

**Council Meeting: October 14, 2008**

SUBJECT: Authorization to Modify an Existing Contract for Fire Protection Engineering Services for the Sunnyvale Town Center Project (F0809-19) and Approval of Budget Modification No. 14

REPORT IN BRIEF

Approval is requested to modify an existing one-year contract with ESH Consultants, of San Francisco, for fire protection engineering services for the Sunnyvale Town Center project by increasing total authorized expenditures to \$210,000 and extending the contract period to January 31, 2010. Staff also requests approval of Budget Modification No. 14 to increase the FY 08/09 project budget by \$116,362 to \$161,040.

BACKGROUND

The Department of Public Safety (DPS) is responsible for enforcing the City's Fire Code by reviewing construction permits and contractor shop drawings, conducting site inspections of construction progress, and witnessing contractor testing of fire protection systems. These services are provided by Fire Protection Engineers (FPE) and funded through the operating budget of DPS Program 485- Investigative Services/Fire Prevention and Engineering. The City's Fire Protection Engineers are highly skilled employees who specialize in fire protection systems and engineering.

On a daily basis, an FPE checks building plans and specifications submitted by architects, engineers, contractors and building owners for compliance with fire and life safety ordinances, laws and codes. An FPE often answers questions from City officials, contractors and other interested parties regarding fire and life safety requirements. Additionally, an FPE advises building and fire inspectors on fire and life safety problems arising in the field during construction.

DISCUSSION

Over the past two years, the FPE workload has significantly increased, mainly due to downtown redevelopment activities and a large number of industrial to residential conversion projects. Unanticipated staff vacancies have also added to the FPE workload. As a result, it has been difficult for DPS to maintain necessary building plan review, permitting and construction site inspections

within the timeframes allotted in the aggressive construction schedule for the Sunnyvale Town Center Project. To help offset the increased workload, the City entered into a contract with ESH Consultants under the City Manager's contract award authority. The initial contract was signed in February 2008 in the amount of \$50,000. The contract was then amended in early September 2008 and increased to \$100,000. As a specialized professional service, this contract is exempt from the City's competitive bidding requirements (Sunnyvale Municipal Code Section 2.08.070(b)).

In FY 07/08, project 826640 was created to provide Fire Protection Engineering services to the Sunnyvale Town Center Redevelopment project. This project provides the resources necessary for ESH Consultants to provide building plan review, permitting and construction site inspections within the timeframes allotted in the construction schedule. The budgeted amounts for FY 07/08 through FY 09/10 total \$93,638 (\$42,000 in FY 07/08, \$44,678 in FY 08/09 and \$6,960 in FY 09/10). These expenditures are offset by permit fee revenue directly related to the FPE services required for this project.

Given the increased workload associated with the Town Center redevelopment, the level of project funding is insufficient to keep pace. The funding amounts described above were based on staff's projections of six (6) to ten (10) hours of consultant FPE services being needed each week to keep the project on schedule. Due to the scope and complexity of this project, the time necessary has exceeded these staff predictions. Currently ESH Consultants is dedicating fourteen (14) hours each week, on average, to this project, with as many as twenty three (23) hours/week needed during months of high activity.

Staff recommends that Council increase the interim contract by \$110,000, to a total of \$210,000, the anticipated cost of the required services through life of the extended contract, which will run through January 31, 2010. Staff also recommends increasing the project budget by \$116,362 to cover anticipated additional expenditures above what is currently budgeted. Staff has determined that this additional allocation is appropriate and reasonable based on the Fire Permit fees for the Town Center Project paid by the developer that are directly related to the services rendered.

FISCAL IMPACT

It is anticipated that total expenditures for the entire contract period will not exceed \$210,000. Additional funds requested for this project will be offset by increased revenue for Fire Prevention Construction Permits. Budget Modification No. 14 has been prepared to receive an additional \$116,362 in revenue for Fire Prevention Construction Permit fees and appropriate it into Project 826640 – Town Center Construction Fire Prevention Services.

**Budget Modification No. 14
FY 2008/2009**

General Fund	Current	<u>Increase/ (Decrease)</u>	Revised
Revenues: Permits – Fire Prevention Construction	\$1,490,451	\$116,362	\$1,606,813
Expenditures: Project 826640- Town Center Construction Fire Prevention Services	\$44,678	\$116,362	\$161,040

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

RECOMMENDATION

1. It is recommended that Council modify an existing contract with ESH Consultants in substantially the same form as the attached Agreement Amendment, by increasing authorized expenditures from \$100,000 to \$210,000 and extend the contract period to January 31, 2010.
2. Delegate authority to the City Manager to exercise an option to extend the contract for one additional one-year period, provided that pricing and service remain acceptable to the City.
3. Approve Budget Modification No. 14 to fund the additional amount necessary for the project.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: Peter Gonda, Senior Management Analyst, Finance

Reviewed by:

Don Johnson
Director, Public Safety

Approved by:

Amy Chan
City Manager

Attachments

1. Draft Agreement Amendment
2. Consultant Services Agreement

DRAFT**SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND ESH CONSULTANTS
FOR FIRE PROTECTION ENGINEERING SERVICES
FOR THE SUNNYVALE TOWN CENTER PROJECT**

This Second Amendment to Consultant Services Agreement, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and ESH CONSULTANTS, a sole proprietorship ("CONSULTANT").

