



City of Palo Alto

City Council Staff Report

(ID # 3064)

Report Type: Action Items Meeting Date: 9/24/2012

Summary Title: 27 University Avenue Contracts

Title: Approval of Professional Services: 1) Contract with Fukuji Planning and Design in Amount of \$139,500 for Preliminary Design Concept Services; 2) Contract with Sandis Civil Engineers Surveyors Planners in the Amount of \$16,500 for Traffic Engineering, Civil Engineering and Arborist Report Services; and 3) Contract with Fergus Garber Young Consultants in the Amount of \$85,000 for Urban Design and Architectural Services 4) Contact with Metropolitan Planning Group in Amount of \$45,000 for Project Management for Real Property at 27 University Avenue to be Funded By the Stanford Medical Center Intermodal Transit Funds with a Budget Amendment Ordinance totaling \$286,000.

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council authorize \$286,000 from the Intermodal Transit Funds (set aside in the Stanford Medical Center Development Agreement) to allow for consultant services for the continued design concepts and analysis of 27 University Avenue.

Executive Summary

This report is related to the 27 University Master Plan staff report also scheduled for the September 24 meeting.

The 2011 Stanford University Medical Center (SUMC) Development Agreement provided funds for the design and construction of enhanced pedestrian and bicycle improvements east of El Camino Park, at the intersection of El Camino Real and Quarry Road. Staff was approached about the development of a new office and theater project on this property. In March 2012, Council authorized use of \$250,000 in design funds provided in the development agreement to hire a consulting architect, site planner and urban designer, and planner, and to start

environmental analyses. This allowed for early coordination with multiple interested parties including all of the different transit agencies, to ensure that the City's goals and objectives are included in the project design. The original project scope initially reviewed by the Council was for an office and theater, however since that time the project scope has increased to include redesign of the transit center, the functions of the adjacent uses such as Urban Lane, and coordination with various transit agencies. The project parameters and amount of time it has taken to review and coordinate this project has exceeded the original scope and therefore, additional funds are needed to complete the work.

Background

John Arrillaga has approached the City of Palo Alto about constructing a new theater and office building at 27 University Avenue. TheatreWorks is expected to be the operator of the theater. The land is owned by Stanford University and houses the MacArthur Park restaurant and an office used by the Red Cross.

In 2011, the City of Palo Alto entered into a Development Agreement between the City and the Stanford University Medical Center (SUMC) parties. Within the development agreement there is a provision to encourage use of Caltrain, bus and other transit services, and to enhance and encourage use of pedestrian and bicycle connections between the SUMC and downtown Palo Alto. The SUMC Parties agreed to a one-time \$2,250,000 payment to the City held in an Intermodal Transit Fund. Up to \$2 million would go towards the development of an attractive, landscaped passive park/green space with a clearly marked and lighted pedestrian pathway, benches and flower borders. The remaining \$250,000 would be used for design expenses. It was noted that the City would be responsible for constructing the improvements and the funds would be used only for the specified purposes. Moreover, these funds are earmarked specifically for the intermodal pedestrian improvements and are part of the discretionary infrastructure or sustainability funds.

On March 5, 2012, the City Council authorized \$250,000 from the Intermodal Transit Funds for consultant services related to the preliminary design and initial environmental review of a potential application for a new office and theater project at 27 University Avenue.

The City then hired Fukuji Planning and Design to provide urban design services, FGY Architects to provide architectural design, Metropolitan Planning Group to provide planning services, Sandis Civil Engineers to prepare a preliminary traffic analysis, on-site civil engineering analysis and an arborist report, and Michael Reardon to provide illustrations for this project.

The proposed architectural and urban design work was anticipated to continue through the end of May 2012, cumulating in circulation concepts, building footprints, heights and massing

design studies, district character studies and site plan concepts for the site. The work has taken longer, particularly due to the need to redesign the transit center, working with the Valley Transportation Authority, SAMTrans, Caltrain, and Stanford's Marguerite Shuttle to coordinate changes. The project concepts will be presented to the Council on September 24, 2012.

Discussion

The City has not received a formal application for this project, and the project is in the early stages of design development. The original development concept for the project includes new multi-story office buildings fronting El Camino Real, a separate theater building of approximately 70,000 square feet, and a three-level underground garage. On site improvements would include a public plaza, and enhanced pedestrian, bicycle and transit connections. However, as the consultant team started to consider options, the opportunity to include redesign of the transit facility emerged. This completely changed the development site and required significant new coordination with multiple transit agencies including Valley Transportation Authority (VTA), SamTrans, Caltrain and Stanford's Marguerite Shuttle operations. The scope also increased to consider the functions on Urban Lane as well as El Camino Park. Part of the project would include moving the historic MacArthur Park building to another location to be determined.

The project provides a potential benefit and design opportunity by building a new performing arts theater and mixed-use office building at this location. Redesigning the project has the potential to fulfill the following goals:

- Create a new Arts and Innovation District.
- Provide TheatreWorks with a new permanent home in Palo Alto.
- Design attractive, vibrant, public spaces that are a new civic destination and identifiable entrance to downtown Palo Alto.
- Shape mixed-use office development to complement the scale and character of downtown as well as provide ground floor uses to activate public spaces.
- Achieve excellence in contemporary architectural design that reflects the City's identity as a center of technology and innovation.
- Redesign the intermodal transit center to address long-term mobility, trip reduction and sustainability goals for the City and Stanford.
- Enhance pedestrian and bicycle connectivity to downtown and Stanford, per the SUMC Development Agreement.

