

**Council Meeting: June 2, 2009**

SUBJECT: Authorization to Modify an Existing Contract for Design Services for the Tasman/Fair Oaks Streetscape and Sense of Place Project (F0805-83)

BACKGROUND

Approval is requested to amend an existing contract with Kimley-Horn and Associates, Inc., of Oakland, to provide additional funds in the amount of \$31,000 for construction support services for the Tasman/Fair Oaks Streetscape and Sense of Place Project. Additional services are needed because conditions in the field have warranted design changes and clarifications resulting from the ongoing construction. The total Kimley-Horn and Associates contract, approved by Council in December 2005 and first amended in July 2007, is \$252,492. The proposed contract amendment would increase the total not-to-exceed amount to \$283,492.

DISCUSSION

The Tasman/Fair Oaks Area Streetscape and Sense of Place Enhancements project was developed in accordance with the *Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan* adopted by Council in August 2004 for the area approximately bounded by Fair Oaks Avenue, Morse Avenue, Highway 237 and Highway 101. Design for the project includes construction of sidewalks, intersection improvements, bus stop amenities, and sense of place improvements throughout the neighborhood, including gateway monument signs, ground-plane sidewalk inlays, and pedestrian scale neighborhood monuments.

FISCAL IMPACT

Funds are available in project budget 826570 to cover the additional expenditures. The project is funded by grants through the VTA and developer fees.

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

It is recommended that the Council modify an existing contract with Kimley-Horn Associates, Inc., in substantially the same form as the attached Amendment to Consultant Services Agreement, by increasing contract expenditures by \$31,000, the total not to exceed \$283,492.

Reviewed by:

Marvin A. Rose, Director of Public Works

Prepared by: Jack Witthaus, Transportation and Traffic Manager

Reviewed by:

Mary Bradley, Director of Finance

Prepared by Pete Gonda, Senior Management Analyst, Finance

Approved by:

Gary M. Luebbers

City Manager

Attachments

- A. Draft Second Amendment to Consultant Services Agreement
- B. First Amendment to Consultant Services Agreement and Original Consultant Services Agreement

**SECOND AMENDMENT TO SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND KIMLEY-HORN AND
ASSOCIATES, INC. TO DESIGN PEDESTRIAN AND BICYCLE
CIRCULATION IMPROVEMENTS IN THE TASMAN/FAIR OAKS AREA**

This Second Amendment to Consultant Services Agreement, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation ("CONSULTANT").

WHEREAS, on January 19, 2006, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would design pedestrian and bicycle circulation improvements in the Tasman/Fair Oaks area of Sunnyvale; and

WHEREAS, on July 23, 2007, CITY and CONSULTANT agreed to amend the Agreement to reflect design changes and increased work scope and to increase the total contract value by \$147,364.00; and

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

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

1. Services by CONSULTANT - Delete Section 1 of the Agreement, dated January 19, 2006, and replace it with the following;

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work", Exhibit "A-2" entitled "Revised Scope and Fee", dated May 1, 2007 and Exhibit "A-3" entitled "Future Construction Support Services" and dated May 28, 2009. All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Randy Durrenberger, P.E., to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

2. Payment of Fees and Expenses - Delete Section 4 of the Agreement dated January 19, 2006 and replace it with the following:

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule", Exhibit "B-1" entitled "Budget" and additional costs as shown in Exhibit "A-3". All compensation

will be based on monthly billings as provided in Exhibits "B", "B-1" and "A-3". 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 to 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 Exhibits "B", "B-1" and "A-3" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Two Hundred Eighty Three Thousand Four Hundred Ninety Two and No/100 Dollars (\$283,492.00) 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.

All other terms and conditions remain unchanged.

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

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

KIMLEY-HORN AND ASSOCIATES,
INC.
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title



Kimley-Horn
and Associates, Inc.

