Street from W. El Camino Real (Caltrans Right-of-Way) to W. Olive Ave. (approx. 890 ft.)
4. S. Murphy Avenue from W. El Camino Real (Caltrans Right-of-Way) to W. Olive Ave. (approx. 1,050 ft.)
5. Flora Vista Avenue from E. McKinley Avenue to south end of Flora Vista Avenue (approx. 960 ft.)
6. Southwood Avenue from S. Bayview Avenue to Central Avenue (approx. 820 ft.)
7. Vine Avenue from Southwood Avenue to Central Avenue (approx. 810 ft.)
8. Bryan Avenue from S. Bayview Avenue to S. Fair Oaks Avenue (approx. 1,640 ft.)
9. Kenmore Avenue from E. Olive Avenue to Bryan Avenue (approx. 1,200 ft.)
10. Wilson Avenue from E. Olive Avenue to north end of Wilson Avenue (approx. 600 ft.)
11. E. Arques Avenue from Commercial Street to west side of Lawrence Expressway (County of Santa Clara Right-of-Way) (approx. 3,300 ft.)
12. W. Olive Avenue from S. Pastoria Avenue to S. Mathilda Avenue (approx. 1350 ft.)

C. Existing Conditions

Project locations are City-wide on public streets, as shown on Attachments B and C.

III. Consultant Scope of Services

The consultant will perform engineering and project management related work necessary to prepare plans and specifications suitable for Public Works bidding.

Consultant services will include, but are not limited to: Project management, preliminary design, design development, bid documents, bidding support, and construction support services, as further detailed below.

A. *Project Management*

The consultant will be the primary responsible party for managing the project's schedule and consultant contract budget. In addition, the consultant is expected to attend and prepare minutes for up to five (5) project meetings. These generally include kickoff, preliminary design, 30%, 75% and 100% review meetings. The consultant is expected to maintain frequent and timely communication with City staff throughout the duration of the project.

All project schedules will be prepared in Gantt chart format, utilizing Microsoft Project software. Three weeks for each City review will be included. Schedule updates will be provided at all progress meetings.

Consultant will perform internal quality assurance/quality control over work product prior to submittal. A statement of peer review will be required for overall constructability, coordination, and reasonable reduction in errors and omissions.

The City utilizes e-Builder project management software, and the Consultant is expected to work within the e-Builder system for this project. One e-Builder software license will be provided to the Consultant for the duration of the project. e-Builder software will be utilized for all project management documentation and correspondence. City will provide one training session prior to start of design and again prior to start of construction to familiarize consultants with the software.

B. *Preliminary Design*

1. ***Preliminary Design + Topo + Utility Mapping + Memo:*** Preliminary design phase will include a field or topographic survey, base mapping, conceptual design, and provision of options, preliminary cost estimate, project schedule and other tasks as recommended by the proposer. Consultant will evaluate the options for proposed alignments relative to the existing water main in a technical memorandum for water main and service replacement which include open cut replacement and trenchless technology.

Aerial Surveying and utility mapping request letters will be performed as part of separate task order of work to accelerate the project schedule and complete the aerial mapping during winter. For field services that require Department of Industrial

Relations (DIR) registration, Consultant will verify DIR registration of applicable subconsultants, prior to field services being performed. This includes those Consultants performing surveying work, drilling and potholing who provide workers with prevailing wages.

Consultant will prepare utility base mapping based on the utility maps received from the Utility Companies, City Maps and other as-built drawings. Consultant shall perform a field review to review the visible surface structures and visible paint marking to update the utilities located in the project area. Consultant will request water meter information from City's finance department to review the lateral and water meter sizes. Consultant will use this information to tabulate all the meters and services to be replaced or protected in place.

2. *Intersection Valves and Layouts/Conference Call:* Consultant will prepare water main tie-in sketches or exhibits indicating the various water main connections to existing mains. Consultant will use the City Water Maps to identify the impacts to the neighborhood and locate the water valves that need to be isolated in each system during the connections. Consultant will arrange a conference call with the City staff and Water Department to review these connections and make minor revisions before finalizing the preliminary design for 30% Design Submittal. Consultant will prepare conference call notes and submit them to the City's Project manager.
3. *Division of Drinking Water (DDW):* Consultant will prepare and submit preliminary plans to Division of Drinking Water after the preliminary design layout review and revisions. This submittal will include a letter to DDW notifying them of the project and the size of existing water main, size of new water main and adjacent wet utilities such as storm drainage main and sanitary sewer main with horizontal separation distances in feet and whether these horizontal separation distances meet the DDW standard separation requirements.

Additional notes will be included in this table to identify exemptions and alternate pipe material that will be provided. This table will not identify vertical clearances and these will be addressed in the 75% and 100% Submittals once the potholing is completed. Modifications to Division of Drinking Water: Update the preliminary design plans based on comments from Division of Drinking Water and resubmit the 30% plans with the horizontal separation information summary as described above. Final Modifications to Division of Drinking Water: Prepare and submit the 100% plans to Division of Drinking Water to obtain final approval from the Agency.