The goal for this design work is that early coordination between all parties and focused design work will support a future application to create an attractive, vibrant, urban destination and identity for people arriving by transit to Palo Alto, one that complements the scale and character of downtown, and enhances connectivity to downtown and Stanford.

During the initial stages of the site planning review, redesigning the transit center emerged as a viable option to increase bus capacity and to allow for a better designed site. Several meetings were held with the various transit agencies to review alternatives. This time intensive work helped open up the site to allow for a more comprehensive design approach. However, the complicated design effort to meet the needs of the city, the developer, TheatreWorks and the transit agencies, extended the time and scope of this important part of the initial design development of the project. The team faced numerous design challenges and obstacles, but continues to work to find appropriate solutions that meet the needs of all of the stakeholders.

Staff is seeking Council authorization of \$286,000 in additional funds from the Intermodal Transit Funds to complete the design work to bring site plan and massing design concepts to the Council at a meeting in September. The work being performed includes:

- Transit circulation concepts;
- Roadway configuration;
- Parking requirements and strategies;
- Site parcelization strategies;
- Building footprint, floor area, height and massing concepts;
- Urban design;
- Public space and connectivity concepts;
- Architectural concepts;
- District character;
- Presentation of these items and on going meetings with major stakeholders; and
- Environmental review such as a sanitary sewer study, bridge analysis, traffic analysis and parking structure consultation.

The SUMC Development Agreement provided a one-time \$2,250,000 payment to the City for pedestrian and bicycle connections and enhancements in the Intermodal Transit Station area. All of the money was to go towards design and construction of improvements. At the time this contribution was made to the City, the construction of these pedestrian improvements would have been the obligation of the City. With this future development project, there is the opportunity to have the project proponent construct or share in the cost to construct these improvements. The additional \$286,000 in design funds should not impact the ability to

construct improvements on this property, as they are being designed into the framework of the project and would be constructed with the project..

The contracts are attached to this report and include:

- Fukuji Planning and Design - \$139,500
- FGY Architects - \$85,000
- Sandis Civil Engineering - \$16,500
- Metropolitan Planning Group - \$45,000

Resource Impact

The SUMC Development Agreement provided a one-time \$2.25 million payment to the City for pedestrian and bicycle connections and enhancements in the Intermodal Transit Station area. These funds are for improvements to enhance the pedestrian and bicycle connection from the Palo Alto Intermodal Transit Center to the existing intersection at El Camino Real and Quarry Road, with up to \$2.0 million of that amount going to the development of an attractive, landscaped passive park/green space with a clearly marked and lighted pedestrian pathway, benches, and flower borders. An amount of \$250,000 was authorized by the City Council on March 5, 2012 (Staff Report 2602) to fund preliminary design review and environmental studies for the 27 University Avenue project of which \$247,369 was spent in Fiscal Year 2012. As of June, 30, 2012, the unaudited balance of the Intermodal Transit funds is \$2.003 million. This staff report proposes that \$286,000 in additional design costs be appropriated in Fiscal Year 2013. With this approval of additional funds, the Intermodal Transit balance will be \$1.716 million.

Next Steps

As a separate action on the September 24th Council agenda, Council is reviewing a master plan and authorizing staff to draft an advisory measure for the March election to ask voters whether the City Council should initiate a change in the Comprehensive Plan and Zoning code to facilitate the Project and if the City Council should exchange a portion of the El Camino Park for land adjacent to the park to facilitate better site planning for the Project. The ballot language would be brought back to Council for review at a meeting later this year for a March 2013 ballot measure.

Environmental Review

The request for City Council's authorization of additional funds is not considered a "project" per the California Environmental Quality Act. An environmental impact report would need to be prepared once an application is submitted and some of the ongoing work will provide input to

that study. Traffic and parking, aesthetics (including building heights), and impacts on heritage trees will be of particular interest for this site.

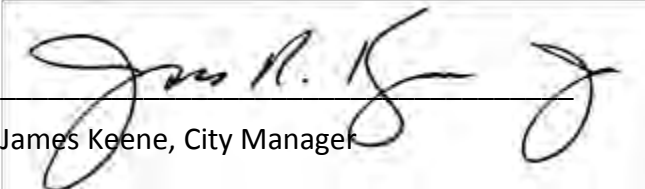
Attachments:

- Attachment A: Budget Amendment Ordinance to Appropriate \$286,000 for Additional Design Costs (DOC)
- Attachment B: 27 University Avenue Draft Timeline(PDF)
- Attachment C: Agreement with Fukuji Planning and Design(PDF)
- Attachment D: Agreement with Sandis Civil Engineers Surveyors Planners (PDF)
- Attachment E: Agreement with Fergis, Garber and Young Consultants (PDF)
- Attachment F: Agreement With Metropolitan Planning Group (PDF)