Exhibit "A-3"

■
Suite 1230
555 12th Street
Oakland, California
94607

May 28, 2009

Richard Chen
City of Sunnyvale
456 West Olive Avenue
PO Box 3707
Sunnyvale, CA 94088-3707

Re: Tasman/Fair Oaks Circulation Plan – Future Construction Support Services

Dear Richard,

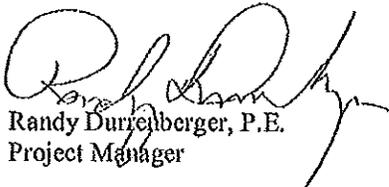
The Kimley-Horn team (including Callander Associates) submits this request for additional compensation to provide ongoing construction support services to the City of Sunnyvale to complete the Tasman/Fair Oaks project. This estimated budget includes providing review and response to requests for information that the City needs our team's input.

Task	Estimated Kimley-Horn Cost	Estimated Callander Costs
Review Contractor Submittals	\$3,000	
Review Material Submittals	\$5,000	\$3,000
Prepare Responses to Submittals	\$10,000	
Additional Support for Design Modifications	\$8,000	
Indirect and Direct Expenses (est. 8% of labor)	\$2,000	
TOTAL	\$28,000	\$3,000

This estimate is for future upcoming support as of today. It does not include any previous effort that is over our contract amount and that we feel is outside of our original scope of work. This is our best forecasted estimate in terms of what we currently know about the project issues and some of the design modifications required due to unforeseen conditions. We will invoice the City based on actual effort expended up to the agreed budget. We will endeavor to complete our services within this budgeted amount and will partner with the City to that extent.

Thank you for your consideration and we look forward to continuing to support the City.

Sincerely,
KIMLEY-HORN AND ASSOCIATES, INC.


Randy Durrenberger, P.E.
Project Manager

cc: Enda Melvin

■
TEL 510 625 0712
FAX 510 625 0714

**FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND KIMLEY-HORN AND ASSOCIATES, INC.,
TO DESIGN PEDESTRIAN AND BICYCLE CIRCULATION IMPROVEMENTS
IN THE TASMAN/FAIR OAKS AREA**

This Amendment to Consultant Services Agreement, dated July 23, 2007, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation ("CONSULTANT").

WHEREAS, on January 19, 2006, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would design pedestrian and bicycle circulation improvements in the Tasman/Fair Oaks area of Sunnyvale ; 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:

1. Services by CONSULTANT – Delete Section 1 of the Agreement, dated January 19, 2006, and replace it with the following:

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work" and Exhibit "A-2" entitled "Revised Scope and Fee", dated May 1, 2007. All exhibits referenced in this agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Randy Durrenberger, P.E., 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. Project Schedule – Delete Section 3 of the Agreement and replace it with the following:

The Project Schedule is set forth in Exhibit "A-1" and extended by Exhibit "A-2".

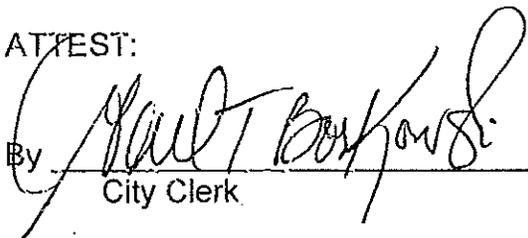
3. Payment of Fees and Expenses – Delete Section 4 of the Agreement dated January 19, 2006, and replace it with the following:

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule" and Exhibit "B-1" entitled "Budget". All compensation will be based on monthly billings as provided in Exhibits "B" and "B-1". 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 Exhibits "B" and "B-1" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Two Hundred Fifty Two Thousand Four Hundred Ninety Two and No/100 Dollars (\$252,492.00) 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.

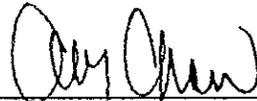
All other terms and conditions remain unchanged.

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

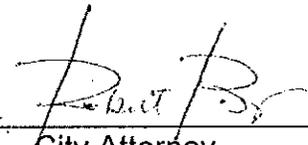
ATTEST:

By 
City Clerk

CITY OF SUNNYVALE ("CITY")

By 
City Manager

APPROVED AS TO FORM:

By 
City Attorney

KIMLEY-HORN AND ASSOCIATES,
INC. ("CONSULTANT")

By 
Randal Durrenberger, Vice President
Name and Title

By 
Avish Nejad, Senior Vice President
Name and Title



Kimley-Horn
and Associates, Inc.