4. *Preliminary Cost Estimate:* Prepare and submit a preliminary cost estimate identifying the various pipe sizes and corresponding lengths with unit costs and total costs. This estimate will also include water valves, fire hydrants. Miscellaneous incidentals items like tees, bends, fittings are considered included in the unit price paid per linear foot of pipe. Miscellaneous general items such as Mobilization, Traffic

Control, Staking, Sheeting and Shoring etc., will also be included with a 20% Design Contingency.

Deliverable: Consultant will evaluate the options for water main replacement as described above, and provide two (2) sets of hard copies and a PDF of the three-page Technical Memorandum. Allow two weeks for City review. Provide two (2) sets of hard copies and PDF and Word versions of the final Technical Memorandum and present the recommendation at the Preliminary Design meeting.

C. Design Development

Consultants will be the Engineer of Record and responsible for design and preparation of complete plans, technical specifications, and recommended revisions to the City's special provisions for the project.

1. 30% Design Submittal + City Review Meeting: Submit 4 sets of 11" x 17" legible hardcopies.
 - a. 30% plans: Cover sheet and plan sheet with base mapping and preliminary details.
Cut sheets for equipment/appurtenances.
 - b. Documentation of outreach with franchise utility companies for facilities needed to be relocated or adjusted to grade as a result of the proposed construction activities.
 - c. Project schedule update.
 - d. 30% construction cost estimate.
 - e. Brief memorandum of determination if the project's construction activities are within the NPDES Construction General Permit. Include project type and risk level.
 - f. Table of Contents list for technical specifications.

The waterline plans will conform to City standards. Specifications shall be prepared in the latest CSI format. Submittals will include hardcopies (number specified below) and digital copies (PDF format) of all documents will be submitted through e-Builder

Coordinate and prepare documentation for outreach with utility companies (PG&E Gas & Electric, AT&T, Comcast, MCI-Verizon, Level 3-Century Link, Air Product Nitrogen Gas, Other Fiber companies), California State Water Resource Control Board - Division of Drinking Water (DDW), County of Santa Clara, and Caltrans. There may be other stakeholders identified early in the design process, and the CONSULTANT will a) provide plans to the added stakeholders, b) coordinate with them via conference calls, and c) incorporate reasonable comments into the plans, as approved by the City. The added stakeholders may require an extra two meetings to be included in the basic services scope of work.

Permitting Coordination with County of Santa Clara Roads and Airports

Arrange a meeting with City and County of Santa Clara staff to present preliminary 30% concept plans and coordinate the requirements for encroachment permit with County. Following this submittal, Consultant will advance a 1-2 page 24x36 plan submittal with required permit forms to obtain approval from the County. The waterline improvements by the City are outside of the County right of way. Therefore, the County permit application and plans/exhibits will be limited to traffic impacts at the intersection of Lawrence Expressway caused by the water line project.

2. Potholing: Consultant's potholing subcontractor, Bess Testlabs, Inc (BTL) will perform potholing at 50 locations for all 12 sites. The exact locations and distribution of the potholes will be determined by the CONSULTANT, with approval from the City. Prior to potholing CONSULTANT will prepare a potholing location plan for both the City and the potholing subcontractor. CONSULTANT will make revisions to the pothole location plan upon comments from the City.

The maximum depth of potholes will be approximately 7' deep. BTL will provide air-vacuum excavation utility location (potholing) services at the locations determined by the Engineer, and marked by the engineer on a scaled plan. Excavated material will be removed from site, the pothole will be backfilled with Class 2 AB, compacted and the surface Hot asphalted where applicable. BTL will provide a potholing report and table indicating the utility reference number, description of the utility including size and material where ascertainable and depth to top of the utility; and showing the approximate pavement section thickness. As part of the potholing operations, BTL will submit a no-fee encroachment permit with City of Sunnyvale and submit Standard traffic control plans to City. BTL will make revisions that are necessary to the traffic control plans prior to obtaining the City encroachment permit.

Consultant engineers will spend 80 hours in the office and field to review and coordinate the field operations during the added 50 potholing work to review the locations of potholes and coordinate with City during pothole operations.

3. Soil Specifications: BTL will also collect 10-15 soil samples. These soil samples will be shipped to the Testing Laboratory. The test performed by the laboratory will vary depending on the project conditions and soil extraction methods. Examples of information included in the testing lab reports for utility trenching projects are as follows: Polychlorinated Biphenyls (PCBs) by EPA Method 8082, Volatile Organic Compounds by EPA Method 8260B (826B Full list in Soil), CAM 17 Metals in Soil by EPA 6010B/7471A, Total Petroleum Hydrocarbons (TPH) as Gasoline (G) and Diesel (D) by EPA 8015B method.