Prepared By: Amy French, Current Planning Manager

Department Head: Curtis Williams, Director

City Manager Approval:



James Keene, City Manager

ORDINANCE NO. XXXX

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AMENDING THE BUDGET FOR FISCAL YEAR 2013 TO PROVIDE
ADDITIONAL APPROPRIATION OF \$286,000 FROM THE
STANFORD UNIVERSITY MEDICAL CENTER (SUMC)
INTERMODAL TRANSIT FUNDS FOR CONSULTANT SERVICES
FOR THE CONTINUED DESIGN CONCEPTS AND ANALYSIS OF
27 UNIVERSITY AVENUE

The Council of the City of Palo Alto does ordain as follows:

SECTION 1. The Council of the City of Palo Alto finds and determines as follows:

A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 18, 2012 did adopt a budget for Fiscal Year 2013; and

B. The 2011 Stanford University Medical Center (SUMC) Development Agreement provided funds for the design and construction of enhanced pedestrian and bicycle improvements east of El Camino Park, at the intersection of El Camino Real and Quarry Road; and

C. On March 5, 2012 (Staff Report 2602) City Council authorized \$250,000 to fund preliminary design review and environmental studies for 27 University Avenue; and

D. Further funds in the amount of \$286,000 are needed for consultant services to continue concept design and analysis of the expanded scope of the project; and

E. City Council authorization is needed to amend the Fiscal Year 2013 Operating Budget as hereinafter set forth.

SECTION 2. The sum of Two Hundred Eighty Six Thousand Dollars (\$286,000) is hereby appropriated to Planning Contracts in the Planning and Community Environment Department and the SUMC Intermodal Transit balance is correspondingly reduced.

SECTION 3. The Intermodal Transit portion of the SUMC Development Agreement Fund is hereby reduced by Two Hundred Eighty Six Thousand Dollars (\$286,000) to One Million Seven

Hundred Sixteen Thousand Six Hundred Thirty-one Dollars (\$1,716,631).

SECTION 4. As specified in Section 2.28.080(a) of the Palo Alto Municipal Code, a two-thirds vote of the City Council is required to adopt this ordinance.

SECTION 5. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

SECTION 6. The Council of the City of Palo Alto hereby finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

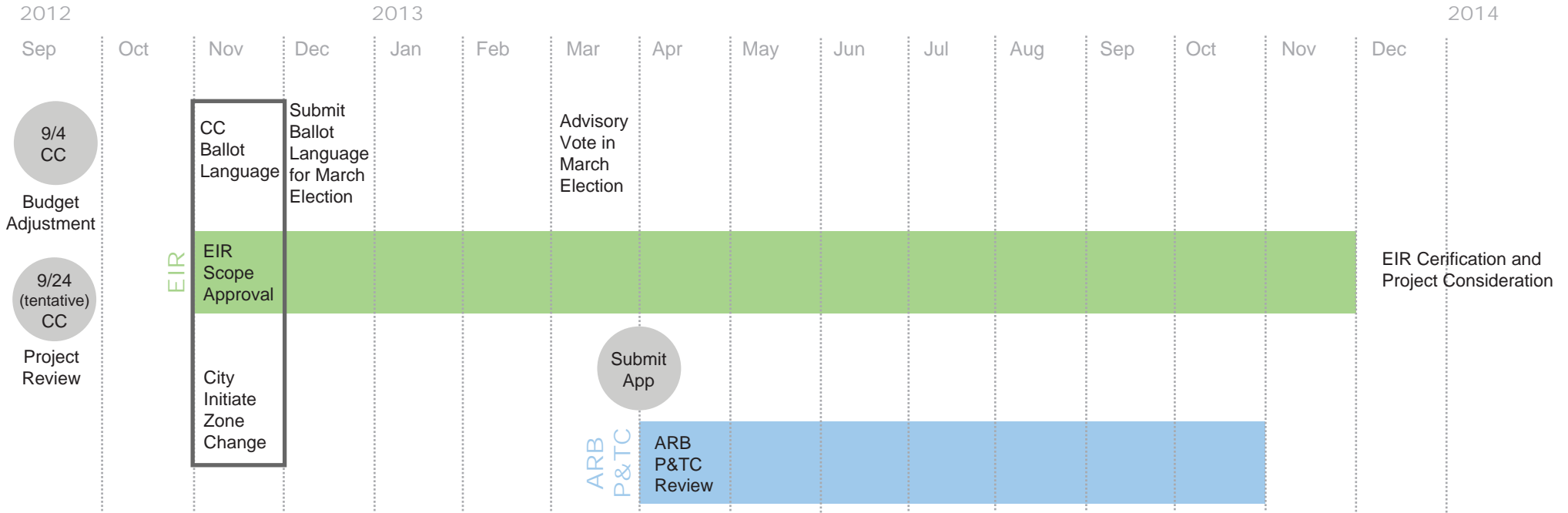
APPROVED AS TO FORM:

City Manager

Director of Public Works

Director of Administrative
Services

27 UNIVERSITY AVENUE TIMELINE



CITY OF PALO ALTO CONTRACT NO. S12145607

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
FUKUJI PLANNING & DESIGN FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this day of August, 2012, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and FUKUJI PLANNING & DESIGN, a Sole Proprietor, located at 604 San Carlos Avenue, Albany, California 94706, Telephone (510) 612-3834 (“CONSULTANT”).