■
Suite 1230
555 12th Street
Oakland, California
94607

May 1, 2007

Dieckmann Cogill
City of Sunnyvale
456 West Olive Avenue
PO Box 3707
Sunnyvale, CA 94088-3707

Re: Tasman/Fair Oaks Circulation Plan - Revised Scope and Fee

Dear Dieckmann,

Based on our recent conversations and meeting, we have prepared a revised scope and fee that represents our understanding of the design changes. In summary, the changes are as follows:

- Remove Class I bikeway along the Sunnyvale East Channel from the project;
- Remove Mobile Park Access Point from the project;
- Include additional Sense of Place signs for a total of 2 gateway signs, 7 neighborhood signs, and 26 sidewalk inlays (quantities are approximate);
- Design 5 VTA bus stop improvements;
- Provide Caltrans coordination related to E-76 process;
- Remove Public Outreach effort related to meetings; and
- Include an additional (60%) design and review stage.

The following is a detailed description of the additional scope items:

PROJECT UNDERSTANDING

Task 4A – Detailed Design

Kimley-Horn shall prepare a plans, specifications, and estimate package to be bid by the City of Sunnyvale. The following elements shall be included in the design:

- **LRT Sense of Place Signs** – Please see attached letter from Callander Associates detailing the scope for this task.
- **Bus Stop Improvements** – Kimley-Horn shall design improvements at 5 bus stop locations. Proposed bus stop improvements shall include sidewalk replacement (if necessary) and bus stop amenities including benches, internally illuminated signs, garbage cans, and bike racks. Bus shelters will not be included in this design. Internally illuminated signs are assumed to be powered from the existing street lighting circuit. Completion of the design will require additional data collection at each location including field review, utility coordination, minor topographic surveying, and preparation of additional plans, specifications and estimates.

- **Project Funding and Grant Compliance** – Funding for the proposed project has been obtained through a Federal grant. As a result this project will require strict adherence to the design and construction schedule to ensure funding release, coordination with Local Assistance to obtain Authorization to Proceed with Construction (E76), and meeting Federal Race Neutral and Minimum Wage Rates requirements.
- **Caltrans Encroachment Permits** – Part of the project is located in State right of way. As such, an Encroachment Permit Application will be prepared and submitted to Caltrans for construction. Obtaining the Encroachment Permit will require meeting with Caltrans staff to discuss the improvements and making additional submittals of the project plans and specifications for design review.

Task 4A.1 Surveying

Kimley-Horn will utilize Mountain Pacific Surveys to conduct additional ground topographic survey of the project area in the vicinity of the proposed bus stop and monument sign locations. The survey will locate the existing street furniture, sidewalk, curb, gutter, poles, surface utilities, landscaping, storm drain catch basins, and drainage structures in the vicinity of each project element.

Task 4A.2 Base Mapping

Kimley-Horn shall further develop line work for base mapping using the topographic survey information and aerial images to facilitate design of bus stops and sense of place monuments. The base mapping will include curb, available utilities, and other relevant design items to support the design.

Task 4A.3 60% Plans, Specifications, and Estimate

Based on discussions with the City, Kimley-Horn shall prepare a 60% PS&E package. We will modify the existing plan set to reflect the additional design elements. We anticipate the following plan sheets for the design package:

- Title Sheet (1 sheet)
- Notes and Legend (1 sheet)
- Typical Sections (1 sheet)
- Sidewalk Alignment (11 sheets)
- Weddell/Fair Oaks Intersection Improvements (1 sheet)
- Tasman/Fair Oaks Intersection Improvements (1 sheet)
- Traffic Signal Modifications (4 sheets)
- Lighting Details or Plans (2 sheets)
- Bus Stop Improvements (3 sheets)
- Sense of Place Sign Locations (4 sheets)
- Landscape Details (3 sheets)
- Construction Details (1 sheet)

The specifications will incorporate Caltrans requirements for work in the State R/W and the applicable Race Neutral and Minimum Wage Rate provisions to satisfy Federal funding requirements. Kimley-Horn shall submit five (5) sets of the 60% PS&E to the City for review and comment.

As part of the bus stop design, Kimley-Horn will prepare the material specifications, sign installation detail, and cost estimate for the bus stop signs that include the motif concept.

Additional PG&E coordination for new services is not included in this scope.