The actual soil parameters to be tested will be determined during the execution of the work, as appropriate for the project and the extraction by the potholing contractor. The laboratory will provide analytics of the soil sampling in a summary

report which will be provided to the Contractors. Following completion of the report, Cook environmental subconsultant will review the lab results and summarize the findings to be included in the project technical specifications, based on their experience with industry standards for disposal of contaminated soil. The technical specifications will also refer to the Laboratory report, to be incorporated into the bid documents.

4. 75% Design Submittal + City Review Meeting: All major issues have been resolved prior to this stage. The intent of this submittal is to provide plans and project documents in sufficient detail to allow for thorough and complete review. Applications for Encroachment Permit with neighboring agencies will be advanced and submitted before the actual 75% submittal to the City. Submit eight (8) sets of legible 11" x 17" and two (2) sets of 24" x 36" hardcopies.
 - a. 75% Plans: Subcontracted work and applicable project details are included in this submittal.
 - b. 75% specifications:
 - Technical specifications,
 - Special Provisions, with recommended changes in track changes format:
 - Bid item descriptions and measurement and payment provisions
 - A list of minimum required submittals during construction
 - List of information available to Bidders, with disclaimer
 - A table listing all inspections (including special inspections and materials testing) and associated responsibility
 - A table list of materials requiring warranties, and associated warranty periods.
 - c. Project schedule update.
 - d. 75% construction cost estimate in the form of the bid schedule.
 - e. Utility conflicts are identified on the plans based on the record drawings and potholing.
 - f. Responses to the City's review comments on the 30% submittal, along with return of mark-ups.
 - g. Other supporting documentation as necessary, including, but not limited to, documentation of starting permits necessary for the Contractor, SWPPP, list of information available to Bidders, etc.

Typical Details at Fire Laterals

The plans will include typical sections for the fire lateral connections from Main the Backflow Preventers. The scope of work anticipates two to three cases to be included in the plans as part of basic services. The purposes of the typical sections is to provide the contractor with bidding assumptions and the anticipated locations of the existing utilities, to be verified in the field during construction.

Meeting with PG&E Gas

Prepare a PG&E application for relocation of gas laterals during water main construction. Consultant will arrange a meeting with City and PG&E Gas Distribution Division to coordinate three different scenarios for water main vs gas main conflicts. (Case 1 –vertical clearance greater than 12”, Case 2 – vertical clearance greater than 6” but less than 12”, and Case 3 – Conflict or less than 6” vertical clearance). Consultant will prepare meeting notes and coordinate PG&E coordination specifications to be included in the Contract Documents.

5. Caltrans Encroachment Permit (Forms, Plans, and Estimate)

Consultant will prepare Plans for work within Caltrans Right of Way. The Caltrans permit package will be a separate plan set focused on Caltrans improvements and will include: cost estimate for work in Caltrans Right of way, Caltrans Encroachment Permit form signed by the authorized representative, draft letter of authorization from City as required by Caltrans, ADA form, Short-Form Storm Water Data Report, Utility Certification letters, and Utility Conflict Matrix. Submit to Caltrans (6) six copies of plans and one hard copy of forms, cost estimate, SWDR.

The Caltrans plans will show the waterline connection to the existing 10" waterline stubs at S. Taaffe Street and S. Frances Street. The available right of way records for El Camino Real indicate the 10" water stubs at Taaffe Street and Frances Street are outside of Caltrans right of way. Consultant will request additional right of way record drawings to confirm the location of the Caltrans right of way on S. Murphy Avenue. For basic services the permit plans will be limited to traffic loop impacts and notations regarding access to El Camino Real and contractor requirements for traffic control plans. Waterline improvements adjacent to Caltrans right of way will be shown for information purposes to the Caltrans reviewers. The optional services budget for "Added Caltrans Encroachment Permit Services" will be used if a portion of the waterline improvements is inside the Caltrans right of way.

6. 100% Design Submittal: All issues, prior comments, and concerns will be addressed in this submittal. City will make a final determination if the Bid Documents will need to be separated into two (2) packages prior to this submittal. Submit eight (8) sets of legible 11" x 17" and two (2) sets of 24" x 36" hardcopies.

a. 100% plans.

- Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet. The professional shall sign, date and seal the following Certification of Peer Review on a letterhead document with the transmittal of the final plans and specifications:
“The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional engineer with expertise and experience in the appropriate fields of engineering equal to or greater than the Engineer of Record, and that appropriate corrections have been made.”

- b. 100% specifications.
 - Reviewed bid instructions
 - Finalized technical specifications
 - Finalized special provisions including required submittals
- c. Project schedule update.
- d. 100% construction cost estimate.
- e. Responses to the City's review comments on the 75% submittal, along with return of mark-ups.
- f. Other supporting documentation as necessary.

