



DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE) WITH ALTA PLANNING + DESIGN, INC.

1. PARTIES

This Agreement is made and entered into as of _____
("Effective Date"), by and between the City of Cupertino, a municipal corporation ("City"), and
Alta Planning + Design, Inc., a California Corporation ("Consultant"),
a Corporation _____ for the Union Pacific Railroad Trail Feasibility Study
_____. ("Project").

2. SERVICES

2.1 Basic Services. Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant's written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City.

2.2 Additional Services. City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal ("Additional Services"). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to "Services" in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant's Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on December 31, 2019, unless terminated earlier as provided herein ("Contract Time").

3.2 Schedule of Performance. All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin work on each separate task upon receiving City's Notice to Proceed ("NTO"), and must complete each task within the time specified in Exhibit B.

3.3 Time is of the essence for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$259,889.00 (“Contract Price”), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant’s actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

4.2 Basic Services. City will pay Consultant \$211,080.00 (“Lump Sum Price”) for the complete and satisfactory performance of the Basic Services in accordance with **Exhibit C**. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, subConsultant’s costs, materials, supplies, equipment, travel, taxes, overhead and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City’s reasonable satisfaction.

4.3 Additional Services. City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$48,809.00. Additional Services provided to City’s reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge (“Reimbursable Expenses”). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

4.4 Invoices and Payments. Monthly invoices must describe the Services completed and the amount due for the preceding month. City will pay Consultant within 30 days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. **Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in 30 minute increments; (iv) the hourly billing rate or Sub-Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.

- b. **Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City-approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

5. INDEPENDENT CONTRACTOR

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

5.2 Qualifications and Standard of Care. Consultant represents on behalf of itself and its subConsultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

5.3 Permits and Licenses. Consultant warrants on behalf of itself and any subConsultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License.

5.4 SubConsultants. Unless prior written approval from City is obtained, only Consultant's employees and subConsultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all subConsultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all subConsultants relative to the portion of their work.

5.5 Tools, Materials and Equipment. Consultant will supply and shall be responsible for all tools, materials and equipment required to perform the Services under this Agreement.

5.6 Payment of Taxes. Consultant must pay income taxes on the money earned under this Agreement. Upon City's request, Consultant will provide proof of payment and will indemnify City for any violations pursuant to the indemnity provision of this Agreement.

5.7 Errors and Omissions. Consultant is solely responsible for its errors and omissions and those of its SubConsultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

During the Contract Time Consultant may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant shall hold in confidence all City information and use

it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement (“Work Product”), will be the exclusive property of the City and shall not be shown to a third-party without prior written approval by City

7.2 Copyright. To the extent permitted by Title 17 of U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its SubConsultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not “works for hire”, Consultant and SubConsultants hereby assign to City all copyrights to the Work Product when and as created. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

7.3 Patents and Licenses. Consultant must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Consultant and its SubConsultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City’s re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

7.5 Deliverables and Format. Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

8. RECORDS

8.1 Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant’s performance, benchmarks and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four years from the date of City’s final payment.

8.2 Consultant will provide City full access to Consultant’s books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or

audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section survives the expiration/termination of this Agreement.

9. ASSIGNMENT

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means 50% or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

10. PUBLICITY / SIGNS

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law and except for losses caused by the sole or active negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants (collectively, "Indemnitees"), as follows:

a. Indemnity Obligations Subject to Civil Code Section 2782.8. With respect to the Services performed in connection with the Agreement, Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any and all liability, claims, actions, causes of action, demands or charges whatsoever against any Indemnitee, including any injury to or death of any person or damage to property or other liability of any nature (collectively, "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, officials, employees, agents or SubConsultants. Such costs and expenses shall include reasonable attorney fees for legal counsel of City's choice, expert fees, and all other costs and fees of litigation. In addition to its indemnity obligations, Design Professional will provide its immediate and active cooperation and assistance to the City, at no additional cost to the City, in analyzing, defending, and resolving such Liability.

b. Claims Involving Intellectual Property. Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant's

negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City's choice, expert fees and all other costs and fees of litigation.

c. Claims for Other Liability. For all other liabilities not included in provisions "b" and "c" above, Consultant shall indemnify, defend, and hold harmless the Indemnitees against any and all liability, claims, actions, causes of action or demands whatsoever, including any injury to or death of any person or damage to property, or other liability of any nature arising out of, pertaining to, or relating to the performance of this Agreement by Design Professional, its employees, officers, officials, agents or subconsultants, including liability based on breach of contract, obligations, or warranties, or any unauthorized use or disclosure of City's confidential and proprietary information.

11.2 Consultant will assist City, at no additional cost, in the defense of any claim, dispute or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

11.3 If this Agreement is entered into or amended on or after January 1, 2018, Consultant's duty to pay for any of Indemnitees' defense related costs will be limited to its proportionate share of fault, as determined by final decision by a court of competent jurisdiction, subject to any applicable exceptions in Civil Code section 2782.8.

