City of Palo Alto
City Council Staff Report

Report Type: Consent Calendar        Meeting Date: 2/14/2011

Summary Title: Contract for rail corridor study consultant

Title: Approval of a Contract with BMS Design Group in a Total Amount Not to Exceed $200,000 for Preparation of a Palo Alto Rail Corridor Study.

From: City Manager

Lead Department: Planning and Community Environment

Recommendation
Staff recommends that Council approve and authorize the City Manager or his designee to execute the attached contract with BMS Design Group (Attachment A) in an amount not to exceed $200,000 to prepare the Palo Alto Rail Corridor Study.

Executive Summary
The City Council approved a draft scope of work for the Palo Alto Rail Corridor Study in the summer of 2010 and directed staff to issue a Request for Proposal (RFP) for a planning and urban design consultant to prepare the study. The RFP was issued on August 18, 2010 requesting proposals by September 15, 2010. Five proposals were received and carefully evaluated. Of the five proposals, staff has determined that the BMS Design Group submittal was the proposal that best met the requirements of the RFP and that the firm will provide the vision, design expertise and experience and communication tools to create a successful plan, in concert with the Task Force and staff.

Background
The City Council initiated the Palo Alto Rail Corridor Study to evaluate land use, transportation and urban design elements of the corridor. The intent is to generate a community vision for land use, transportation, and urban design opportunities along the Caltrain corridor, particularly in response to proposed improvements to fixed rail services along tracks in Palo Alto. Although the High Speed Rail project provides important context for the study, it was not intended to be the study focus. In addition, the Council authorized the formation of a Task Force for the Rail Corridor Study to provide input into the study and to solicit information from the broader community.

Discussion
The scope of the contract is for the preparation of a Rail Corridor Study. The study is proposed in three phases and is expected to be completed in 12 months.
Phase I is the information gathering component of the study. This phase would outline the preliminary “Context and Vision” for the corridor, including updated goals and policies, along with the definition of key land use and transportation parameters that would require further analysis and review.

Phase II would include the “Analysis” of land use, transportation, and urban design components of potential rail and development scenarios. Two to three alternatives and urban design considerations would be developed from the analysis of information gathered from Phase I.

The final Phase III would include the identification of a preferred approach from Phase II. The approach would be integrated into a “Plan and Implementation” as part of the Comprehensive Plan. This would include new or modified goals, policies, programs, implementation measures, mitigation and financing measures.

The phases are not intended to be entirely linear. It is expected that some items would overlap during the three phases. The consultant is also expected to help coordinate the Task Force efforts in each of the three phases, enhancing the quality of public outreach.

Project Coordination
The Department of Planning and Community Environment has coordinated the bid process with the Purchasing Division of Administrative Services and the City Manager’s Office. Input from other departments (City Manager, Public Works, Community Services, etc.) will be solicited as necessary.

Proposal Process
A notice inviting formal proposals for this project was posted at City Hall, on the City website, and sent to six design firms on August 18, 2010. The proposal period was 27 days. Proposals were received from five consultants on September 15, 2010. The costs of the proposals ranged from a low of $199,847 to a high of $229,926.

A summary of the proposal process is outlined in the table below:

<table>
<thead>
<tr>
<th>Summary of the Proposal Process</th>
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<tbody>
<tr>
<td><strong>Proposal Name</strong></td>
</tr>
<tr>
<td><strong>Proposed Length of Project</strong></td>
</tr>
<tr>
<td><strong>Number of RFP Packages Mailed to Consultants</strong></td>
</tr>
<tr>
<td><strong>Total Days to Respond to RFP</strong></td>
</tr>
<tr>
<td><strong>Pre-Proposal Conference</strong></td>
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<tr>
<td><strong>Number of Company Attendees at Pre-Proposal Conference</strong></td>
</tr>
<tr>
<td><strong>Number of Proposals Received</strong></td>
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</tbody>
</table>

February 14, 2011
(ID # 1319)
Number of Interview Rounds Following Receipt of Proposals

<table>
<thead>
<tr>
<th>Proposal Price Range</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low $199,847 to a high of $229,926</td>
<td>San Francisco, CA</td>
</tr>
<tr>
<td>Carrasco and Associates</td>
<td>Palo Alto, CA</td>
</tr>
<tr>
<td>BMS Design Group</td>
<td>San Francisco, CA</td>
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<tr>
<td>Dyett and Bhatia</td>
<td>San Francisco, CA</td>
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<tr>
<td>DC&amp;E</td>
<td>San Francisco, CA</td>
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<tr>
<td>Van Meter, Williams, Pollock</td>
<td>San Francisco, CA</td>
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</tbody>
</table>

The proposals were evaluated by Planning, Transportation and City Manager's Office staff. Staff carefully reviewed each proposal in response to criteria identified in the request for proposals (RFP). Specific focus was placed on each firm's understanding of rail related issues, experience with similar projects, and understanding of Palo Alto concerns. Two rounds of oral interviews were held.