D. Bid Package

The bid package shall be finalized upon incorporation of the City's final comments from the 100% submittal.

Submit copies and digital format (PDF) of each of the documents listed below:

1. One hard copy of full sized plans (24" x 36"), stamped and signed on each sheet by the Engineer of Record and by discipline.
2. One digital copy of the Technical Specifications, with cover sheet stamped and signed by all necessary disciplines.
3. Final project schedule update.
4. Final construction cost estimate.

E. Bidding Services

Consultant will assist the City in responding to bidder's requests for information (RFIs), support the City's coordination efforts to inform plan-holders of significant responses to RFIs and prepare addenda as necessary. During bidding, all proposers' communications will be directed through the City's Purchasing Officer. Following the bid period, the Consultant will prepare conformed plans.

F. Construction Support

The City's construction management team will have primary responsibility for construction management and inspection. The Consultant's point of contact will be the City's construction manager, not the contractor.

The following is a minimum list of services and submittals required.

1. Attend and prepare information for an internal handoff meeting from the design team to the construction management team. Consultant shall be prepared to address: possible construction pitfalls, items for the construction management team to be aware of (special working hours, shortened timelines for submittal reviews, etc.).
2. Attend the pre-construction meeting.
3. Attend up to six (6) construction progress meetings, as needed.
4. Participate in the final inspection and development of punch lists.

5. Respond to RFIs, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
6. Review and respond to all submittals within the period allocated in the contract documents and as necessary to avoid construction delays and claims.
7. Review proposed substitutions, if any, for conformance to plans and technical specifications.
8. Review and make recommendations on proposed changes to the contract (Request for Quotations and Contract Change Orders).
9. Prepare Record Drawings based upon red-lines provided by the contractor and field reviews. The Record Drawings shall be prepared digitally, using AutoCAD. Final Record Drawings shall be submitted electronically, in PDF format.
10. Participate in the "Lessons Learned Meeting" with all parties at the end of the project.

G. Water Main Replacement on W. Olive Avenue (S. Pastoria Ave to S. Mathilda Ave):

This task is part of basic services and will include preparation of plans, specifications, and cost estimates at 30% Preliminary Design, 75%, 100% and Bid Submittals. The W. Olive Avenue water main replacement plans will utilize the Civic Center project base mapping and survey provided by the City.

CONSULTANT will augment the City topographic survey with one day of field surveying to determine the rim and inverts at existing manholes and existing water valves. The deliverables will be similar to the ones listed in Section C. above. This project will be accelerated as part of basic services to be completed prior to the City's Civic Center Modernization Master Plan. We assume environmental documents, geotechnical reports, site plans in AutoCAD and available potholing data will be provided by the City for the Civic Center site to facilitate coordination with the water main replacement project.

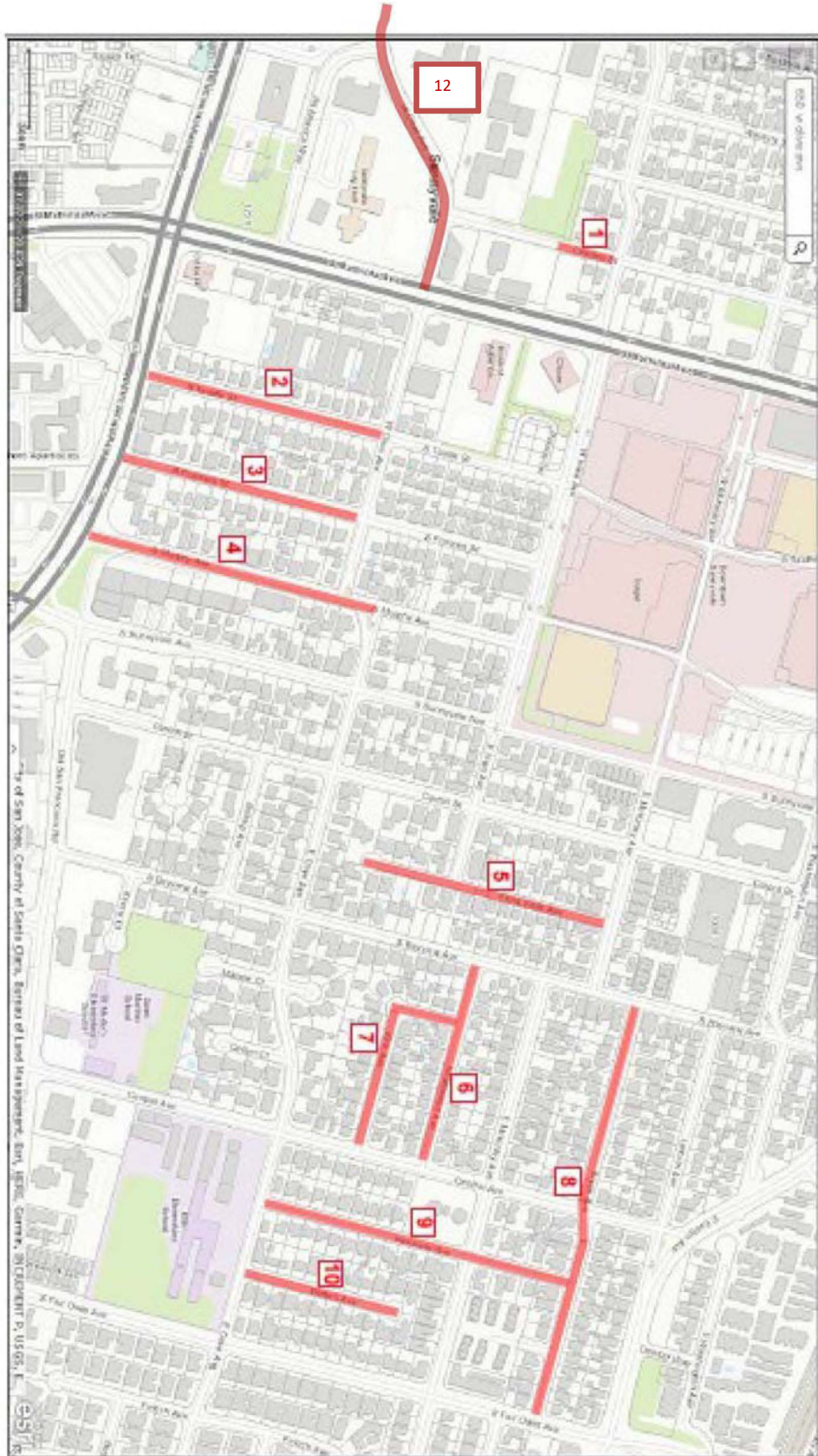
- H. E. Arques Ave Utility Alternatives Analysis:* Due to the presence of extensive utilities along the E. Arques Avenue Corridor, Consultant will perform an alternative analysis with pros and cons and a separate cost estimate for each option. These will include 24x60 color PDF exhibits showing three alternatives and corresponding costs.