11.4 Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City. Section 11 survives expiration or termination of this Agreement.

12. INSURANCE

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Consultant shall comply with all laws and regulations applicable to this Agreement. Consultant will promptly notify City of changes in the law or other conditions that may affect the Project or Consultant's ability to perform. Consultant is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act, or other federal or state law, rule or regulation.

13.2 Labor Laws. Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a “public works” component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City’s Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

13.3 Discrimination Laws. Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777 and 3077.5. Consistent with City policy prohibiting, Consultant understands that harassment and discrimination by Consultant or any of its subConsultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited.

13.4 Conflicts of Interest. Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City’s rules governing gifts to public officials and employees.

13.5 Remedies. A violation of this Section constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

14. PROJECT COORDINATION

14.1 City Project Manager. The City’s Project Manager for all purposes under this Agreement will be Jennifer Chu, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

14.2 Consultant Project Manager. Subject to City’s reasonable approval, Consultant’s Project Manager for all purposes under this Agreement will be Heather Deutsch, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City’s Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant will be compensated for satisfactory Services performed through the date of abandonment and will be given reasonable time to assemble the work and close out the Services. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within 30 days of Consultant's final invoice.

17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section survives the expiration/termination of this Agreement.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of any breach shall not be deemed to constitute waiver of another term, provision, covenant or condition, or a subsequent breach, whether of the same or a different character.

21. ENTIRE AGREEMENT

This Agreement and all its Sections represent the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between this main Agreement and the attachments or exhibits thereto, the text of the main Agreement shall prevail.

22. INSERTED PROVISIONS

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

26. NOTICES

All notices, requests and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino 10300 Torre Ave. Cupertino CA 95014 Attention: <u>Jennifer Chu</u> Email: <u>jenniferc@cupertino.org</u>	To Consultant: <u>Alta Planning + Design, Inc.</u> <u>711 SE Grand Ave.</u> <u>Portland, OR 97214</u> Attention: <u>Greg Maher</u> Email: <u>gregmaher@altaplanning.com</u>
---	---

27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if it complies with the contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney's Office.

28. EXECUTION

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

CONSULTANT

Alta Planning + Design, Inc.

By _____

Name Greg Maher

Title Vice President, as duly authorized

Date _____

CITY OF CUPERTINO

A Municipal Corporation

By _____

Name Timm Borden

Title Director of Public Works

Date _____

Tax I.D. No.: 68-0465555

APPROVED AS TO FORM:

RANDOLPH STEVENSON HOM
Cupertino City Attorney

ATTEST:

GRACE SCHMIDT
City Clerk

Exhibit A – Scope of Services

Scope of Work

Task 1. Initiation and Project Management

Alta will review the existing resource documents that contain information related to the UPRR Trail Feasibility Study and the City of Cupertino's policies regarding trails. These documents include:

- Cupertino General Plan: Community Vision 2015-2040
- City of Cupertino 2016 Bicycle Transportation Plan
- Union Pacific Rail Trail Feasibility Study (October 15, 2001)
- Joint City Coordinated Stevens Creek Trail Feasibility Study (September 2015)
- Santa Clara County Countywide Trails Master Plan Update (November 14, 1995)
- Countywide Trails Prioritization and Gaps Analysis (March 17, 2015)
- VTA Bikeways Map D – Cupertino, Campbell, Saratoga and Los Gatos (May 2016)
- Alta will also review with the various agency standards and guidelines for developing trail design concepts that may apply to this project and shall provide a list of documents this project will need to adhere to. These standards and guidelines include:
 - 1999 Santa Clara County Interjurisdictional Trail Design, Use and Management Guidelines
 - 2005 Santa Clara County Parks and Recreation Department Trail Maintenance Manual
 - 2006 Santa Clara Valley Water District, Water Resources Protection Manual: Guidelines & Standards for Land Use Near Streams
 - 2012 California Department of Transportation Highway Design Manual: Chapter 1000 Bicycle Transportation Design
 - 2013 Architectural Barriers Act Accessibility Guidelines: Outdoor Developed Areas (and all applicable latest ADA standards)
 - VTA Bicycle Technical Guidelines, December 2012

Task 1 Deliverables:

- Applicable agency standards and guidelines list

Task 2. Identify Ownerships and Jurisdictions

TASK 2.1. COLLECTION OF OWNERSHIP DOCUMENTS

The Alta team will collect publicly available documents including Title reports, maps, and other recorded information that relates to properties within the vicinity of the proposed trail.

TASK 2.2. REVIEW OF OWNERSHIP DOCUMENTS

The Alta team will review available documents including Title reports, maps, and other recorded information in order to determine owners of or in the vicinity to land proposed to be part of the trail.

TASK 2.3. IDENTIFY POTENTIAL IMPACTS AND CONSTRAINTS

Using the available documents related to ownership, the Alta team will identify potential impacts and/or constraints that may exist including easements, exceptions, and other restrictions.