BMS Design Group

Staff identified BMS Design Group as the preferred consultant following the review of the written proposals and the oral interviews. BMS Design Group is a Bay Area planning consulting group that provides professional services in urban design, land use planning, landscape architecture and community outreach. The firm is headed by two partners, Barbara Maloney and Michael Smiley, who each have over 30 years of urban design and planning experience for both public and private sectors clients. BMS Design Group has extensive experience on a variety of rail and transit oriented development. Their list of relevant projects include the Diridon/Arena Strategic Development Plan in San Jose, the Downtown Transit-Oriented Development Strategy and the San Leandro BART Station Pedestrian Interface Plan, the Embarcadero Waterfront Transit and Streetscape Improvements, and Third Street Light Rail Urban Design Improvements Project, both in San Francisco, and the Hayward Park Station Area Improvements in San Mateo. The firm was also recently hired in November 2010 by the City of Sunnyvale to prepare the Lawrence Area Station Plan.

BMS Design Group initially provided an initial bid of $229,926, but staff and the firm have revised the scope of work to a maximum cost of $200,000. Staff anticipates project completion by the end of February 2012. Staff has contacted references provided by the consultant for previous work performed and received positive feedback.

Task Force Meetings

The 17-member Task Force has met on November 9th, December 3rd and January 17th. The focus of the three meetings has been to provide the Task Force with background information, including the status of rail projects, and to discuss organization and logistics. Staff has presented information on the Brown Act and the City's High Speed Rail efforts at those meetings. Sara Armstrong of Californians Advocating for Responsible Rail Development (CARRD) has also made a presentation on the group's
efforts at the December 3rd meeting. Task force meetings have been scheduled for the first and third Thursdays of the month at the Lucie Stern Community Center. Staff has also invited representatives of other stakeholder groups to attend the meetings. Mountain View and Menlo Park, the neighboring communities along the rail corridor, and Caltrain were invited to appoint liaisons to attend the meeting.

**RESOURCE IMPACT**
Funding for the project was allocated by the City Council when the Study was initiated. $100,000 was budgeted during the 2010-2011 fiscal year. An additional $100,000 was identified for the project in the 2011-2012 fiscal year.

**POLICY IMPLICATIONS**
The study will rely on the City’s Comprehensive Plan and other land use transportation policies to guide the effort for the corridor.

**ENVIRONMENTAL REVIEW**
Approving a contract for the study is not considered a project requiring environmental review per the California Environmental Quality Act. It is anticipated that future environmental review for the Rail Corridor Plan would be completed as part of the Comprehensive Plan Environmental Impact Report.

**ATTACHMENTS:**
- Attachment A - Contract C11138343 - BMS Design Group Contract  (PDF)

Prepared By: Elena Lee, Senior Planner

Department Head: Curtis Williams, Director

City Manager Approval: James Keene, City Manager
CITY OF PALO ALTO CONTRACT NO. C11138343

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
BMS DESIGN GROUP
FOR PROFESSIONAL SERVICES
PROVISION OF RAIL CORRIDOR STUDY

This Agreement is entered into on this 15th day of February, 2011, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and BMS DESIGN GROUP, a Partnership, located at 414 Jackson Street, Suite 404, San Francisco, CA 94111, (PH) (415) 249-0130 ("CONSULTANT").

RECsTAILS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to develop a Rail Corridor Plan and implementation measures to be incorporated into the City’s Comprehensive Plan ("Project") and desires to engage a consultant to provide a Palo Alto Rail Corridor Study to evaluate land use, transportation, and urban design elements of the rail corridor area ("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 March 31, 2012, or completion of Study, whichever occurs first, 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.
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 Two Hundred Thousand Dollars ($200,000.00). In the event Additional Services are authorized, the total compensation for services and reimbursable expenses shall not exceed Two Hundred Thousand Dollars ($200,000.00). The applicable rates and schedule of payment are set out in Exhibit “C-1”, entitled “SCHEDULE OF RATES,” 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. 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.