WHEREAS, on February 6, 2008, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would provide specialized services in relation to the performance of fire inspections and plan checks for the Sunnyvale Town Center Project; and

WHEREAS, on September 3, 2008, CITY and CONSULTANT entered into an Amendment to Service Agreement which increased the total compensation not to exceed amount to \$100,000; and

WHEREAS, the parties now agree that an Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

Delete Section 2 in its entirety and replace with the following:

Section 2. Time for Performance

The term of this Agreement shall be two years, beginning February 1, 2008, unless otherwise terminated. Extensions of time may be granted by the City Manager upon a showing of good cause.

Delete Section 4 in its entirety and replace with the following:

Section 4. Compensation

CITY agrees to pay CONSULTANT at the rates set forth in Exhibit "A" attached and incorporated herein by this reference. Total compensation shall not exceed Two Hundred Ten Thousand and no/100 Dollars (\$210,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

ESH CONSULTANTS
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND ESH CONSULTANTS,
FOR FIRE PROTECTION ENGINEERING SERVICES FOR THE
SUNNYVALE TOWN CENTER PROJECT**

THIS AGREEMENT dated February 6, 2008 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ESH CONSULTANTS, a sole proprietorship ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to the performance of fire inspections and plan checks for the Sunnyvale Town Center Project; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide qualified individuals to provide services in accordance with Exhibit "A" attached and incorporated by reference. Each individual performing services under this Agreement shall be approved by CITY in advance.

2. Time for Performance

The term of this Agreement shall be one year, beginning February 1, 2008, unless otherwise terminated. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

CITY shall also provide a work space; access to standard office equipment, including telephones; and materials and supplies, as required, while working at a CITY facility. However, CONSULTANT shall not use CITY's vehicles.

4. Compensation

CITY agrees to pay CONSULTANT at the rates set forth in Exhibit "A" attached and incorporated by reference. Total compensation shall not exceed Fifty Thousand and no/100 Dollars (\$50,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee 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.

Pursuant to CITY's Standard Conflict of Interest Code (Exhibit "B") attached and incorporated by reference, CITY has determined that any individual performing services under this Agreement is required to file a Statement of Economic Interest (Form 700) which can be found at www.fppc.ca.gov.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- (b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Indemnity

CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

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 endorsements as specified in Exhibit "C".

12. CITY Representative

Jeff Schlesinger, Fire Marshal, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Elliot L. Gittleman, PE, MBA shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Jeff Schlesinger, Fire Marshal
Department of Public Safety
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Elliot L. Gittleman, PE, MBA.
ESH Consultants
842 32nd Avenue
San Francisco. CA 94121

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. 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 two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

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. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

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.

17. 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.

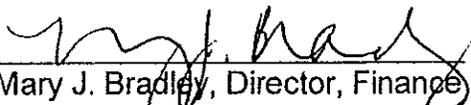
18. Miscellaneous

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. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

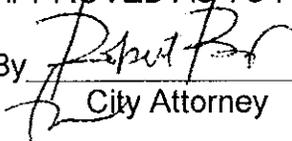
ESH CONSULTANTS
("CONSULTANT")

By 
Mary J. Bradley, Director, Finance
Acting Purchasing Officer

By 

Elliot Gittelman, OWNER 4 SP- ENGINE CAR
Name and Title

APPROVED AS TO FORM:

By 
City Attorney

eshconsultants

Fire Protection Engineers and Code Consultants



November 25, 2007

Jeff Schlesinger, Fire Marshal
Sunnyvale Division of Public Safety
700 All American Way
Sunnyvale, CA 94086

Proposal for Fire Protection Engineer Services

Scope of services to be provided by ESH Consultants:

1. ESH Consultants will provide in-house or in our office plan review services as requested by the Sunnyvale Division of Public Safety. These reviews will be based on the current California Building and Fire Codes, as well as any Sunnyvale regulations, and industry standards such as but not limited to NFPA 13 and 72.
2. Using approved permit and submittal plans provided by Sunnyvale Division of Public Safety, ESH Consultants will provide field inspection of construction to verify compliance with the approved plans.
3. ESH Consultants will attempt to be available a minimum of 1 day per week, excluding holidays, illness, vacation, or out of area work related travel. Sunnyvale Division of Public Safety may request additional hours and all attempts will be made to accommodate the requests. In many situations, up to three days per week may be available.