Optional Services:

1. *Additional Potholing (assume 30):* Consultant's potholing subcontractor, Bess Testlabs, Inc (BTL). will perform potholing at additional 30 locations for the 12 sites. Refer to Task 3 of the Basic Services for the potholing operations scope of work and requirements, which will be the same.
2. *Potholing Operations Field Review:* Consultant engineers will spend 48 hours in the office and field to review and coordinate the field operations during the added 30 potholing work to review the locations of potholes and coordinate with City during pothole operations.

3. *Traffic Control Plans for El Camino Real and Lawrence Expwy:* Consultant's traffic control plans subconsultant prepare will traffic control plans for El Camino Real and Lawrence Expressway. These traffic control plans will be prepared on 1" = 40' scale plans.
4. *Separation of Bid Set for Acceleration of W. Olive Ave Water main:* This task will include the separation of the waterline project Bid Set Documents into a separate bid packages (e.g. plans, specifications, bid schedules, etc.). The purpose of this additional bid package will be to support the City efforts to accelerate a portion of the waterline project for W. Olive Avenue. Bellecci will prepare a separate bid form and cost estimate.
5. *Separation of Bid Set for E. Arques Avenue Water Main:* This task will include the separation of the waterline project Bid Documents into a separate bid packages (e.g. plans, specifications, bid schedules, etc.). The purpose of this additional bid package will be to support the City efforts to create a separate bid package for E. Arques Avenue to fit the available construction budget. Bellecci will prepare a separate bid form and cost estimate.

Attachment B
Location Map (Sites 1 through 10 and 12)



Attachment C
Location Map (Site 11)