Caltrans Coordination Meeting:

The Kimley-Horn team will arrange and attend a meeting with Caltrans to discuss the proposed improvements and obtain guidance for completing design of non-standard features to be located in the State right of way. A copy of the meeting minutes will be submitted to the City.

We will conduct a Comment Resolution meeting following the 60% review to discuss and resolve the comments.

Deliverable: 5 copies of 60% Conceptual Design on 11x17 sheets

Task 4A.4 90% Plans, Specifications, and Estimate

Based on comments on the 60% PS&E comment resolution meeting and guidance obtained from Caltrans staff, Kimley-Horn will prepare a 90% PS&E package. This package will represent a preliminary final design stage. The design plans will include all of the same information from the 60% design, additional design features, and incorporation of any comments or changes resolved during that process. The specifications will include all Federal requirements.

Kimley-Horn will provide structural support to Callander in development of the monuments.

Kimley-Horn will submit five (5) sets of the 90% PS&E to the City for review and comment. We will conduct a Comment Resolution meeting with the stakeholders following the 90% review to discuss and resolve the comments. This will expedite the preparation of the Final Bid Documents.

Caltrans Encroachment Permit Coordination:

The Kimley-Horn team will submit the Caltrans Encroachment Permit Application with the 90% construction bid documents to Caltrans for Encroachment Permit review and approval. Once comments have been addressed, the Encroachment Permit will be resubmitted with the revised construction bid documents, a detailed "response to comments" and any necessary Mandatory Design Exceptions. Copies of the Encroachment Permit Application, responses to comments and revised construction bid documents will be submitted to the City. Completion of more than three Caltrans review cycles for the construction bid documents will be considered extra services and will be completed for an additional fee.

Prepare Authorization to Proceed with Construction:

The Kimley-Horn team will prepare documents to obtain Authorization to Proceed with Construction (E76) from Caltrans, which will include financial statements, PS&E checklist and inclusion of appropriate Federal requirements in the special provisions.

*Deliverable: 5 copies of 90% PS&E to City
6 copies of 90% PS&E to Caltrans*

Task 4A.5 100% Plans, Specifications, and Estimate

Based on comments on the 90% PS&E documents, Kimley-Horn will prepare a 100% (Final) PS&E package. This package will represent a sealed bid package. The design plans will include all of the same information from the 90% design, incorporating any comments or changes resolved during that process.

Kimley-Horn will prepare as-built documentation at the conclusion of the project based on actual construction. The Contractor shall provide markups on the original plan set of any changes to the original

design. Kimley-Horn will revise the project plans to reflect the Contractor changes and submit an electronic (AutoCAD and PDF) and hardcopy (22" x 34") set of As-Built documents.

*Deliverable: 1 set of final plans on 22"x34" Mylar
5 copies of Final Design on 11x17 sheets and Special Provisions
Electronic copy of Plans (AutoCAD and PDF)
Electronic and hard copy of special provisions and estimate of probable construction cost
Preparation of As-Built*

Task 4A.5 Bid and Construction Support

The Kimley-Horn team will provide Bid Assistance and Construction Support Services following completion of the design. Tasks may include preparing response input to bidder questions, attendance to prebid or preconstruction meetings, justification of Engineer's Estimate, response input to Contractor RFI's, and construction observation in support of City inspectors. A total of 60 hours is budgeted for Kimley-Horn for this effort (with additional support budgeted for Callander Associates) and will be billed on a time and materials basis.

*Deliverable: Response to Bidder Questions
Attendance to Meetings
Response to Contractor RFIs*

SCHEDULE

Kimley-Horn is prepared to begin work immediately upon receipt of your notice to proceed and we will endeavor to meet your scheduling needs. Highlights of our proposed schedule for the project are as follows:

Deliverable	Time
60% PS&E	5 weeks after NTP
90% PS&E	4 weeks after receiving 60% review comments
Final PS&E	3 weeks after 90% review comments



BUDGET

Kimley-Horn will provide the services outlined in the Scope of Services for a fee not to exceed \$147,364. This includes a lump sum amount of \$131,512 and a Time and Materials amount of \$15,852. This amount has been adjusted to reflect the original budget for the 90% and 100% tasks. The fees include labor costs and expenses incurred in performing these services. A detailed breakdown of the fees is shown in the table below.