Notwithstanding Section 11 above, CITY agrees that subconsultants may be used to complete the Services. The subconsultants authorized by CITY to perform work on this Project are:

Kimley-Horn & Associates
Economic and Planning Systems

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.
SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Barbara Maloney, Partner, as Partner in Charge and Project Director, to have supervisory responsibility for the performance, progress, and execution of the Services and to represent CONSULTANT during the day-to-day work on the Project. James M. Daisa, PE, shall be designated as Project Manager. If circumstances cause the substitution of the project director, project manager, or any other key personnel for any reason, the appointment of a substitute project manager 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 Elena Lee, Planning and Community Environment Department, 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: (650) 617-3196. 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 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 "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. 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 Barbara Maloney, Partner,
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.
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

City Manager (Required on contracts over $85,000)
Purchasing Manager (Required on contracts over $25,000)
Contracts Administrator (Required on contracts under $25,000)

APPROVED AS TO FORM:

Senior Asst. City Attorney
(Required on Contracts over $25,000)

BMS DESIGN GROUP

By:

Name: Barbara Meloche

Title: Partner

Attachments:
EXHIBIT “A”: SCOPE OF SERVICES
EXHIBIT “B”: SCHEDULE OF PERFORMANCE
EXHIBIT “C”: COMPENSATION
EXHIBIT “C-1”: SCHEDULE OF RATES
EXHIBIT “D”: INSURANCE REQUIREMENTS
1. SCOPE OF SERVICES

PHASE 1: CONTEXT AND VISION (4 months)

Task 1.1 Project Initiation
The BMS Design Group team will meet with staff to finalize the work program, schedule and project budget. The work program will be used throughout the process to monitor progress; work products will be clearly defined. At this time the team will submit requests for data of varying types.

At this time schedules and procedures for project communications will be identified. A preliminary schedule of High Speed Rail Committee, Planning and Transportation Commission and City Council meetings will be set.

Task 1.2 Review Background Materials
City Staff will provide GIS and Autocad data and mapping, reports, analyses and other data for relevant studies, city documents, and other materials including in progress plans.

The BMS team will utilize the city’s data to prepare base maps suitable for analysis and plan preparation. The team will undertake a thorough review of site conditions, relevant documents and plans including documents relevant to corridor transportation and, in particular, documents produced by the HSR Authority related to alignment options and station information. Utilizing materials provided by the city, including policy and regulatory plans and ordinances, planned or proposed project information, site and aerial photos, and work by other consultants, the BMS team will assemble and review materials in preparation for subsequent tasks. The team will create a preliminary list of issues to be discussed with the Task Force and community.

The BMS team and city staff will conduct a site tour of the project area.

Task 1.3 Task Force Meeting 1
The preliminary Task Force meeting will serve to introduce the project work program and schedule. BMS Design Group will facilitate a discussion of goals for the project and issues that the Task Force considers essential to the outcome of the project.

Task 1.4 Stakeholder Interviews
The BMS team will conduct a limited number of individual or small group stakeholder interviews. These will provide key stakeholders with an opportunity to discuss issues of particular concern directly with the team. These meetings, if needed, will be conducted on the same days as other standing meetings such as Task Force.

Task 1.5 Community Meeting 1 | Issues Charrette
The BMS team will conduct the first project community meeting. The agenda for the meeting will include a review of the work program and schedule, as well as an update by city staff on any related HSR or city planning.
information. The BMS team will facilitate a discussion and prioritization of issues of concern to the community. These will become elements in the ultimate evaluation of project concepts and alternatives.

Task 1.6 Urban Design and Land Use Analysis – Issues and Opportunities

Prepare Urban Design and Land Use Analysis

The BMS team will collect a range of information regarding the existing nature of the study area and its short and long term opportunities. Information to be compiled and considered will include:

- Existing land use patterns
- Existing facilities, including public and community uses such as schools, parks, community facilities, etc.
- Neighborhood/district context – neighboring uses and districts, areas of influence
- Community scale and character
- Architectural and landscape character
- Distinguishing features such as landmarks, entries and edges
- Relationship of facilities and uses to major and minor rights of way and circulation framework
- Opportunity sites
- Parcel configurations
- Parcel ownership
- Proximity to transit facilities

Provide Market-Based Inputs to Issues and Concepts

Making use of existing data and studies as much as possible, EPS will conduct a high-level market review to assess potential development opportunities in the study area. Utilizing area demographic and employment trends, development patterns, competitive supply, and project performance, EPS will characterize the market support for various types of development along the Corridor. The results of EPS’s market review will be incorporated as the land use alternatives are developed. EPS will work with the rest of the consultant team to shape the land use alternatives by attending the task force meeting described in Task 1.7 to provide perspective on the implications of each alternative in terms of its capitalization on market opportunities, its projected buildout timeframe, and the comparative value being created for property owners.