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to develop a preliminary design concept for the real property located 27 University Avenue, Palo Alto (“Project”) and desires to engage a consultant to prepare a design in connection with the Project (“Services”).
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through 08/31/2013 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, shall not exceed One Hundred Thirty Nine Thousand Five Hundred Dollars (\$139,500.00). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed One Hundred Thirty Nine Thousand Five Hundred Dollars (\$139,500.00). The applicable rates and schedule of payment are set out in Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. Not applicable.

SECTION 9. COST ESTIMATES. Not applicable.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Bruce A. Fukuji as the Project Manager, Email: bruce@fukuji.com Telephone: (510) 612-3834 to have supervisory responsibility for the performance, progress, and execution of the Services and as the Project Manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Khashayar Alaei, Planning and Community Environment Department, 250 Hamilton Avenue Palo Alto, CA 94303, Email: Khashayar.Alaei@CityofPaloAlto.org , Telephone: (650) 329-2230. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. This conveyance shall not deprive the Architect of the right to retain electronic data or other reproducible copies of the Drawings and Specifications or the right to reuse information contained in them in the normal course of the Architect's professional activities including rights protected under the Architectural Works Copyright Protection Act of 1990. The Architect shall be given appropriate credit in any public display of such documents Upon delivery, all work product, including without limitation, all final drawings and specifications and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual

property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. Consultant shall protect, indemnify, defend and hold harmless the City and its respective City Council members, officers, employees, agents and representatives from and against all liability losses, damages, demands, claims, suits, settlements, judgments, costs and expenses, including attorneys' fees, expert witness fees, and other reasonable expenses of litigation, arising out of or related to the negligent acts, errors or omissions, gross negligence or willful misconduct of Consultant in its performance of the Consulting Services hereunder, and the insurance required hereunder shall not reduce such indemnification obligation.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A:-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk

Professional Services
Rev. June 2, 2010

City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the City, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. NON-APPROPRIATION

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.

25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

25.9 All unchecked boxes do not apply to this agreement.

25.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

FUKUJI PLANNING & DESIGN

City Manager

By: Bruce A. Fukuti
Name: BRUCE FUKUTI
Title: PRINCIPAL

APPROVED AS TO FORM:

Senior Asst. City Attorney
Date:

Attachments:

EXHIBIT "A": SCOPE OF WORK
EXHIBIT "B": SCHEDULE OF PERFORMANCE
EXHIBIT "C": COMPENSATION
EXHIBIT "C-1": SCHEDULE OF RATES
EXHIBIT "D": INSURANCE REQUIREMENTS

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**EXHIBIT “A”
SCOPE OF SERVICES**

Task 1. Project Management

Task 1.1 Project Management. Coordinate design work and communications with City staff and consultants regarding decision-making and issues resolution on design, process, schedule, deliverables and external project communications.

Task 2. Collaborative Design Process

Facilitate frequent and regular input and feedback with city staff, Mr. Arrillaga, Santa Clara Valley Transportation Authority (VTA), Stanford University transportation staff, SamTrans, Caltrain and Theaterworks on project design to achieve mutually acceptable solutions. Develop transit circulation, urban design and building architecture for the project. Task 2 includes:

Task 2.1 City Meetings. Weekly project team meetings.

Task 2.2 Mr. Arrillaga Meetings. Up to twice a week meetings.

Task 2.3 Transit Agency Meetings. Up to 6 project meetings.

Task 3. Site Analysis -- NA

Task 4. Program Review and Development -- NA

Task 5. Design Concepts

Prepare a master plan level site plan for the expanded project area. Expanded project area includes southern edge of El Camino Park, the project site, the University Avenue loop and Urban Lane. Detailed site design including infrastructure improvements, landscape/urban design features, grading, drainage, site utility design and accommodating public art are not included in this scope. Master plan site planning consists of the following tasks:

Task 5.1 Transit Center Design and Circulation Concepts. Develop a concept design for the relocation of the intermodal bus transit center from the existing location to the University Avenue loop that serves and expands existing capacity and operations, as well as enable future expansion of transit capacity.

Task 5.2 Building Footprint, Floor Area, Height and Massing Concepts. Jointly prepare with FGY building footprint, floor area, height and massing concepts that respond to site context and master planning design objectives.

Task 5.3 Urban Design, Public Space and Connectivity Concepts. Develop site planning concepts that shape the form, size, scale, orientation, massing, ground level uses of buildings, public spaces, pedestrian and bicycle connectivity, site access and parking.

Task 5.4 Architectural Concepts. Support FGY and John Arillaga’s design work to develop the architectural character of the office and theater buildings to support the urban design of the district.

Task 5.5 District Character. Develop concepts for the visual character of the Innovation and Arts District to be illustrated by the renderer. Direct the City’s renderer to create ground level perspective views (renderer not included in this scope of services or fees).