Task	Prof. 8	Prof. 6	Prof. 5	Prof. 1	Cler.	Total	Cost
Public Outreach/Project	4	30	20			54	\$ 11,312
Prepare Base Mapping		4	15	26		45	\$ 7,650
Prepare 60% PS&E	2	25	52	74	8	161	\$ 27,788
Prepare 90% PS&E	2	43	92	66	11	214	\$ 38,282
Prepare Final PS&E	2	32	58	70	8	170	\$ 29,804
Bid and Constr. Support		8	32	20		60	\$ 10,816
Total Hours	10	142	269	256	27	704	
Rate	\$ 288	\$ 212	\$ 190	\$ 152	\$ 98		
Labor	\$ 2,880	\$30,104	\$51,110	\$38,912	\$ 2,646	Labor Subtotal	\$125,652
Original KHA 90% and 100% Labor Budget							(\$32,682)
Mountain Pacific Survey							\$1,800
Callander Associates							\$31,392
Nature Graphic							\$5,350
Lump Sum Total							\$131,512
Time and Materials Total for Bid and Construction Support							\$15,852
Grand Total							\$147,364

Services other than those set forth in the Scope of Services shall constitute extra services. Extra services, such as creation of additional plans, additional review cycles, attendance at meetings other than those included in the Scope of Services, changes in project location, design of irrigation systems, time for preparation of bid documents, additional bid assistance or construction assistance beyond budgeted amount, etc., shall be performed only with your authorization, and for additional fees to be negotiated prior to authorization.

CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF
SUNNYVALE AND KIMLEY-HORN AND ASSOCIATES, INC., TO
DESIGN PEDESTRIAN AND BICYCLE CIRCULATION
IMPROVEMENTS IN THE TASMAN/FAIR OAKS AREA

THIS AGREEMENT dated 1/19/06 is by and
between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and KIMLEY-
HORN AND ASSOCIATES, INC., a North Carolina corporation ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary to plan and
design pedestrian and bicycle circulation improvements in the Tasman/Fair Oaks area
of Sunnyvale; 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 Randy Durrenberger, P.E., 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. Commencement of Services

- (a) CONSULTANT shall commence services upon receipt of an executed
duplicate original of this Agreement 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 One Hundred Five Thousand One Hundred Twenty Eight and no/100 Dollars (\$105,128.00) 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.

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, 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 negligent act, error, omission or negligence of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

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 shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: Jack Witthaus, Traffic and Transportation Manager
Department of Public Works
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Randy Durrenberger, P.E.
KIMLEY-HORN AND ASSOCIATES, INC.
555 12TH Street, Suite 1230
Oakland, CA 94607

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, by 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 three 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.

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 certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would conflict in any manner or degree with the performance of this Agreement.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

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

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.

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

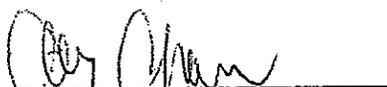
IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")



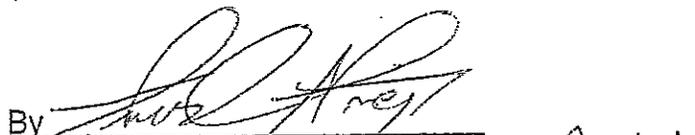
City Clerk



City Manager

KIMLEY-HORN AND ASSOCIATES, INC.
("CONSULTANT")

APPROVED AS TO FORM:

By 

Avush A. Nigal, SR. Vice President
Name/Title



Deputy City Attorney

By 

Randal Durrenberger / Vice President
Name/Title

SCOPE OF WORK

Task 1 – Public Outreach

Kimley-Horn shall provide support to the City during a public information meeting open to local residents and other interested parties such as BPAC. This meeting will be held to inform the residents of the proposed changes to the area that will improve mobility and safety for bicycles and pedestrians. We will also be soliciting input from attendees on existing concerns regarding safety and access so that we can consider these factors as we prepare the design.

Kimley-Horn shall attend one Sunnyvale BPAC meeting during the project to convey design concepts and seek input from the committee. We anticipate that this meeting will be held after the public information meeting so issues brought up from the local residents can be discussed with the committee. Comments from this meeting will be incorporated into the planning and design aspects of this project.