Preliminary Identification of Implementation Constraints

The BMS Team will work with City staff, rail agency representatives, and other important stakeholders to understand the potential parameters of each party’s participation in the implementation of the Corridor plan. Issues to discuss will include the entities’ legal and administrative obligations and constraints, the amount of and competition for financial resources, etc. For example, do changes to existing regulations or programs require popular elections? What funding sources are available and how much have been pledged to other projects or programs? Do the by-laws of various entities’ formation prevent or require certain actions? This review will help to ensure that the parties involved and the community-at-large understand the “ground rules” for evaluating the viability of alternative planning concepts.

Task 1.7 Task Force Meeting 2

The second Task Force meeting will focus on reviewing and discussing the urban design and land use analysis. The meeting will be facilitated by BMS to ensure that the Task Force can review and comment on all the various element of analysis that are presented. The focus will be on confirming the team’s analysis and identifying key issues and opportunities.
Task 1.8  Transportation and Circulation Framework Analysis – Issues and Opportunities
Kimley Horn will summarize and describe key transportation parameters associated with the HSR alignment options and station location including potential impacts, obstructions to connectivity, multi-modal access, infrastructure requirements, and costs. KHA will also summarize transportation-related issues as identified in the analysis, and as discussed by staff, city leaders, the Task Force and community. Working with the BMS team, KHA will discuss land use, urban design and transportation opportunities associated with the study area and future infrastructure improvements.

KHA will provide a comparative assessment of existing and future constraints to the integration of HSR into the Rail Corridor and the constraints created by implementation of the HSR. KHA will also summarize the transportation-related opportunities for expediting the integration of HSR as well as the potential for transit-oriented development.

Task 1.9  Task Force Meeting 3
The third Task Force meeting will focus on reviewing and discussing the transportation and circulation analysis. The meeting will be facilitated by BMS to ensure that the Task Force can review and comment on all the various element of analysis that are presented. The focus will be on confirming the team’s analysis and identifying key issues and opportunities.

Task 1.10  Community Meeting 2 | Vision Charrette
The second community meeting will be a longer meeting to allow a full discussion of the issues and opportunities associated with urban design, land use, transportation and circulation elements. As part of the meeting, the BMS team will facilitate a small group brainstorming of initial visions for the project area, incorporating the opportunities identified by the analysis as well as others that community members will bring to the discussion.

Task 1.11  Task Force Meeting 4
This Task Force meeting will review the work to date, including the results of the community meeting. Discussion will focus on confirming issues, opportunities and visions for the area.

Task 1.12  Summary of Context and Preliminary Vision for Corridor
The BMS team will prepare a brief summary of the work to date compiling materials prepared for and developed at the various meetings. The materials in this summary will be presented so as to lead directly into and form the basis for the analysis and tasks of Phase 2, especially the definition of alternatives.

Meetings (maximum):
Task Force: 4
• Goals and Issues
• Urban Design and Land Use
• Transportation and Circulation Analysis
• Summary of Context and Vision
High Speed Rail Committee - 1
Planning and Transportation Commission Progress Reports and Hearings – 2
City Council Progress Reports and Hearings – 1
Community: 2
• Issues Charrette
• Vision Charrette
**Deliverables:**
*Summary of Context and Vision*
- Goals, Policies and Vision Statements
- Issues and Opportunities

**PHASE TWO: ALTERNATIVES AND ANALYSIS (5 months)**

**Task 2.1 Urban Design, Land Use, and Transportation Concepts**
The BMS team will prepare urban design, land use and transportation concepts for the study corridor. These concepts will be integrated and coordinated with the transportation concepts, building upon one or several alternative urban design framework of streets and pathways, and parcels. The concepts will identify the creation of neighborhoods or districts within the corridor as well as the manner in which areas of the corridor may be better integrated into and connected with adjoining neighborhoods and districts. The concepts will explore the most relevant and feasible land uses and densities and opportunities for transit-oriented development. The concepts will be configured to illustrate a range of options that will lead to configuring alternatives combining urban design, land use and circulation elements.