Task 2 Deliverables:

- Title reports for key property owners along property trail corridor
- Record boundary map
- Stakeholders and agency contact list

Task 3. Conduct Field Reconnaissance and Existing Facilities Inventory/Analysis

Task 3.1. Data Collection and Base Mapping

The Alta team will create a series of comprehensive base maps for the project from available GIS and other information such as existing exhibits, reports and mapping to create an interactive site driven series of base maps for the project. Information contained on the base mapping will include:

- The foundation for the base mapping will be developed from publicly available high-resolution aerial imagery
- Right-of-way and property line data for the base mapping will be based on latest public available data
- Planning level topography will be based on available LIDAR to be provided by the City and County

With the foundation base mapping completed, we will refine and complete a comprehensive inventory, including but not limited to:

- Property ownership
- Zoning, land use, specific plan considerations as applicable
- On-street bicycle and pedestrian facilities and crossings
- Connections to other modes of transportation
- Roadway, railroad, creeks and waterway crossings
- Bridges
- Trees (protected, native, and trees greater than or equal to 8-inches in diameter)
- Utilities (above and below ground)
- Drainage patterns
- Rights-of-way, easements, and encroachments
- Geological conditions
- Biological conditions

Alta will compile this information into an Existing Facilities Inventory Memorandum, which will later be incorporated into the draft feasibility study. Existing facilities graphics will be produced in ArcGIS and Adobe Illustrator in 11"x17" tabloid format at an easily readable scale (typically 1" = 200' with enlargements for constrained areas). The Memorandum will include a Photograph Log of the corridor.

Task 3.2. Site Reconnaissance

Prior to our site visits, the Alta team will coordinate with Union Pacific Railroad (UPRR), as identified in Task 7.5, regarding anticipated trail work within the UPRR right-of-way and crossings under UPRR facilities. We will build on our recent experience working on pathway/rail crossing and encroachments for Sonoma Marin Area Rail Transit (SMART) and the Cities of Mountain View and Davis to identify the type of work and type of permits (crossing, encroachment or other) anticipated and review the concepts with UPRR managers Kevin Yoder (Public Projects) or Peggy Ygbuhay (Special Projects) to identify significant issues and potential solutions.

The Alta team will perform site visits to observe existing field conditions, verify trail alignment feasibility, and gather pertinent data to be used during the opportunity and constraints analysis. All information that is observed will be gathered and mapped based on opportunities for connectivity to existing trails and nearby points of interest. Alta will also identify the constraints for the UPRR Trail development. These constraints will include:

- Available land capacity
- Existing utilities
- Storm drainage infrastructure and drainage structure considerations
- Existing tree inventory
- Existing roadway conditions
- Existing underpasses and overpasses
- Retaining walls
- Biological resources

Alta will take a full inventory of all necessary roadway crossings, creek crossings, areas where structures may be needed (bridges, overpasses, underpasses), areas where trail width may be constrained, and areas in proximity to key infrastructure.

Task 3.3. Opportunity and Constraints Analysis

Using the data collected and site reconnaissance information attained in Tasks 3.1 and 3.2, the Alta team will perform an opportunity and constraints analysis for the project area. This analysis will be summarized in an opportunity and constraints report and map.

Task 3 Deliverables:

- Draft existing facilities inventory and opportunity and constraints analysis and maps
- Final existing facilities inventory and opportunity and constraints analysis and maps

Task 4. Develop Trail Alignments and Feasibility Criteria

Using the data from Tasks 1-3 and getting feedback from the agency and local business meetings discussed in Task 7.5 and Task 7.6, Alta will identify and develop trail alignment alternatives based on criteria set by the project team for a feasibility trail design. The proposed trail alignment will be a north-south alignment along the UPRR between the Hammond-Snyder Loop Trail and Saratoga-Sunnyvale Road.

Task 4.1. Trail Feasibility Criteria

Alta will prepare illustrated design trail feasibility criteria specific to the anticipated users and settings discussed in the 2016 City of Cupertino 2016 Bicycle Transportation Plan (2016 Plan). The guidelines will reference applicable City, County, State, and Federal standards and policies, and will respond to the opportunities and constraints identified in previous tasks. Illustrations will include typical and special trail cross-sections and plan views, and design details. Alta literally “wrote the book” in the FHWA Rails-with-Trails: Lessons Learned Federal Study on many aspects of trail design standards along active rail lines both for accommodating different users, and for adapting to different trail settings such as:

- Trail types for specific users, and multi-use combinations
- Trails for specific environmental or land use settings
- Road and railroad crossings and adjacencies
- Trail parking and staging facilities - restrooms, rest areas, kiosks, and mapboards
- Fencing, gates, and styles

- Signage, including wayfinding, regulatory, and interpretive signs and elements

While developing the design criteria for the UPRR Channel corridor, Alta will take into account the following design considerations as they relate to each alignment alternative:

- Adjust property/real estate and/or trail easement acquisition
- Overhead and underground utilities
- Intersection crossings
- Proximity to residences
- Proximity to railroad tracks
- Privacy considerations and solutions
- Access to nearby points of intersects
- Compliance with ADA requirements
- Safe connections with existing and planned bicycle and pedestrian facilities
- Safety of trail users and residents adjacent to the proposed trail, including during evening hours
- Policing and preventing unauthorized trail access during evening hours
- Emergency vehicle access
- Maintenance and management
- Construction cost

The Alta team will be working with affected property owners and develop a list of key stakeholders and contact persons for use throughout the project. Agency Engagement meetings will be held early with UPRR, SCVWD, Santa Clara VTA, Caltrans, and PG&E to establish design criteria and project constraints. This will be a crucial aspect in the process to understand the elements of design that will be allowed within each agency jurisdiction.