Kimley-Horn shall attend one City Council meeting to discuss the design elements that will be addressed by this project. We anticipate this meeting to be held after the BPAC meeting so that resident comments from the first meeting and additional discussion from the BPAC can be incorporated into the presentation to the City Council. City staff will present the information the City Council; Kimley-Horn will assist the City in preparing the presentation and be in attendance to answer questions.

*Deliverables: Attend Public Information Meeting
Attend BPAC Meeting
Attend City Council Meeting*

Task 2 – Environmental Evaluation

This task has been eliminated from the project. This effort will be completed by City staff.

Task 3 – Planning Documentation

Kimley-Horn shall prepare a planning document for this project that will summarize the conceptual details of each Project Element. This documentation will outline the design requirements for each element, discuss how each element contributes to the accessibility of the Tasman/Fair Oaks light rail station, and describe how each element will be implemented in conformance with the principles of the VTA Community Design and Transportation Program guidelines.

Deliverable: Planning Document for each project element that summarizes the conceptual details of each project.

Task 4 – Detailed Design

Kimley-Horn shall prepare a plans, specifications, and estimate package to be bid by the City of Sunnyvale. The following elements shall be included in the design:

• **Sunnyvale East Channel Trail** – Design a trail that interfaces with the existing John W. Christian Greenbelt to the south and terminates at Tasman Drive to the north. The trail will be a 10-foot wide asphalt path with no striping. There will be a minimum 5-foot buffer area between the trail and the slope of the drainage channel. There will be minimal to no landscaping along the trail, only single, low-maintenance trees. There will be lighting designed along the trail which will be identical to the lighting that exists along the John W. Christian Greenbelt.

• **LRT Sense of Place Signs** – Sense of place signs should lead pedestrians and bicyclists to the Tasman LRT station and create a neighborhood identity. The signs should be similar in color scheme to the VTA signs but unique to the neighborhood. All signs shall be identical in size, color, and shape. Signs shall be located at the following locations, at a minimum:

- Intersection of Toyama Drive and Morse Avenue
- Intersection of Tasman Drive and Morse Avenue
- Intersection of John W. Christian Greenbelt and Weddell Drive west of Fair Oaks Avenue
- Intersection of Fair Oaks Avenue and Weddell Drive

A sign/monument will be created that will create a sense of entrance at the Fair Oaks LRT station at the intersection of Fair Oaks and Tasman.

Kimley-Horn shall design up to 3 signs to be reviewed by the City at the 30% design stage. The City will choose one design to be carried to final design.

• **Sidewalk** – Sidewalk shall be 10 feet wide and 4" thick. Unless otherwise advised by the City, all sidewalks shall be designed at the back of the curb. The first 2 feet behind the curb shall include decorative lighting and trees arranged identical to the configuration in other parts of the project area. Sidewalk shall be designed at the following locations:

- Approximately 1,500' along the west side of Morse Avenue from Persian Drive to approximately 500' north of Toyama Drive.
- Approximately 800' along the east side of Morse Avenue from the John W. Christian Greenbelt north along the future park site.
- Approximately 1,800' along the east side of Fair Oaks Avenue between Tasman Drive and Weddell Drive.
- Approximately 900' along the east side of Weddell Drive from Fair Oaks Avenue to the John W. Christian Greenbelt.

• **Mobile Park Access Point** – The opening to provide LRT station access to the mobile park will be 10 feet wide. There will be several ballasts installed in concrete to prevent motorized vehicle access. The openings between ballasts will

be ADA compliant. There will be no vegetation included at this access point and there are no anticipated improvements within the mobile park.

• **Tasman/Fair Oaks and Weddell/Fair Oaks Intersection Improvements** – Improvements to this intersection may include the following:

- Add a refuge island on north and south legs of intersection;
- Restripe crosswalks to “ladder” configuration;
- Consider advanced flashing beacons to alert drivers of high pedestrian area;
- Operational improvements based on satisfactory LOS (i.e., prohibit RTOR, add all pedestrian phase when LRT has passed); and
- Other improvements identified in the Bicycle and Pedestrian Circulation Plan.

Kimley-Horn and the City will agree at the 30% stage on the specific improvements that will be made based on preliminary evaluations. Those improvements will be carried out through the full detailed design.