Fee for services:

All fees would be paid by the City of Sunnyvale and not be dependant on the city being paid by any contractors or developers. The billing cycle is monthly with payment due at the end of 30 days.

Fees for the project are on an hourly basis of \$185 per hour, billed in 1/4th hour increments. This is a \$15 reduction on our 2008 fees for a principal engineer. Time charged will include travel time to and from our San Francisco office to Sunnyvale Division of Public Safety or to job inspection sites. Time charged will include on-site time, pre-inspection preparation and post inspection documentation/reports. Work requested for evenings, nights, weekends or holidays would be at a premium rate: 1.5 times the normal rate for evenings and nights, and 2.0 times the normal rate for weekends and national holidays.

Fees for work extending beyond December 31, 2008, will be \$200 per hour for 2009, and the fee for 2010 will be \$220 per hour.

Charges include mileage from our San Francisco office, to and from Sunnyvale Division of Public Safety offices, or job sites, or project meetings, and will include mileage reimbursement based upon the then current IRS rate (presently \$0.485 per mile) plus any tolls and parking fees.

Any equipment, materials, codebooks or handbooks, or software specially purchased for this project will also be reimbursed at cost plus 10%.

Minimum billing will be for four hours per site visit, project meetings, or work at the offices of the Division of Public Safety. Travel time will be included as part of the four-hour minimum. The requirement for a four-hour minimum has occurred because of work for previous clients who requested 3 or 4 one-hour meetings a week, each on a different day. The result was a loss of billable hours without compensation. ESH Consultants now bills on either a full day or minimum half-day basis for out of the office work assignments.

Other billable charges:

Should it be necessary to prepare/create inspection report and data gathering forms, this work will be accomplished in our San Francisco office. All work for preparation of these forms will be billed at the standard hourly rate, with no minimum charge.

Policy 7.3.7 Standard Conflict of Interest Code

POLICY PURPOSE:

The purpose of this policy is to establish procedures developed in compliance with the terms of the Political Reform Act and related regulations concerning the adoption of Conflict of Interest Codes.

POLICY STATEMENT:

The Political Reform Act, Government Code §81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. §18730, which contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference and which may be amended by the FPPC to conform to amendments in the Political Reform Act; these provisions are incorporated by reference as the City's Conflict of Interest Code. The standard Conflict of Interest Code requires a list of City positions subject to its provisions, and these are found in Appendix A. City Councilmembers, Planning Commissioners, City Managers, City Treasurers and City Attorneys are treated separately under the Political Reform Act and are not listed in the Appendix as designated employees. The persons holding positions listed in Appendix A are designated employees. Members of the Board of Building Code Appeals and the Heritage Preservation Commission also have been designated in the Conflict of Interest Code. It has been determined that these persons make or participate in making decisions which may have an effect on financial issues. The disclosure categories they must file under are set forth following the list of positions.

In accord with Government Code Section 87306.5, the Conflict of Interest Code is reviewed in even-numbered years and Appendix A is updated, if necessary:

All designated employees and certain Board and Commission members shall file Statements of Economic Interests, on forms required by the Fair Political Practices Commission, with the City Clerk no later than April 1 of each calendar year.

(Adopted: RTC 91-3CA (2/29/1991); Amended: 92-265 (6/9/1992), 94-351 (6/14/1994), 96-386 (10/1/1996), 98-326 (9/22/1998), 00-307 (9/12/2000), 02-415 (10/22/2002), 04-342 (9/28/2004); (Clerical/clarity update, Policy Update Project 7/2005))

Lead Department: Office of the City Manager

COUNCIL POLICY MANUAL

Appendix A
 CITY OF SUNNYVALE CONFLICT OF INTEREST CODE
DESIGNATED CITY POSITIONS REQUIRED TO FILE
 (Pursuant to Resolution No. 136-04)

Position:	Disclosure Category:
Accountant (Treasury)	1
Administrative Assistant	1
Administrative Librarian	1
Administrative Services Manager	1
Administrative /Services Manager (Revenue)	1
Assistant Buyer	2
Assistant City Attorney	1
Assistant City Engineer	1
Assistant City Manager	1
Assistant Director of Public Safety	1
Assistant Director of Public Works/City Engineer	1
Assistant to the City Manager	1
Assistant to the Director of Parks and Recreation	1
Assistant Planner	1
Associate Planner	1
Building Inspector/Coordinator	1
Buyer	1
Child Care Manager	1
City Clerk	1
City Property Administrator	1
Civil Engineer	1
Columbia Neighborhood Services Center Manager	1
Communications Officer	1
Deputy City Attorney	1
Deputy City Clerk	1
Deputy City Manager	1
Deputy Communications Officer	1
Director of Community Development	1
Director of Employment Development	1
Director of Human Resources	1
Director of Information Technology	1
Director of Libraries	1
Director of Parks and Recreation	1
Director of Public Safety	1
Director of Public Works	1
Economic Development Manager	1
Employment Training Manager	1
Environmental Division Manager	1