**Task 2.2 Task Force Meetings 5 and 6**
This Task Force meeting will be organized to allow a thorough review of the urban design, land use and transportation and circulation concepts. From the range of concepts presented, the Task Force and consultant team will identify preferred concepts that will be integrated into the plan alternatives.

**Task 2.3 Community Meeting 3 Concept Review Workshop**
The community meeting will be conducted as small group work sessions, with facilitated discussion of the urban design, land use, circulation and transportation concepts. The discussions will be summarized with priorities among the range of concepts identified by the community. Voting for preferences and priorities may be one technique used to discern public preferences.

**Task 2.4 Preliminary Urban Design, Land Use and Transportation Alternatives**
Based on the feedback from the Task Force meeting and the community meeting, the team will prepare up to three plan alternatives. These will be configured to reflect three realistic alternatives that resolve issues and match community priorities and concerns. A variety of graphic materials and media will be used to depict the alternatives including plans, sketches, sections, photosimulations, and 3D models.

**Task 2.5 Task Force Meeting 7**
The Task Force meeting will be the opportunity for members to review and propose modifications to the preliminary alternatives. Issues, further analysis, and additional concepts will also be discussed.

**Task 2.6 Refine Alternatives and Preliminary Evaluation**
Based on the Task Force meeting, the BMS team will refine the alternatives. At this time, working with city staff and select stakeholders, the BMS team will identify potential environmental impacts associated with the alternatives. These will focus on impacts to historic resources, visual and noise impacts. An overview of possible traffic impacts will be discussed but detailed analysis will not be conducted at this time.

**Task 2.7 Task Force Meeting 8**
At this Task Force meeting, the BMS team will present the refined alternatives and provide information relevant to evaluating the alternatives, such as cost, phasing, feasibility of development options, and regulatory or policy hurdles. The team will facilitate a discussion with the Task Force to gain their insights into further evaluation of the plans.

Task 2.8 Community Meeting 4 | Alternatives Review Workshop

The final community meeting of this phase will include a review of the alternatives, as modified by input from the Task Force as well as by the High Speed Rail Committee, Planning and Transportation Commission, and City Council. The facilitated discussions will focus on evaluation of the alternatives and any proposed modifications.

Task 2.9 Summary of Alternatives and Evaluation

A brief summary of the work of Phase 2, focusing on the alternatives, will be prepared. It will include discussion of the alternatives as well as their evaluation, including comments and input from the Task Force, community, and city policy-makers.

Meetings (maximum):

Task Force: 4
- Review Concepts
- Review Preliminary Alternatives
- Review Alternatives and Evaluations
High Speed Rail Committee - 1
Planning and Transportation Commission Progress Reports and Hearings – 2
City Council Progress Reports and Hearings – 1
Community: 2
- Concept Review Workshop
- Alternatives Review Workshop

Deliverables:
Summary of Concepts, Alternatives and Evaluations

PHASE THREE: PLAN PREPARATION (3 months)

Task 3.1 Task Force Meeting 9 - Charrette: Identify Preliminary Preferred Plan(s)

Based on input from Phase 2, the BMS team will conduct a charrette with city staff and the Task Force. The purpose of the charrette will be to work intensively through the various alternatives identified and to determine those elements that most align with the issues and concerns of the community and that will provide the most beneficial framework for the future of this area of Palo Alto. If needed, options may remain on some components to provide flexibility or to illustrate certain policy decisions that will need to be made.

Task 3.2 Refine Preferred Plan(s)

The BMS team will refine the plans identified in the Task Force charrette, clarifying and outstanding issues and providing a range of illustrations such as 3D modeling, photosimulations and other hand-aid computer-generated drawings that will illustrate the plan concepts.

Task 3.3 Community Meeting 5 | Preferred Plan(s) Workshop
The BMS team will facilitate a community meeting with the intent of reviewing, clarifying if needed, and confirming the preferred plans for the corridor as well as any remaining options for elements or particular issues. The meeting will be conducted with a combination of presentation, small group discussions and attendee input via voting, comments or other means.