Task 4.1 Surveying

Kimley-Horn will utilize Mountain Pacific Surveys to conduct a ground topographic survey of the project area, based on the City’s horizontal and vertical control. The survey will locate the existing street furniture, sidewalk, curb, gutter, poles, surface utilities, storm drain catch basins, and drainage structures, which will be shown on the plans. The topographic survey will be the basis for developing the base plans for the project.

Task 4.2 Base Mapping

Kimley-Horn shall develop line work for base mapping using aerial images provided by the City. The base mapping will include curb, available utilities, lane information, and other relevant design items.

The City has provided electronic files for the intersection of Tasman and Fair Oaks. This information will be used for base mapping to support the intersection improvement design.

The intersection of Weddell and Fair Oaks is a Caltrans intersection. Kimley-Horn shall obtain as-built information from Caltrans to be used to produce the line work for base mapping at that intersection.

Kimley-Horn shall request utility information during the base mapping stage from all associated utility companies. This information will be reflected on the plans.

Task 4.3 30% Conceptual Plans

Kimley-Horn shall prepare a 30% conceptual design package that will include all of the design elements. This will include conceptual layouts and details for all elements. Intersection plans will be prepared on a 1"=20' scale. Sidewalk and trail plans will be prepared at a 1"=50' scale.

Kimley-Horn shall submit five (5) sets of the 30% Design Plans, Specifications, and Estimate (PS&E) to the City of Sunnyvale for review and comment and for distribution to other stakeholders. Along with the design plans, we will also submit LOS analyses or any other documentation needed to support the design recommendations. If preferred, we can submit the plans directly to the appropriate reviewing parties.

We will conduct a Comment Resolution meeting with the stakeholders following the 30% review to discuss and resolve the comments.

*Deliverable: 5 copies of 30% Conceptual Design on 11x17 sheets
Documentation to support recommendations*

Task 4.4 90% Plans, Specifications, and Estimate

Based on comments on the 30% PS&E documents, Kimley-Horn will prepare 90% plans, specifications (technical provisions), and estimate for each project element combined into a single plan set. This package will represent a preliminary final design stage. The design plans will include all of the same information from the 30% design, incorporating any comments or changes resolved during that process.

We anticipate the following plan sheets for the design package:

- Title Sheet (1 sheet)
- Notes and Legend (1 sheet)
- Recreational Trail Plan and Profile (3 sheets)
- Sidewalk Alignment (3 sheets)
- Tasman/Fair Oaks Intersection Improvements (1 sheet)
- Weddell/Fair Oaks Intersection Improvements (1 sheet)
- Sense of Place Sign Locations (1 sheet)
- Landscape Details (3 sheets)
- Details (5 sheets)

Kimley-Horn will submit five (5) sets of the 90% Design PS&E to the City of Sunnyvale for review and comment and for distribution to any other stakeholders. If preferred, we can submit the plans directly to the appropriate reviewing parties. We will conduct a Comment Resolution meeting with the stakeholders following the 90% review to discuss and resolve the comments. This will expedite the preparation of the Final Bid Documents.

Deliverable: 5 copies of 90% Design on 11x17 sheets

Task 4.5 100% Plans, Specifications, and Estimate

Based on comments on the 90% PS&E documents, Kimley-Horn will prepare 100% plans, specifications (technical provisions), and estimate for each project element combined into a single plan set. This package will represent a preliminary final design stage. The design plans will include all of the same information from the 90% design, incorporating any comments or changes resolved during that process.