The draft study will include an implementation and funding section with specific grant funding program review and strategy for the recommended alignment. It will include a review of the steps and documentation anticipated for project planning, design, approval and implementation, anticipating the particular challenges unique to the project type and location.

Task 4.2. Develop Trail Alignments Alternatives and Connection/Crossing Concept Designs

Once the feasible design criteria have been set, Alta will develop trail alignment alternatives and crossing concept designs. The trail alternatives will provide information and recommendations that include the following:

- Feasible trail type
- Typical sections of the trail that includes width and surface treatments
- Sketches of design solutions at areas where the width is constrained
- Exhibits showing the facility widths and design elements that would meet the varying grantors and design standards listed in Task 1

Where appropriate, Alta will also explore and provide alternatives for over, under, and at-grade intersection crossings, on-street and at-grade alternatives for any seasonal underpasses, and short-term and long-term solutions that allow phased implementations of functional pathway segments. We will also identify access point opportunities, staging areas where amenities (i.e. benches, shade structures, drinking fountains, etc.) can be stationed, potential parking areas and enhancement opportunities to improve habitat value. In coordination with BRG, we will be working with an arborist to address the potential impact to the existing trees throughout the corridor.

During the phase of the project, Alta will conduct a special examination and create design concepts for the street and trail connections and crossing along the corridor. These design concepts will illustrate each crossing, intersection and proposed structure. Each design solution will be shown with enough detail to confirm that adequate clearances can be provided. The following locations will be analyzed and illustrated:

- Connection to regional Stevens Creek Trail
- Connection to Hammond-Snyder Loop Trail
- Cristo Rey Drive Crossing
- Interstate 280 Northbound on-ramp and off-ramp crossing
- Foothill Boulevard Crossing
- Stevens Creek Boulevard Crossing
- Bubba Road Crossing
- McClellan Road Crossing
- Regnart Creek Crossing
- Rainbow Drive Crossing
- Seven Springs Parkway Crossing
- Prospect Road Crossing
- Arroyo De Arguello/Via Roncole Crossing
- Prospect Creek Crossing
- Saratoga-Sunnyvale Road Crossing

Task 4.3. Develop Technical Report for Trail Alignments and Connection/Crossing Concept Designs

Along with developing trail alignment alternatives and creating design concepts for the above connections and crossings, Alta will develop a recommendation for the trail alternatives to carry into an environmental analysis of a future trail. We will evaluate each of the alternatives for desirability (low, medium, and high) by creating a matrix evaluation criterion that will make alternatives more preferable than others.

Alta will prepare an administrative technical report with appropriate appendices presenting each trail alignment alternative along with the connection and intersection concept design. The technical report will include a summarized matrix that will evaluate each alternative by ranking them for desirability. The administrative technical report will be present to City of Cupertino staff for review and comment.

After initial comments are incorporated, Alta will submit a draft public technical report for the UPRR Trail alignment alternatives to City staff. We will present the draft public technical report for the Union Pacific Trail alignment alternatives to the community and City's commissions for input and feedback on the different alternatives.

Upon final comments from City of Cupertino staff, Alta will revise the draft public technical report for trail alignments to reflect all the input received. The final document will be known as the final technical report for the UPRR trail alignment alternatives.

Task 4 Deliverables:

- Technical report for the UPRR trail alignment alternatives and appendices (administrative draft, public draft, and final)
 - Document concept trail alignment alternatives
 - Design considerations
 - Trail feasibility criteria

- Recommendation matrix
- Recommendations for a preferred alternative

Task 5. Facilitate Community Outreach and Public Participation Efforts

5.1. Community Outreach Plan

Alta will work with the City project manager and key partners to create a detailed, coordinated plan to inform and involve the public and all partners and stakeholders throughout the trail study. Elements of the outreach plan will be discussed at the project initiation meeting. The plan will then be refined, coordinated with the overall project work plan, and transmitted for review. Key components to be developed include:

- Plan of materials to be developed, including public notices, online forum, and email messages
- Study messaging to be used throughout outreach materials, including specific messaging for parents and families, and non-English-speaking residents
- Materials and communications distribution plan
- Outreach Schedule

The Outreach Plan will be revised by Alta in response to one set of comments from the City and relevant partners. The final outreach plan will be implemented by Alta in collaboration with the City. We anticipate that the City will assist with material distribution, including distribution to City channels, including print and electronic media and public message boards.