Exhibit A-1 Project Schedule

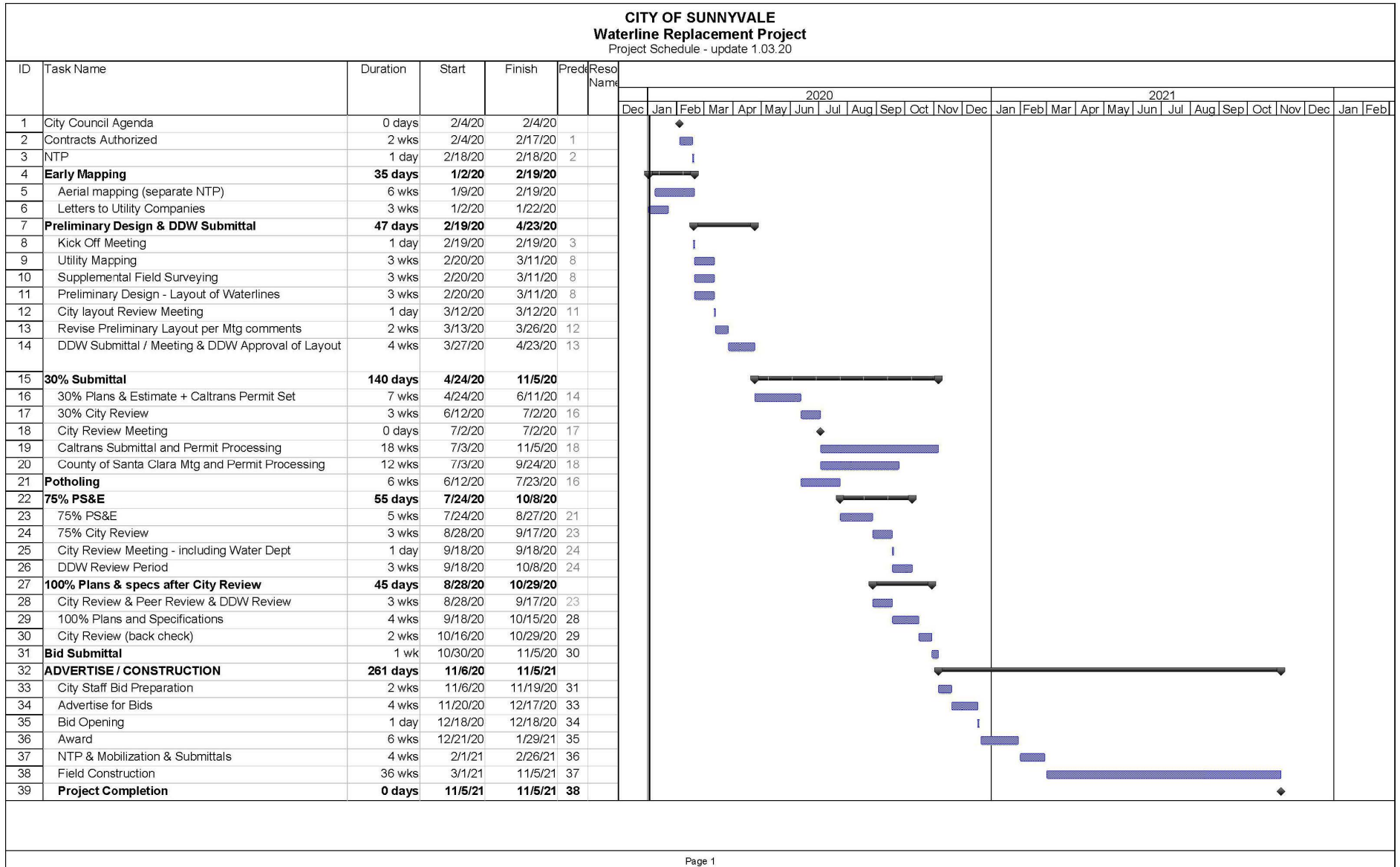


Exhibit B Compensation Schedule

Exhibit B COST PROPOSAL

City of Sunnyvale

Proposal for: Water Line Replacement 2019 - rev 4

Bellecci & Associates, Inc.