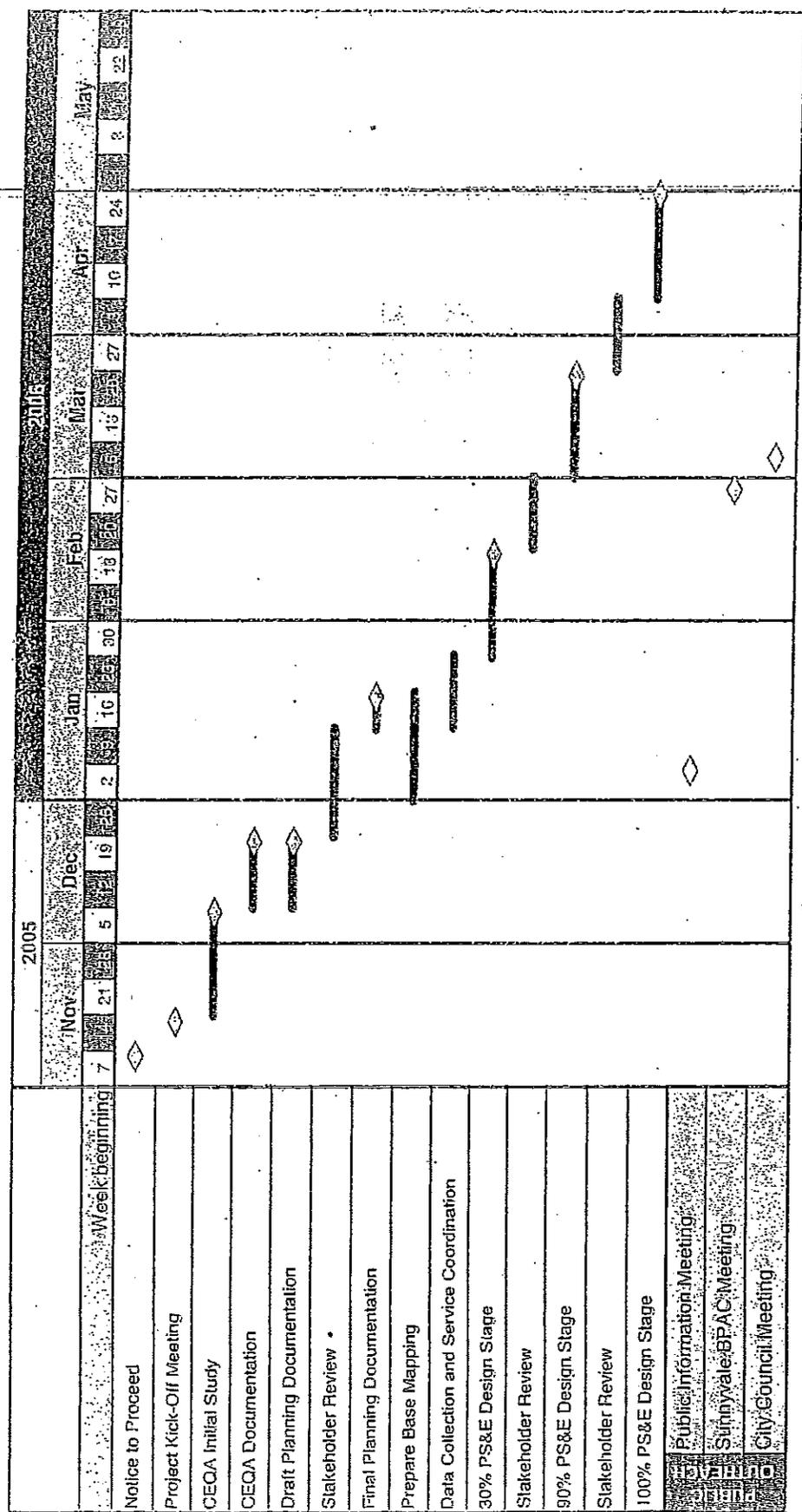
*Deliverable: 1 set of final plans on 22"x34" Mylar
5 copies of 90% Design on 11x17 sheets
Electronic copy of special provisions and estimate of probable
construction cost*

proposal

DETAILED PRELIMINARY DESIGN

09.23.05

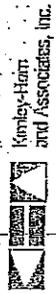
9. TIMELINE



◆ Indicates project deliverable.
 ◆ Stakeholder Task

9. Timeline
 TBR50151.05

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Proposal printed on 100% recycled paper

EXHIBIT "C"
INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the Agreement 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 CONSULTANT, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation and Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to CONSULTANT's profession: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by CITY. 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 are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents or volunteers, except as follows: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to this project, CONSULTANT's insurance shall be primary. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents, and volunteers shall be excess of 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 CITY, its officers, officials, employees, agents or volunteers.
4. 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 CITY.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to CITY.

Verification of Coverage

CONSULTANT shall furnish to CITY original Certificate(s) of Insurance and endorsements effecting the coverage required. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by CITY prior to commencement of work.