5.2. Community Workshops

Alta will work with the City to plan and host up to three (3) engaging, collaborative, and interactive community workshops.

Workshop #1

The first workshop will focus on introducing the study, gathering stakeholder feedback on opportunities and constraints to be explored. This workshop will provide an opportunity to gather early feedback on the project and engage stakeholders at the earliest stages of study development. We envision that the workshop would include multiple stations with maps, diagrams, and other visual materials to help orient attendees to the study area and objectives, with Alta and City staff available to discuss the project and gather feedback.

Workshop #2

Working with the City, Alta will plan and host a second community workshop at a mid-point of the project to provide project updates and solicit additional feedback from stakeholders. This workshop will focus on presenting the trail design and alignment alternatives, study opportunities and constraints, and final evaluation criteria. Attendees will be presented with visual displays that showcase the alternatives, opportunities and constraints, and provide the contextual information to help them provide informed comments to the project team.

Workshop #3

The final community workshop will provide an opportunity to showcase the study findings, including the recommended alignment, design standards, and cost estimates. Alta will work with the City to plan the workshop for diverse attendance from stakeholder communities, including user groups, school communities, nearby property owners, and non-English-speaking residents. The workshop will be in an open house format, providing an opportunity to drop in, review the study findings and recommendations, and speak with project team staff when convenient to the attendee. Boards and display materials will be highly visual, with maximum use of graphic representation of materials alongside any narrative information.

5.3. Neighborhood-Specific Working Group Sessions

To promote more focused input and engagement, Alta proposes holding neighborhood-specific working group sessions with residents living along the corridor in the following areas:

- Stonebridge Community to Creston Drive
- Northern end of Madera Drive to Stevens Creek Boulevard
- McClellan Road to Rainbow Drive
- Rainbow Drive to Prospect Road
- Prospect Road to Saratoga-Sunnyvale Road

Community Walks

Alta proposes holding the first two working group sessions as joint site tours/community walks to identify key conditions and issues in the study area and to establish a shared understanding between the project team and the community (these community walks could be combined with Task 3). The first community walk could be on the northern section (Hammond-Snyder Loop Trail to McClellan Road) and the second on the southern section (McClellan Road to Saratoga-Sunnyvale Road). The sections could also be shortened in length and may be contingent on getting approval from UPRR or other property owners. Alta will provide a base map and background information package for participants. The main purpose of this effort will be an interactive field working session where creative brainstorming can occur and where opportunities and constraints can be better understood.

Working Group Sessions

Alta will then meet with each working group one time (five meetings total). The first working group session will recap the community walks, describe existing conditions, opportunities, and constraints, and share initial concepts for review and feedback. Revised concepts will be available for feedback at the second and third community workshop. The method for noticing residents will be established in Task 5.1 Community Outreach Plan and may include direct mail and/or online social media such as NextDoor.

5.4. Community Outreach Memo

Alta will develop a memo that details the public outreach process, timeline of activities, level of participation, and community feedback. The memo will summarize community input according to common themes expressed by the public and provide documentation of the engagement process through photographs, attendance records, and comment cards or other written remarks. The memo will include an executive summary.

5.5. Graphics/Online Media

Alta will develop a logo and design scheme to brand the study process. Alta will develop outreach flyers for each of the three (3) community workshops. Alta will prepare up to twelve (12) visually rich posts to help the City advertise upcoming events or provide updates on the study process via the City's website and social media channels.

Task 5 Deliverables:

- Community outreach plan
- Up to three community workshops
- Community walk (joint working group session)
- Up to six neighborhood-specific working group sessions
- Community outreach memo
- Study logo/brand

- Community workshop flyers
- Up to twelve update posts for social media/website

Task 6. Union Pacific Railroad Trail Feasibility Study

Task 6.1. Administrative Feasibility Draft Study

Based on the information gathered in Tasks 1-5, Alta will prepare an administrative draft version of the UPRR Trail Feasibility Study based on the preferred UPRR Trail preferred alignment alternative. Every major chapter and section as well all exhibits and appendices produced will be provided to City of Cupertino staff for review. This will be presented to city staff in the form of an administrative draft trail feasibility study for comments. We will look to the City's project manager to provide us with one consolidated set of comments for inclusion in the final report.

Task 6.2. Public Feasibility Draft Study

After initial comments are incorporated, Alta will submit a public draft version of the UPRR Trail Feasibility Study to City staff. We will present the public draft of the UPRR Trail Feasibility Study to the community and City's Commissions for final input and feedback on the preferred alternative.

Task 6.3. Final Feasibility Study

Upon final comments from City of Cupertino staff, Alta will revise the public draft version of the UPRR Trail Feasibility Study to reflect all the input received. The final document will be known as the Final UPRR Trail Feasibility Study.

