

**DRAFT CONSULTANT SERVICES AGREEMENT BETWEEN
THE CITY OF SUNNYVALE
AND SALLY SWANSON ARCHITECTS, INC.
FOR ADA TRANSITION PLAN**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SALLY SWANSON ARCHITECTS, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services to conduct an ADA Self Evaluation, Barrier Assessment, and Public Outreach for the development of an ADA Transition Plan; and

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

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be for one year, beginning from the date of agreement execution, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

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

4. Compensation

CITY agrees to pay CONSULTANT amount not-to-exceed Two Hundred Sixty Nine Thousand Four Hundred Fifteen and No/100 Dollars (\$269,415.00). Payments shall be made upon CITY's acceptance of completed tasks, and in further accordance with the payment provisions specified in this section and in Exhibit "B", Fee Schedule. CONSULTANT shall submit invoices no more frequently than monthly to CITY's Accounts Payable unit.

5. Ownership of Documents

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

6. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

7. Confidential Information

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

8. Compliance with Laws

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

9. Independent Contractor

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

10. Indemnity

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

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "E" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "E."

12. CITY Representative

Shahid Abbas, Transportation and Traffic Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Sally Swanson, President, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

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

To CONSULTANT: Sally Swanson, President
Sally Swanson Architects, Inc.
220 Sansome Street. Suite 1100
San Francisco, CA 94104

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

15. Assignment

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

16. Termination

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

SALLY SWANSON ARCHITECTS, INC.
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

Exhibit A

SCOPE OF SERVICES

I. GENERAL

Following is a proposed scope of services for the development of the City's ADA Self Evaluation and Transition Plan. Additional steps may be added as the Consultant determines appropriate based upon their experience.

1. ADA Self Evaluation

- a. The Consultant shall develop the procedure and forms needed to conduct a Self Evaluation.
- b. The Consultant shall compile the final Self Evaluation Report.

Deliverable(s):

- Self Evaluation Update recommendations including proposed procedures and forms
- Draft Self Evaluation Report
- Final Self Evaluation Report

2. City ADA Policy and Practices

The Consultant shall review and recommend any needed changes to the City's current ADA policies and practices and propose new/additional polices as needed.

3. Barrier Assessment

a. Buildings

- i. The Consultant shall determine which City buildings are subject to the requirements of the ADA.
- ii. The Consultant shall compile plans (if available) for all City buildings and its associated parking lot requiring assessment. Please note that the City has capital projects to upgrade many existing buildings. Only those buildings, which are not part of the capital project, will need to be surveyed and included in this report. Please refer to Exhibit A which documents which buildings are included as part of the capital project and would not need to be surveyed.
- iii. The Consultant shall conduct the necessary investigations of the areas of each City building and its associated parking lot open to public access.
- iv. The Consultant shall originate Access Compliance Assessment Reports (ACAR) identifying each physical element within the public areas of City buildings and its associated parking lot that constitutes a code violation or otherwise hinders or prevents access to persons with disabilities. Compliance shall be measured using the Federal ADA Accessibility Guidelines (ADAAG) and State Title 24 Building Code.

Each ACAR shall include, but is not limited to the following:

- Executive summary;
- As-built dimensions as it relates to ADA access;
- Barrier Severity Rating (relative level of impact to access);

- Reference to code defining the barrier to access;
- Proposed solution(s) to eliminate the barrier;
- Individual detailed cost estimate for each solution;
- Digital photograph(s) of each barrier to access;
- Reference drawing/map showing the location of the barrier.

Deliverable(s):

- Draft ADA Compliance Assessment Reports for City buildings
- Final ADA Compliance Assessment Reports for City buildings

b. Public Rights-of-Way

- i. The Consultant shall conduct field investigations of all City of Sunnyvale streets (approximately 260 miles), off-street trails, and parking lots.

The City has capital projects for remodeling and upgrading all park buildings and associated parking lots. At that time all the park facilities will be upgraded to meet ADA standards.