Tasks		Labor										Subconsultants				Mark Ups	ODCs	Total
Task #	Task Description	Project Manager	Principal	Peer Reviewer	Sr. Civil Engineer	Design Engineer	Asst. Engineer	Land Surveyor	Union Survey Crew	Total Hours	Total Labor Costs	Aerial	Potholing	Contaminated Soil Specs	TC Plans	5% Sub Mark Up	Other Direct Costs	Total Fee
		AA	DL	RB				AF	DM			360 Aerial	BTL	Cook+Lab Tests				
		\$206	\$240	\$206	\$174	\$146	\$128	\$206	\$278			LS Fee	LS Fee	LS Fee				
A	Project Management (up to 5 meetings)	36	7.5							44	\$9,216							\$9,216
B	Preliminary Design																	
1	Preliminary Design + Topo + Utility Mapping + Memo	16	2		41	75	141	8	64	347	\$59,348						\$600	\$59,948
2	Intersection Valves and Layouts / Conf Call	8	2		20	20	0	8	0	58	\$10,176							\$10,176
3	Division of Drinking Water (DDW)	6					44			50	\$6,868							\$6,868
4	Preliminary Cost Estimate	1				2	16			19	\$2,546							\$2,546
C	Design Development																	
1	30% Design Submittal + City Review Meeting	40	3		79	109	141			372	\$56,668						\$600	\$57,268
2	Potholing (50 Potholes)	6					80			86	\$11,476		\$91,750			\$4,587.5	\$2,000	\$109,814
3	Soil Specifications	1					5			6	\$846			\$4,250		\$213		\$5,309
4	75% Design Submittal + City Review Meeting	41	7		52	145	209	4	8	466	\$70,144						\$600	\$70,744
5	Caltrans Encroachment Permit (Forms, Plans, Estimate)	4			15	41	67			127	\$17,996							\$17,996
6	100% Design Submittal	12	2	12	16	43	46			131	\$20,374						\$600	\$20,974
D	Bid Package	8	2		4		24			38	\$5,896							\$5,896
E	Bidding Services	1			2		8			11	\$1,578							\$1,578
F	Construction Support	16	4		72		120			212	\$32,144							\$32,144
G	Water Main Replacement on W. Olive Ave (S. Pastoria to S. Mathilda)	20	6		36	84	94	4	8	252	\$39,168						\$300	\$39,468
H	E Arques Ave Utility Impacts Alternatives Analysis	12	4		24	36	48			124	\$19,008							\$19,008
Basic Service Subtotal		228	40	12	361	555	1043	24	80	2343	\$363,452	\$0	\$91,750	\$4,250	\$0	\$4,800	\$4,700	\$468,952
Optional Services																		
1	Additional Potholing (Assume 30)	4					12			16	\$2,360		\$55,050			\$2,753	\$1,000	\$61,163
2	Potholing Operations Field Review (For 30 Potholes)	4					48			52	\$6,968					\$0		\$6,968
3	Traffic Control Plans for El Camino Real and Lawrence Expwy	2					16			18	\$2,460				\$7,000	\$350		\$9,810
4	Separation of Bid Set for Acceleration of W. Olive Ave Water main	8	1		4	8	32			53	\$7,848							\$7,848
5	Separation of Bid Set for E. Arques Avenue Water Main	2			2	5	10			19	\$2,770							\$2,770
Total Optional Services		20	1	0	6	13	118	0	0	158	\$22,406	\$0	\$55,050	\$0	\$7,000	\$3,103	\$1,000	\$88,559
TOTAL BASIC AND OPTIONAL SERVICES		248	41	12	367	568	1161	24	80	2501	\$385,858	\$0	\$146,800	\$4,250	\$7,000	\$7,903	\$5,700	\$557,511
Notes:																		
1 We assume no water modeling or coordination is required. New water main pipes sizes are as indicated in the RFP.																		
2 We assume no encroachment permit fee if required for potholing.																		
3 City to provide GIS data for property lines, street center lines, and one (1) foot contours as specified in the RFP. City to also provide aerial photographs to be used as background for plans.																		
4 We assume maximum depth of potholing to be 7 ft. deep.																		
5 Aerial Survey is included in a separate task order																		
6 Distribution of Hours may vary																		
7 Traffic Detector Loops Replacement locations will be shown on the waterline plans for E. Arques/Commercial St, E. Arques/Santa Trinita, and E. Arques/Lawrence Expressway. City to provide as-built traffic signal plans for City Owned TS information. Consultant to coordinate with County for County-owned signals.																		

Exhibit C

INSURANCE REQUIREMENTS FOR CONSULTANTS/CONTRACTORS

Consultant/Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$2,000,000 per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$X,XXX,XXX per occurrence and \$X,XXX,XXX aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$X,XXX,XXX per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied 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 of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. 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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Subcontractors

CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to these requirements. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.

Attachment E
POLICY 5.1.6 WAGE THEFT PREVENTION – COUNCIL POLICY MANUAL

POLICY PURPOSE:

To establish a Council Policy and procedure to prevent wage theft on City goods and services contracts as well as deny, suspend or revoke certain City permits and licenses to businesses with unpaid wage theft judgments.

BACKGROUND:

Wage theft occurs when an employer fails to pay its workers the wages to which they are legally entitled. It is the crime of stealing earned wages from workers. There are numerous forms of wage theft involving violations of employment laws but all resulting in workers earning less than they are entitled to earn.

Local and national studies on wage theft report that wage theft is a pervasive and chronic problem. Wage theft is not incidental, aberrant, rare or committed only by a few rogue employers at the periphery of the labor market. Instead it takes place in industries that span the economy – from retail, restaurants and grocery stores; caregiver industries; manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes and beauty and nail salons.

POLICY STATEMENT:

II. GOODS AND SERVICES AGREEMENTS

It is the policy of the City of Sunnyvale that all parties contracting with the City pursuant to Sunnyvale Municipal Code Chapter 2.08 must comply with all applicable federal, state and local wage and hour laws including, but not limited to, the Federal Fair Labor Standards Act ("FLSA"), the California Labor Code and the Sunnyvale Minimum Wage Ordinance.

This Policy does not apply to any "public works" contracts as defined in City Charter Section 1309, Sunnyvale Municipal Code Chapter 2.09 and state law.

III. MANDATORY DISCLOSURE REQUIREMENT

As a part of any City solicitation for supplies, materials, goods and/or services, a potential contractor shall fully complete a "Bid Certification" ("Certification"). The Certification requires each potential contractor to disclose whether the contractor has been found by a court or final administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws within the past five (5) years from the date of the submitted bid or proposal. For each disclosed violation, the potential contractor shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of potential contractor's efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the potential contractor to the City as a part of its bid or proposal.