Task 6 Deliverables:

- UPRR Trail Feasibility Study (administrative draft, public draft and final)

Task 7. Meetings

Throughout the duration of this project, the Alta team will be conducting meetings with city staff, local agencies, local businesses, and with different communities and neighborhood throughout the UPRR Trail corridor. The following meetings will be lead and administrate by the Alta team:

Task 7.1. Project Kick-off Meeting

As the first order of work Alta will conduct a project kick-off meeting with City of Cupertino staff and the project team members will take place. Topics for this meeting include review of project goals, key issues and project schedule including task and meeting sequencing, confirm procedures and lines of communication and stakeholders, review and collect available information and review.

Task 7.2. City Staff Meetings

Monthly, in-person project team meetings will be conducted between the project team and City of Cupertino staff. These meetings will occur throughout the project timeline and are intended to take place in Cupertino.

Weekly or bi-weekly project update meetings will be held via telephone, GoTo Meeting or similar (based on City of Cupertino's preference). The Alta team will lead both weekly/bi-weekly and monthly meetings and will prepare the agendas, meeting materials, and meeting minutes.

Task 7.3. City Council Meetings/Study Sessions

Alta will prepare presentations for a minimum of two City council meetings/study sessions. These meetings/study sessions will serve as an info session for the city council members and an opportunity for them to provide their input. Alta will prepare all associated presentation materials.

Task 7.4. Commission Meetings/Study Sessions

Alta will lead presentations at a minimum of ten city commission meetings/study sessions for the various applicable City of Cupertino commissions. These meetings/study sessions will serve as an info session for the city commission members and an opportunity for them to provide their input. Alta will prepare all associated presentation materials.

To reduce costs associated with this project, Alta and the City of Cupertino will strategize to combine these meetings and hold joint commission meetings to discuss the proposed corridor.

Task 7.5. Agency Meetings

Alta will lead and administer meetings with each of the following agencies:

- UPRR – minimum of four meetings
- SCVWD – minimum of four meetings
- Santa Clara Valley Transportation Authority – minimum of two meetings
- California Department of Transportation (Caltrans) – minimum of three meetings
- Pacific Gas & Electric – minimum of one meeting
- City of Saratoga – minimum of two meetings
- Alta will prepare all associated presentation materials for meetings.

Task 7.6. Local Business Meetings

Alta will discuss with the City of Cupertino staff to identify the local businesses along Bubb Road that will be affected by the proposed UPRR Trail corridor. Once these businesses are identified, Alta will lead and administer a minimum of two (2) meetings with each of the businesses to discuss their needs for potential access from their parking lots. Alta will prepare all agenda, associated presentation materials, and meeting minutes following each meeting.

Community Outreach Meetings

Please refer to Task 5: Facilitate Community Outreach and Public Participation Efforts for the community outreach meetings plan.

Task 7 Deliverables:

- Final project scope and work schedule from the project kick-off Meeting
- Agendas, meeting materials, and meeting minutes for the City staff meetings
- Presentation and reports for the City council meetings
- Meeting materials and presentations for the City commission meetings
- Agendas, meeting materials, and meeting minutes for each of the agency meetings
- Agendas, meeting materials, and meeting minutes for each of the local business meetings
- Meeting materials and presentations for the community outreach meetings

Additional Task

Task 8. Boundary and Topographic Survey

Task 8.1. Topographic Survey

We propose to provide a topographic survey information at a scale of 1" = 20'. Areas where additional topographic survey information is required will be identified by the Alta team and will typically show the location of existing trees, structures, walkways, fences, adjacent roadways, and utility information within the project areas. The location of utility vaults, manholes, catch basins and invert information of storm and sanitary sewers will be shown based upon a field survey. The location of underground utilities lines such as gas, water, electric, and any on-site utilities will be shown based upon available agency records. Mechanical detection of existing utilities is specifically excluded.

Task 8.2. Boundary Survey

We propose to provide property boundary information where required including tie-in with adjacent streets, curbs, etc. We will show boundary lines, giving length and bearing (including reference on basis) on each straight line; interior angles; radius, point of tangency and length of curved lines.