COUNCIL POLICY MANUAL

Position:	Disclosure Category:
Environmental Engineering Coordinator	2
Finance Manager	1
Fire Prevention Inspectors	3
Fleet Manager	2
Golf Operations Supervisor	2
Hazardous Materials Coordinator	3
Hazardous Materials Inspector	3
Housing & Neighborhood Preservation Manager	1
Housing Officer	1
Human Resources Manager	1
Human Resources Supervisor	2
Industrial Waste Inspector	3
Leisure Services Manager	1
Manager, Applications Development	1
Manager, Bureau of Technical Services	1
Manager of Business Operations	2
Manager, Information Technology Services	1
Manager of Job Seeker Services	1
Management Analyst/Budget	2
Management Analyst/Human Resources	2
Management Analyst/Organizational Effectiveness	1
Neighborhood and Community Services Manager	1
Operations Manager	3
Parks Supervisor	3
Permit Technician	1
Plan Check Engineer	1
Planning Officer	1
Principal Planner	1
Program Quality & Operations Manager	2
Public Safety Captain I	1
Public Safety Captain II	1
Public Works Construction Inspector	3
Public Works Supervisor	1
Recreation Supervisor	3
Recycled Water Coordinator	2
Recycling Supervisor	1
Revenue Systems Supervisor	1
Risk & Insurance Manager	1
Senior Accountant	2
Senior Assistant City Attomey	1
Senior Building Inspector/Coordinator	1
Senior Buyer	1
Senior Engineer	1
Senior Finance Manager	1
Senior Industrial Waste Inspector	1

COUNCIL POLICY MANUAL

Position:	Disclosure Category:
Senior Construction Inspector/Coordinator	1
Senior Management Analyst	1
Senior Management Analyst/Organizational Effectiveness	1
Senior Planner	1
Senior Traffic Engineer	2
Senior Transportation Planner	2
Solid Waste Contract Administrator	2
Solid Waste Program Manager	1
Superintendent of Building Inspection	1
Superintendent of Building Maintenance	1
Superintendent of Cultural Arts	1
Superintendent of Field Services	1
Superintendent of Parks	1
Superintendent of Trees & Landscape	1
Supervising Librarian	1
Transportation and Traffic Manager	1
Urban Landscape Supervisors	3
Volunteer Services Manager	1
Water Pollution Control Lab and Pretreatment Manager	1
Water Pollution Control Maintenance & Facility Manager	1
Water Pollution Control Operations Manager	1
Youth and Family Services Manager	1
Consultants*	1
Designated Appointees:	
Member, Board of Building Code of Appeals	1
Member, Heritage Preservation Commission	1

* Consultants are included in the list of designated employees and shall disclose pursuant to Category 1 subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

DISCLOSURE CATEGORIES

Category 1. A designated employee in this category must report all investments, interests in real property owned in the City of Sunnyvale, income and business entities in which he or she is a director, officer, partner, trustee, employee or holds any position of management.

COUNCIL POLICY MANUAL

Category 2. A designated employee in this category must report income and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management, if the business entity or source of income is of the type which has done business with the City of Sunnyvale within the previous two years.

Category 3. A designated employee in this category must report income and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management, if the business entity or source of income is of the type which within the previous two years has provided services, equipment, lease space, materials or supplies to the City.

EXHIBIT "C"
INSURANCE REQUIREMENTS

CONSULTANT shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONSULTANT shall take out and maintain during the life of the contract **Workers' Compensation** insurance coverage to statutory limits as may be required by law.

CONSULTANT shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONSULTANT, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONSULTANT, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONSULTANT's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- "CITY, its officers, officials, employees and volunteers" must be named as an additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND ESH CONSULTANTS
FOR FIRE PROTECTION ENGINEERING SERVICES
FOR THE SUNNYVALE TOWN CENTER PROJECT

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WHEREAS, on February 6, 2008, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would provide specialized services in relation to the performance of fire inspections and plan checks for the Sunnyvale Town Center Project; and

WHEREAS, the parties now agree that an Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

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All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

CITY OF SUNNYVALE ("CITY")

ESH CONSULTANTS
("CONSULTANT")

By [Signature]
Acting Purchasing Officer

By [Signature]
[Signature]
Name and Title [Signature]

APPROVED AS TO FORM:

By [Signature]
City Attorney