Task 5.6 Presentation and Documentation. Jointly prepare with FGY presentation documents. Fukuji Planning & Design will focus on illustrating a master site planning concept with supporting drawings, cross-sections of key elements and sketch views to show scale, use and character of proposed urban design. FGY will focus on presenting and documenting the architectural design of the project.

Deliverables:

- Maps
 - Project area
 - Land use
 - Public spaces
 - Connections (pedestrian, bike, auto and transit)
 - Transit circulation
 - Urban design
 - Illustrative Plan (with landscape concept)
- Illustrations
 - Street sections

**EXHIBIT “B”
SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Milestones	Completion
Task 1. Project Management	on-going
Task 2. Collaborative Design Process	on-going
Task 5. Preliminary Design Concepts	September 30, 2012

**EXHIBIT “C”
COMPENSATION**

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”) and reimbursable expenses shall not exceed \$139,500.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$139,500.00. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$139,500.00 and the total compensation for Additional Services does not exceed \$139,500.00.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1 (Project Management)	\$3,500.00
Task 2 (Collaborative Design Process)	\$40,000.00
Task 3 (Design)	\$91,000.00
Sub-total Basic Services	\$134,500.00
Reimbursable Expenses	\$5,000.00
Total Basic Services and Reimbursable expenses	\$139, 500.00
Additional Services (Not to Exceed)	\$0.00
Maximum Total Compensation	\$139,500.00

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees. Mileage expense for travel to and from project meetings, parking and tolls will be reimbursed at actual cost.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$0.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services:

**EXHIBIT “C-1”
HOURLY RATE SCHEDULE**

Hourly Rates

Fukuji Planning & Design costs for professional services are incurred as professional time costs and direct costs associated with performance of project tasks. Professional time is billed according the following hourly rates:

<u>Personnel</u>	<u>Rate Per Hour</u>
Bruce A. Fukuji, AIA Principal	\$ 195.00
Urban Designer	\$ 125.00
Technical/Administrative Staff	\$ 65.00

Hourly billing rates are valid through December 2012.

Reimbursable Expenses

Direct Costs

Direct costs or project expenses such as photocopying (large-quantity); plotting; printing (b&w, color); workshop supplies; equipment rental; and other direct project expenses will be charged at cost plus 10%.

Communications

Cost of communications including long-distance telephone (excluding cell phones), facsimile, postage, courier, and other delivery costs will be charged at cost plus 10%.

Mileage and Travel

Mileage charge for personal autos will be the currently applicable mileage rate established by the Internal Revenue Service. Travel time will be billed at half of the above hourly rates for trips longer than ½ hour. All other travel expenses such as parking, tolls, etc. will be charged at cost.

Payment

Payments are due within thirty (30) calendar days of the invoice date.

EXHIBIT "D" INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES		\$1,000,000
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"
 - A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

- B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

CITY OF PALO ALTO CONTRACT NO. S12145609

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
SANDIS CIVIL ENGINEERS SURVEYORS PLANNERS
FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this _____ day of August, 2012, (“Agreement”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and SANDIS CIVIL ENGINEERS SURVEYORS PLANNERS a California Corporation, located at 3007 Douglas Boulevard, Suite 105, Roseville California 95661, Telephone (408) 636-0999 (“CONSULTANT”).

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to develop a preliminary design concept for the real property located at 27 University Avenue, Palo Alto (“Project”) and desires to engage a consultant to provide Traffic Engineering Services, Civil Engineering Services and Arborist Report in connection with the Project (“Services”).

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit “A” in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through 08/31/2013 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT.

CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed Sixteen Thousand Five Hundred Dollars (\$16,500.00). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Sixteen Thousand Five Hundred Dollars (\$16,500.00). The applicable rates and schedule of payment are set out in Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C-1"). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

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SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY's stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Amy Taylor as the Project Manager, Email: ataylor@sandis.net , Telephone: (650) 473-0400 to have supervisory responsibility for the performance, progress, and execution of the Services and as the Project Manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Khashayar Alaei, Planning and Community Environment Department, 250 Hamilton Avenue Palo Alto, CA 94303, Email: Khashayar.Alaei@CityofPaloAlto.org , Telephone: (650) 329-2230. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an

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alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "E". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on

or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
 at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the City, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. NON-APPROPRIATION

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.

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25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

25.9 All unchecked boxes do not apply to this agreement.

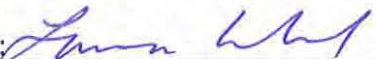
25.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

**SANDIS CIVIL ENGINEERS
SURVEYORS PLANNERS**

City Manager

By: 
Name: LAURA CABRAL
Title: SURVEY MGR., ASSOC. PRINCIPAL

APPROVED AS TO FORM:

Senior Asst. City Attorney
Date:

Attachments:

EXHIBIT "A": SCOPE OF WORK
EXHIBIT "B": SCHEDULE OF PERFORMANCE
EXHIBIT "C": COMPENSATION
EXHIBIT "C-1": SCHEDULE OF RATES
EXHIBIT "D": INSURANCE REQUIREMENTS

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IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

**SANDIS CIVIL ENGINEERS
SURVEYORS PLANNERS**

City Manager

By: *Laura Cabral*
Name: LAURA CABRAL
Title: SURVEY MNGR, ASSOC. PRINCIPAL

APPROVED AS TO FORM:

Senior Asst. City Attorney
Date:

Attachments:

EXHIBIT "A": SCOPE OF WORK
EXHIBIT "B": SCHEDULE OF PERFORMANCE
EXHIBIT "C": COMPENSATION
EXHIBIT "C-1": SCHEDULE OF RATES
EXHIBIT "D": INSURANCE REQUIREMENTS

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EXHIBIT "A"
SCOPE OF SERVICES

SANITARY SEWER STUDY	\$4,000
<ul style="list-style-type: none">• Prepare Site Sanitary Sewer Analysis. Coordinate with Caltrans for utility encroachment.	
MEETINGS	\$12,500
Attend coordination meetings with City and Consultants.	