Exhibit B - Schedule of Performance

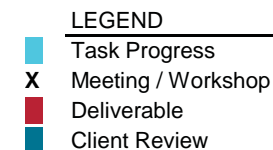
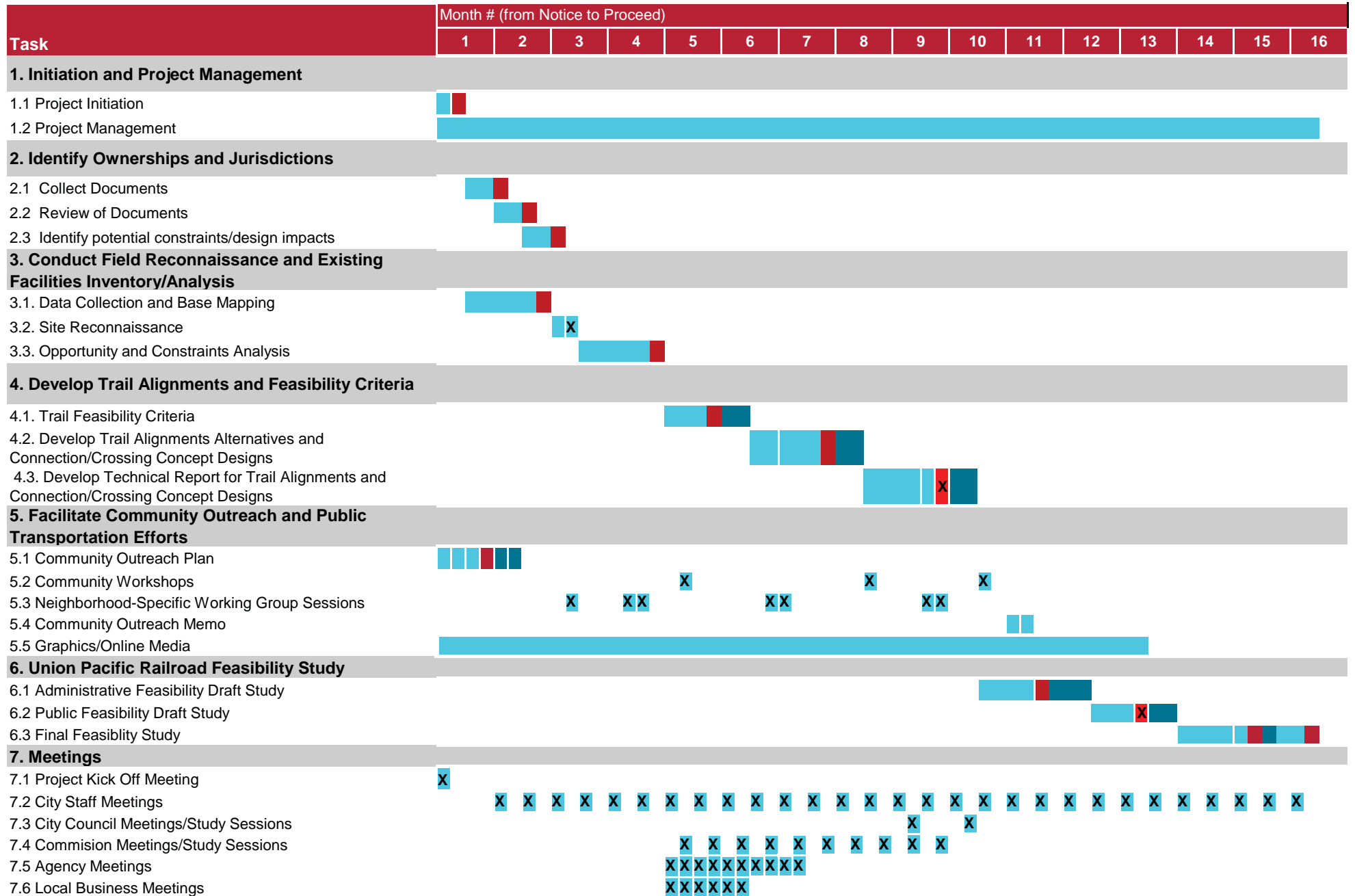