IV. *Bid or Proposal Disqualification Circumstances*

A potential contractor that has submitted a formal or informal bid or proposal to provide supplies, materials, goods and/or services to the City pursuant to Sunnyvale Municipal Code Chapter 2.08 ***shall*** be disqualified if the potential contractor has been found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws on one (1) or more occasion ***and*** has one (1) unpaid wage judgment in the past five (5) years prior to the date of submission of a bid or proposal to provide supplies, materials, goods and/or services.

V. *Grounds for Contract Termination after the Award of the Contract*

A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five (5) years prior

to or during the term of the contract with the City, may be in material breach of its contract with the City if the violation is not fully disclosed and/or satisfied per City contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

VI. Inaccurate or Incomplete Disclosures

Inaccurate or incomplete disclosures constitute a violation of the City's Wage Theft Prevention Policy and may result in immediate disqualification from the City solicitation and contracting process or immediate termination of any contract with the City.

3. CONTRACT LANGUAGE AFTER SUCCESSFUL BID OR PROPOSAL

All City contracts subject to this Policy shall include the following provisions:

Wage Theft Prevention

Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the Sunnyvale Prevailing Wage Policy and Minimum Wage Ordinance.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, the City of Sunnyvale or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City with documentary evidence of compliance with the final judgment, decision or order within five (5) calendar days of satisfying the final judgment, decision or order. The City reserves the right to require Contractor to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

4. DENIAL AND REVOCATION OF PERMITS AND LICENSES UNDER THE SUNNYVALE MUNICIPAL CODE

The Sunnyvale Municipal Code shall contain language that allows the City to deny, suspend or revoke certain permits or licenses if a business fails to pay a court or final administrative action of an investigatory government agency for violating applicable wage and hours laws.

If the City receives complaints about permittees or licensees regarding wage theft, the department responsible for issuance of the permit or license shall work with the Economic Development Division and the City Attorney's Office to investigate the complaint to determine whether denial, suspension, or revocation of the permit or license until the wage judgment is satisfied.

(Adopted: RTC #18-0215 (April 10, 2018)) Lead Department: Office of the City Manager

Exhibit 2: Labor Compliance

Contractor Registration with the State of California – Contractors, and all applicable subcontractors which are required to pay prevailing wages, must be registered with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, pot holing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. Registration must remain current throughout the project entirety. It is the contractor's responsibility to not allow their PWC Registration to lapse during the project and to ensure all Subcontractor's registrations remain current. The Labor Commissioner can assess penalties to public works contractors of up to \$10,000, in addition to the registration fee, for failure to register. Awarding agencies are also subject to penalties of \$100 a day, up to a maximum of \$10,000, for having an unregistered contractor perform work on a public works project. If any penalties are issued to the City for unregistered subcontractors or for a lapse in a contractor/subcontractor's PWC Registration, these penalties will be passed onto the contractor. **A contractor that allows an unregistered subcontractor to work on the project is also subject to penalties of \$100 a day up to \$10,000.** Contractors shall list all applicable PWC registration numbers on the Bid Form.

Hours of Work – Pursuant to Labor Code, Section 1810, eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to the City, twenty-five dollars (\$25.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code. Such forfeiture amounts may be deducted from the contract sum.

Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

Wage Rates – Pursuant to Sections 1770, 1771 and 1774 of the Labor Code of the State of California, or any applicable local law, contractors shall not pay less than the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations. The City has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. The City has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against the City.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify the City who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

Prevailing Wage – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the City will be on file at the City's principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the City for Bidder's information only and is not guaranteed by the City to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such subcontractors in the execution of the work.

Contractor shall forfeit to the City, as a penalty, no more than two hundred dollars (\$200.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by contractor or any subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the contractor's bid and will not, under any circumstances be considered as the basis of a claim against the City under the Agreement.

Certified Payroll Records – Pursuant to Labor Code, Sections 1776 et. Seq., contractor and all subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. All payroll records shall be certified as being true and correct by contractor or subcontractors keeping such records; and the payroll records shall be provided to the City no later than three weeks after closing of payroll for City-funded projects, and no later than one week for federal aid projects. The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in Labor Code section 1776 (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Certified payroll records shall be made available at reasonable hours at the contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code section 1776. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

Each contractor and every lower-tier subcontractor will be required to submit certified payrolls and labor compliance documentations electronically via the software LCPtracker. Contractor shall cause all subcontracts to include the provision that all subcontractors submit certified payrolls and labor compliance documentation electronically via LCPtracker. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. Each contractor user will be given a Log-On identification and password to access the City's reporting system. Access will be coordinated by a City representative.

Apprentice Program – Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, contractor or subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the work. In the event contractor willfully fails to comply with this section, it will be considered in violation of the requirements of the Contract.

Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares the unlawful discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.