EXHIBIT "B"
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Milestones	Completion No. of Days From NTP
Task 1. Sanitary Sewer Study	90
Task 2. Sanitary Sewer Study; Meetings	90

EXHIBIT "C"
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Basic Services") and reimbursable expenses shall not exceed \$16,500.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$16,500.00. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$16,500.00, and the total compensation for Additional Services does not exceed \$16,500.00.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1 (Sanitary Sewer Study)	\$4,000.00
Task 2 (Sanitary Sewer Study; Meetings)	\$12,500.00
Sub-total Basic Services	\$16,500.00
Reimbursable Expenses	None
Total Basic Services and Reimbursable expenses	\$16,500.00
Additional Services (Not to Exceed)	\$00.00
Maximum Total Compensation	\$16,500.00

REIMBURSABLE EXPENSES

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The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: NONE

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$0.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services:

EXHIBIT "C-1"
HOURLY RATE SCHEDULE

Prepare Existing Conditions Section

- Senior Traffic Engineer @ \$150/Hr
- Project Engineer @ 120/Hr
- Graphics 24 Hours @ 100/Hr

Traffic Impact Analysis

- Senior Traffic Engineer @ \$150/Hr
- Project Engineer @ 120/Hr
- Graphics @ 100/Hr
- Subtotal

Mitigation

- Senior Traffic Engineer @ \$150/Hr
- Project Engineer @ 120/Hr
- Graphics @ 100/Hr

Draft Report Preparation

- Senior Traffic Engineer @ \$150/Hr
- Project Engineer @ 120/Hr
- Graphics 20 Hours @ 100/Hr

Response to Comments from PEER Review/ Incorporation into DEIR

- Senior Traffic Engineer @ \$150/Hr
- Project Engineer @ 120/Hr
- Graphics @ 100/Hr

EXHIBIT "D"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTRACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

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III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

CITY OF PALO ALTO CONTRACT NO. S12154608

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
FERGUS GARBER YOUNG CONSULTANTS FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this _____ day of August, 2012, ("Agreement") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and FERGUS GARBER YOUNG CONSULTANTS a California Corporation, located at 81 Encina Avenue, California 94301, Telephone (650) 473-0400 ("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. CITY intends to develop a preliminary specific plan concept for the real property located at 27 University Avenue, Palo Alto ("Project"). The CITY desires to engage CONSULTANT to support the City's development of this specific plan, including the development of potential character, size and locations of buildings and structures that support the concepts of this specific plan..
- B. CITY intends to engage the applicant(s) who wish to develop this site in the design development of their proposal(s) to better inform the applicant(s) of the CITY's goals, policies, and requirements that constrain the design of any proposed development of this site. The City desires to engage the CONSULTANT to support the CITY's engagement of these applicants in these discussions.
- C. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- D. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through 09/30/2013 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part

of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall not be responsible for delay caused by factors beyond the reasonable control of CONSUOLTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed Eighty Five Thousand Dollars (\$85,000.00). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Eighty Five Thousand Dollars and (\$85,000.00). The applicable rates and schedule of payment are set out in Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C-1"). The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and

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in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. [Intentionally omitted.]

SECTION 9. [Intentionally omitted.]

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Daniel Garber as the Project Manager, Email: dan@fgy-arch.com, Telephone: (650) 473-0400 to have supervisory responsibility for the performance, progress, and execution of the Services and as the Project Manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

The City's project manager is Khashayar Alaei, Planning and Community Environment Department, 250 Hamilton Avenue Palo Alto, CA 94303, Email: Khashayar.Alaei@CityofPaloAlto.org, Telephone: (650) 329-2230. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the

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exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "E". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers

with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, , by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services. If the notice provides cause, CONSULTANT shall be provided 10 days to correct any default to the City's reasonable satisfaction.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will

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survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project manager
 at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the CITY's Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code, which have been provided to the consultant, relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City's Environmentally Preferred Purchasing policies which are available at the City's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply to the best of their ability with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply to the best of their ability with the City's zero waste guidelines:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.

SECTION 24. NON-APPROPRIATION

24.1. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.

25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of

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California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

25.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City's express written consent.