Exhibit C - Compensation

City of Cupertino

Cupertino Union Pacific Railroad Trail Feasibility Study

TASK	Alta Planning + Design									Sandis								Biotic	Task Hours	Total Task Fee
	Principal-in-Charge George M. Hudson, P.I.A.	Project Manager Greg Maher, P.I.A., A.S.I.A.	Assistant Project Manager Brian Burchfield, P.I.A.	Outreach Lead Jeff Knowles, AICP	Planner Lola Torney	Designer Reed Gordon	Senior Engineer Jason Cook, PE, OSD	Engineer Joseph Paull	GIS Analyst Zachary Robinson	Principal-in-Charge Ron Sanzo, PE, TE	Project Manager Bruce Davis, PE	Project Engineer Jenner Philips	CAD Drafter Colin Findlay	Senior Surveyor Kelly Johnson, P.L.S.	Project Surveyor TBD	2-Person Survey Crew TBD	Biologist Kathleen Lyons			
	\$265	\$200	\$133	\$175	\$112	\$105	\$145	\$112	\$105	\$200	\$165	\$140	\$105	\$175	\$140	\$295	\$145			
1. Initiation and Project Management	7	34	64	16	4	0	12	0	0	0	0	0	0	0	0	0	4	141	\$22,735	
1.1 Project Initiation	1	4	4	4	4		4										4	25	\$3,905	
1.2 Project Management	6	30	60	12			8											116	\$18,830	
2. Identify Ownerships and Jurisdictions	1	4	8	0	0	16	10	0	24	14	22	0	0	28	64	0	0	191	\$28,069	
2.1 Collect Documents	1	2	4			8	8		16	2	2			4	16			63	\$8,547	
2.2 Review of Documents		2	4			8	2		8	4	8			20	40			96	\$14,122	
2.3 Identify potential constraints/design impacts										8	12			4	8			32	\$5,400	
3. Conduct Field Reconnaissance and Existing Facilities Inventory/Analysis	2	5	24	14	20	36	28	16	36	3	8	20	0	0	0	0	30	242	\$31,894	
3.1. Data Collection and Base Mapping		1	8	2		16	8	4	12	1	4	4					6	66	\$8,452	
3.2. Site Reconnaissance		2	8	4	4	4	4	4	8			8					12	58	\$7,760	
3.3. Opportunity and Constraints Analysis	2	2	8	8	16	16	16	8	16	2	4	8					12	118	\$15,682	
4. Develop Trail Alignments and Feasibility Criteria	6	6	36	24	36	48	24	6	12	0	0	0	0	0	0	0	0	198	\$26,262	
4.1. Trail Feasibility Criteria	2	2	12	8	12	16	8	2	12									74	\$9,594	
4.2. Develop Trail Alignments Alternatives and Connection/Crossing Concept Designs	2	2	12	8	12	16	8	2										62	\$8,334	
4.3. Develop Technical Report for Trail Alignments and Connection/Crossing Concept Designs	2	2	12	8	12	16	8	2										62	\$8,334	
5. Facilitate Community Outreach and Public Participation Efforts	4	26	30	50	110	32	4	16	0	0	0	0	0	0	0	0	0	272	\$37,052	
5.1 Community Outreach Plan	2	2	2	4	8													18	\$2,792	
5.2 Community Workshops		12	12	18	40		4	16										102	\$13,998	
5.3 Neighborhood-Specific Working Group Sessions		8	16	24	30													78	\$11,288	
5.4 Community Outreach Memo	1	2		4	16	2												25	\$3,367	
5.5 Graphics/Online Media	1	2			16	30												49	\$5,607	
6. Union Pacific Railroad Trail Feasibility Study	6	24	32	36	30	48	48	30	0	0	0	0	0	0	0	0	3	257	\$36,101	
6.1 Administrative Feasibility Draft Study	2	8	12	12	10	16	16	10										86	\$12,066	
6.2 Public Feasibility Draft Study	2	8	12	12	10	16	16	10									2	88	\$12,356	
6.3 Final Feasibility Study	2	8	8	12	10	16	16	10									1	83	\$11,679	
7. Meetings	3	44	76	32	16	0	24	8	0	0	16	0	0	0	0	0	0	223	\$23,967	
7.1 Project Kick Off Meeting	1	4	4	4														13	\$2,297	
7.2 City Staff & Team Meetings	1	8	16	8			8											41	\$6,553	
7.3 City Council & Commission Meetings/Study Sessions	1	8	8	8	8		4											37	\$5,805	
7.4 Commision Meetings/Study Sessions		8	20	12	8		8	8										64	\$9,312	
7.5 Agency Meetings	2	8	16				4				16							46	\$7,478	
7.6 Local Business Meetings	2	8	12															22	\$3,726	
Additional Tasks																				
8. Boundary and Topographic Survey	1	1	8	0	0	0	8	0	0	3	8	4	70	24	48	86	0	261	\$48,809	
8.1 Topographic Survey	1	1	8				8			1	4	4	54	4	8	54		147	\$27,529	
8.2 Boundary Survey										2	4		16	20	40	32		114	\$21,280	
Staff Hours	29	143	270	172	216	180	150	76	72	17	46	20	0	28	64	0	37	1785	\$254,889	
Reimbursable Expenses & Travel																			\$5,000	
Project Total without Additional Task 8	\$7,685	\$28,600	\$35,910	\$30,100	\$24,192	\$18,900	\$21,750	\$8,512	\$7,560	\$3,400	\$7,590	\$2,800	\$0	\$4,900	\$8,960	\$0	\$5,365		\$211,080	
Project Total with Additional Task 8																			\$259,889	

GENERAL NOTES:
* Hours and staff assignments can be adjusted by the consultant as needed to implement the tasks described during the course of the project.

EXHIBIT D

Insurance Requirements

Professional/Consulting Services Contracts

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. ***Commercial General Liability*** (CGL): Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, contractual liability, property damage, bodily injury, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project (ISO CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO CG 20 01 04 13
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO Form Number CA 00 01 covering any auto (Code 1), or, if Contractor has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees).*
4. ***Professional Liability***. Insurance which includes coverage for professional acts, errors and omissions, with limits no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate *(if applicable)*.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and higher insurance limits maintained by Contractor.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the Services

performed by or on behalf of Contractor including materials, parts, or equipment furnished. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

Primary Coverage

For any claims related to this Contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Contractor grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

City may approve self-insured retentions and require proof of Contractor's ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurers must be acceptable to City and licensed to do business in California, and each insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

Claims Made Policies (applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
2. Insurance must be maintained for at least five (5) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

Verification of Coverage

Contractor shall furnish the City with acceptable original certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City prior to commencing the Services. City retains the right to demand verification of compliance at any time during the Contract.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Insurance coverage shall not limit Contractor's duties to indemnify, defend and hold City harmless. City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.