Task 3.4 Identify Preliminary Implementation Issues and Strategies
The BMS Team will identify the variety of regulatory changes, physical improvements, and programmatic approaches required to implement the preferred plan. Where investments in new public infrastructure are required, the BMS Team will work with city staff to estimate the costs of those improvements. Then, EPS will help to frame a financing strategy for those improvements by exploring the availability of existing funding sources as well as the potential capacity for new development to contribute to infrastructure costs through various means. In addition to state, federal, and rail agency funding, EPS will consider locally implemented funding sources such as Community Facilities Districts, development impact fees, tax increment, the City's CIP, public private partnerships, transferable development rights, etc. While not resulting in specific cost burdens and financing mechanisms assigned to specific properties, this analysis will indicate whether the study area appears capable of carrying the burden for the new infrastructure, or if alternative funding sources are likely to be required. Also, it will be important to create a conceptual implementation schedule that aligns the phasing of improvements with the availability of funding from various sources. The implementation strategy will also account for the responsibilities allocated to various parties and stakeholders, including the City of Palo Alto and local property owners and developers in addition to the rail agencies and other levels of government.

The team will also identify potential environmental issues associated with plan implementation.

Task 3.5 Task Force Meeting 10
The Task Force will meet to review implementation issues and strategies identified by the BMS Design Group team.

Task 3.6 Draft Rail Corridor Plan
Based on input from all preceding tasks and from the summaries prepared at the conclusions of phases 1 and 2, the BMS team will prepare a draft corridor plan. It is expected that this plan will be a compilation of materials already prepared with additional commentary and illustrations as needed. The plan will be configured to correlate with other city policy documents to allow ready inclusion by staff. The draft plan will be provided to city staff for a preliminary review. Following receipt of any major comments, the team will provide a revised plan for distribution to the Task Force.

Task 3.7 Task Force Meeting 11
The team will meet with the Task Force to receive comments on the draft plan. Following review by the Task Force and staff, the team will finalize the plan for presentation and distribution to city decision-makers.

Task 3.8 Community Meeting 6 | Open House
A community meeting will be held to review the Rail Corridor Plan. This community meeting will be held in an open house format, allowing the community to review and comment on all elements of the plan.

Task 3.9 Final Rail Corridor Plan
Following presentations to the High Speed Rail Committee, the Planning and Transportation Commission, and City Council, the BMS Design Group team will finalize the Rail Corridor Plan.

Professional Services
Rev June 2, 2010
Meetings (maximum):

Task Force: 3
- Preferred Plan Charrette
- Implementation Issues and Strategies
- Draft Plan Review

High Speed Rail Committee - 1
Planning and Transportation Commission Progress Reports and Hearings – 2
City Council Progress Reports and Hearings – 1

Community: 2:
- Preferred Plan Workshop
- Draft Plan Open House

Deliverables:
Draft and Final Rail Corridor Plan
EXHIBIT B
SCHEDULE OF PERFORMANCE

The CONSULTANT shall complete all project tasks and services within the timeframes and schedule agreed upon between CITY and CONSULTANT. The BMS Design Group team will meet with staff to finalize the work program, schedule and project budget. The work program will be used throughout the process to monitor progress; work products will be clearly defined. At this time the team will submit requests for data of varying types.

At this time schedules and procedures for project communications will be identified. A preliminary schedule of High Speed Rail Committee, Planning and Transportation Commission and City Council meetings will be set.

Estimated Time Periods:

Phase I - 4 months
Phase II - 5 months
Phase III - 3 months
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 completed to the reasonable satisfaction of the CITY, as described in Exhibit A, Scope of Services, a not-to-exceed price for professional services of Two Hundred Thousand Dollars ($200,000.00). Compensation will be paid for services provided as outlined below and as detailed in Exhibit C-2, Project Budget and Schedule Summary, based on the Hourly Rates provided in Exhibit C-1, Schedule of Rates.

### PHASE ONE - CONTEXT AND VISION

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### PHASE TWO - ALTERNATIVES AND ANALYSIS

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CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. 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

Reimbursables shall include, but are not limited to, the cost of copying plans, outreach materials, postage, signage or other items not included herein. Travel, computer and phone charges shall be considered as included in the CONSULTANT overhead costs. Any needed office spaces or related supplies shall be provided by CONSULTANT and shall be considered to be included in the Scope of Services above.

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 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"
SCHEDULE OF RATES

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Exhibit C-2
Project Budget and Schedule Summary

(Excel Spreadsheet Inserted Here)

$2,020

s by Firm: $134,980
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:

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<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED</td>
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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 HEREBIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, 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 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