25.9 All unchecked boxes do not apply to this agreement.

25.10 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

**FERGUS GARBER YOUNG
CONSULTANTS**

City Manager

By: 

Name: DANIEL M. GARBER

Title: PARTNER

APPROVED AS TO FORM:

Senior Asst. City Attorney

Date:

Attachments:

EXHIBIT "A":	SCOPE OF WORK
EXHIBIT "B":	SCHEDULE OF PERFORMANCE
EXHIBIT "C":	COMPENSATION
EXHIBIT "C-1":	SCHEDULE OF RATES
EXHIBIT "D":	SUPPLEMENTAL TERMS AND CONDITIONS
EXHIBIT "E":	INSURANCE REQUIREMENTS

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EXHIBIT “A” SCOPE OF SERVICES

Specific Plan Development - Phase Two

Tasks include:

1. Agency and Stakeholder Engagement, Continued
2. Theater Use Entitlement Development
3. City Council Presentation including; Exhibit Production, Staff Report Review, Public Presentation

Applicant Support - Phase Two

Tasks include:

1. Meetings with Applicant(s) , Continued
2. Review of Applicant design concepts, Continued

Assumptions

City Staff will take an active role including, but not limited to the following tasks:

- Perform project administration tasks including meeting agenda, notes, internal team coordination, communications and scheduling.
- Manage the Public’s and the City Council’s communication and directions to and from the City’s Design Team.
- Represent the City’s interests at meetings with Mr. Arrillaga and his design team.
- Manage the Design Team’s outreach to other agencies as necessary including but not limited to the VTA, Marguerite Shuttle, CalTrain and Samtrans.
- Present project status and issues to the City Council including preparing presentation materials.

City Staff and City consultants will provide the following information to the scope of the CONSULTANT, including but not limited to the following:

- Assist in the programming of public spaces.
- Recommend solutions to the relocation of the Julia Morgan Building and Red Cross occupancy.
- Provide parking and traffic, historic resources, utility, arborist and other technical analysis or studies.
- Provide direction related to the pedestrian and bicycle connectivity in the case other future development for the site.

Scope Limitations

Communication and or presentation of the project to the Commission and City Council,

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stakeholder and community engagement, renderings and the engagement of a renderer, are not included in this scope of work.

The CONSULTANT shall provide no cost estimating.

The CONSULTANT shall not be responsible for any errors or omissions contained in any document they prepare for the CITY. The CONSULTANT will be responsible for the collection of the goals and objectives the CITY wishes to be represented in the Specific Plan Concept the CITY is preparing, and for the representation of the concepts that are developed to address the CITY's goals and objectives depicted in Specific Plan Concept.

If the CITY assumes ownership of the work products of the CONSULTANT, the CITY shall give acknowledgement of the CONSULTANT's authorship of those work products and the CITY takes complete responsibility for the accuracy and completeness of the product and the purpose for which the work products are being used by the CITY.

EXHIBIT "B"
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement (email is acceptable) of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed.

Milestones	Completion Date or No. of Days/Weeks From NTP
Specific Plan Development - Phase Two	September 24, 2012
Applicant Support - Phase Two	September 24, 2012

EXHIBIT "C"
COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Basic Services") and reimbursable expenses shall not exceed \$85,000.00. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$85,000.00. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. This does not prevent the City and Consultant from entering into a separate contract for additional related services.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, does not exceed \$85,000.00 and the total compensation for Additional Services does not exceed \$0.00 for this contract.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Specific Plan Development - Phase Two	\$45,000.00
Applicant Support - Phase Two	\$30,000.00
Sub-total Basic Services	\$75,000.00
Reimbursable Expenses	\$ 10,000.00
Total Basic Services and Reimbursable expenses	\$85,000
Additional Services (Not to Exceed)	\$0.00
Maximum Total Compensation	\$85,000.00

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the

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following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

- Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
 - Fees paid for securing approval of authorities having jurisdiction over the Project;
 - In and Out of house printing, reproductions, plots, standard form documents; The consultant may charge \$.07 for 8.5x11, \$1.72 for 23x18 and \$3.00 for 24"x36" prints or copies without obtaining advanced authorization.
 - Postage, handling and delivery;
 - Expense of overtime work requiring higher than regular rates, if authorized in advance by the CITY;
 - Renderings, models, mockups, professional photography, and presentation materials as requested by the CITY;
 - CONSULTANT's Consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the CITY requests such insurance in excess of that normally carried by the CONSULTANT's consultants;
 - Costs charged by the Consultant's insurance carriers to add or reference the City in the insurance policies, including workers comp.
 - All taxes levied on professional services and on reimbursable expenses, if any
- Transportation and authorized out-of-town travel and subsistence. For driving beyond a 10 mile radius of our office we charge the standard IRS mileage rate.

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$300.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement

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Work required because the following conditions are not satisfied or are exceeded shall be considered as additional services:

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**EXHIBIT “C-1”
HOURLY RATE SCHEDULE**

TIME AND EXPENSE FEES

All services performed on a time and expense basis will be billed at the assigned person’s standard hourly rate, as follows:

Intern	45
Designer	85
Arch 1	105
Arch 2	125
PA/PM	145 (also Sustainability Manager & principle’s time when drafting)
Principle	175 (meetings, management, and design)

We bill monthly and payments are due within thirty (30) calendar days of the invoice date.

Invoices for time and expense based fees will list the people who are working on the project, their hours, and a brief description of the tasks they have worked on. Monthly invoices include only the time that have been approved by FGY management prior to that invoice’s issuance.

If we are asked to engage and manage project consultants including - but not limited to – renderers, model makers, structural, mechanical, electrical, landscaping, geotechnical, lighting, specifications, controls or other low voltage, and hardware consultants, these fees in time and expense agreements will be marked-up by 10%.

NOT TO EXCEED and FIXED FEES

We bill monthly and payments are due within thirty (30) calendar days of the invoice date. Invoices for fixed dollar values based fees will be billed on a percent complete basis.

Each monthly bill will include reimbursable expenses which are in addition to our fees (see below). Expenses are billed at a 10% mark-up.

If we are asked to engage and manage project consultants including - but not limited to – renderers, model makers, structural, mechanical, electrical, landscaping, geotechnical, lighting, specifications, controls or other low voltage, and hardware consultants, these fees in fixed fee or not to exceed agreements will be marked-up by 10%.

For items that fall outside of the services being provided under our fixed fee (“additional services”), we will bill on a time and material basis at billing rates noted, unless some other structure of payment is established with you beforehand. Items that would fall into this category include but are not limited to the following: changes to the contractor; changes in scope, (adding or reducing significant square footage or changes to the project budget); changes in design (significant changes to plan layout, details, fenestration, or materials), changes needed for permitting to meet conditions for approval; and or changes to the duration or continuity of the project (stopping the project or doing tasks out of sequence for example).

EXHIBIT "D"
SUPPLEMENTAL TERMS AND CONDITIONS

HAZARDOUS MATERIALS OR TOXIC SUBSTANCES

The CONSULTANT shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

USE OF PHOTOGRAPHIC AND OR ARTISTIC REPRESENTATIONS

With the permission of the CITY: CONSULTANT shall have the right to include photographic or artistic representations of the design of the Project among the CONSULTANT's promotional and professional materials, on the CONSULTANT's Web site and other online presences including but not limited to the CONSULTANT's Facebook, and Houzz accounts.

The CONSULTANT shall be given reasonable access to the completed Project to take photograph and or make such representations. However, the CONSULTANT's materials shall not include the CITY's confidential or proprietary information if the CITY has previously advised the CONSULTANT in writing of the specific information considered by the CITY to be confidential or proprietary.

The CITY shall provide professional credit for the CONSULTANT in the CITY's promotional materials for the Project.

EXHIBIT "E"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

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B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

**AMENDMENT NO. 1 TO CONTRACT NO. S12144798
BETWEEN THE CITY OF PALO ALTO AND
METROPOLITAN PLANNING GROUP**

This Amendment No. 1 to Contract No. S12144798 ("Contract") is entered into September 12, 2012, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and **METROPOLITAN PLANNING GROUP**, a California corporation, located at 579 Clyde Avenue, Suite 340, Mountain View, California, 94043 ("CONSULTANT").

RECITALS:

WHEREAS, the Contract was entered into between the parties for the provision of overseeing and assisting with development of the real property located at 27 University Avenue, Palo Alto, California ("Project") and desires to engage a consultant to assist with the coordination of the Project, the coordination and review of the environmental review for the Project, the site plan and architectural review process for the Project and any other tasks as necessary or needed in connection with the Project ("Services")

; and

WHEREAS, the parties wish to amend the Contract;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 4. NOT TO EXCEED COMPENSATION is hereby amended to read as follows:

"The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed Forty Five Thousand Dollars (\$45,000.00). The applicable rates and schedule of payment are set out in Exhibit "C-1", entitled "HOURLY RATE SCHEDULE," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 2. The following exhibit(s) to the Contract is/are hereby amended to read as set forth in the attachment(s) to this Amendment, which are incorporated in full by this reference:

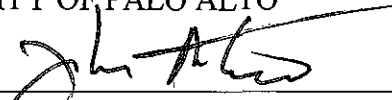
- a. Exhibit "C" entitled "COMPENSATION".

b. Exhibit "C-1" entitled HOURLY RATE SCHEDULE

SECTION 3. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

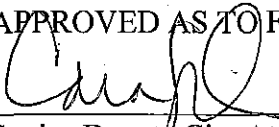
IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Amendment on the date first above written.

CITY OF PALO ALTO



Purchasing Manager

APPROVED AS TO FORM:



Senior Deputy City Attorney
ASST

METROPOLITAN PLANNING GROUP,

By 

Name: GEOFF I. BRADLEY

Title: PRES.

Attachments
EXHIBIT "C" COMPENSATION
EXHIBIT "C-1" HOURLY RATE SCHEDULE

EXHIBIT "C" COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Services") and reimbursable expenses shall not exceed \$45,000.00. CONSULTANT agrees to complete all Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$0. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$0 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expenses, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

EXHIBIT "C-1"
HOURLY RATE SCHEDULE

METROPOLITAN PLANNING GROUP
2012 RATE SCHEDULE

STAFF HOURLY RATES

Principal	\$158.
Project Manger	\$145.
Senior Planner	\$131.
Environmental Planner	\$125.
Associate Planner	\$105.
Assistant Planner	\$79.
Administrative/Planning Tech	\$68.