- ii. The Consultant shall originate ACAR's identifying each physical element within the public rights-of-way that constitutes a code violation or otherwise hinders or prevents access to persons with disabilities, including non-compliance of traffic control elements. Compliance shall be measured using the ADAAG (ADA Accessibility Guidelines for Buildings and Facilities), the Public Rights of Way Guidelines (PROWAG) from the Federal Access Board, the Federal Highway Administration's California Edition of the Manual on Uniform Traffic Control Devices (MUTCD) and California Code of Regulations/Title 24. Each ACAR shall include the following items:

Each ACAR shall include, but is not limited to the following:

- Executive summary;
- As-built dimensions as it relates to ADA access;
- Barrier Severity Rating (relative level of impact to access);
- Reference to code defining the barrier to access;
- Proposed solution(s) to eliminate the barrier;
- Individual detailed cost estimate for each solution;
- Digital photograph(s) of each barrier to access;
- Reference drawing/map showing the location of the barrier.

Deliverable(s):

- Draft ADA Compliance Assessment Reports for City rights-of-way (including off-street trails)
- Final ADA Compliance Assessment Reports for City rights-of-way (including off-street trails)

4. Comprehensive ADA Self Evaluation and Transition Plan

The Consultant shall develop the comprehensive ADA Self Assessment and Transition Plan for Buildings and Public Rights-of-Way. The same level of detail presented in the

ACAR shall be provided in the ADA Transition Plan reports, as a minimum requirement. **The plan shall include prioritization of barrier removals and cost estimates for those removals.**

The ADA Transition Plan shall include, but is not limited to, the following components:

- Methodology for evaluation of barriers,
- Methodology for prioritization of barrier remediation,
- Estimated costs for barrier remediation,
- Implementation phasing schedule,
- Procedures and forms for monitoring implementation,
- Procedures and forms for performing evaluations of additional barriers,
- Procedures and forms for filing Requests for Accommodation,
- Standard drawings for remediation methods, and
- A section shall also be included that lists references and contacts information for ADA and accessibility related resources.

Deliverable(s):

- Draft ADA Self Evaluation and Transition Plan
- Final ADA Self Evaluation and Transition Plan

5. Public Participation and Outreach

The City would like to host a Community Meeting to advise the public of the ADA Self Assessment and Transition Plan project and to provide the opportunity for interested persons, individuals with disabilities or organizations representing persons with disabilities to participate in the development of the plan. The Consultant shall assist the City with organizing a Community Meeting to inform the public of the project and receive initial input on the process. The Consultant shall attend and host the meeting, maintain a record of the proceedings and comments and be prepared to answer questions within their area of expertise.

Deliverable(s):

- Public meeting agendas and minutes

6. Project Database and Mapping

The Consultant shall develop a database for the ADA Transition Plan using Microsoft Excel and GIS. The purpose of the database is to facilitate ongoing monitoring and updating of the final comprehensive ADA Transition Plan by City staff. The database shall correlate all aspects of the transition plan and shall be produced using the database, including but not limited to, Access Compliance Assessment Reports, Transition Plans, reference drawings, standard drawings and photographs. The database shall be the property of the City of Sunnyvale when the ADA Transition Plan compilation is complete.

The Consultant shall develop a city-wide reference map using GIS. The map shall fully show distinct points for each identified barrier to access.

Deliverable(s):

- Draft format for Database and Project Map

- Final format for Database and Project Map

7. City Staff Training

The Consultant shall train designated City staff in the following areas:

- Applicable government code, statues and regulations;
- Performing field investigations and inspections;
- Preparation of ADA Compliance Assessment Reports;
- Using and maintaining the database;
- Using and maintaining the project map; and
- Monitoring and updating the ADA Self Evaluation and Transition Plan.

8. Meetings

The Consultant shall include at least three project meetings and two meetings with City advisory boards. The Consultant shall attend and provide a presentation to City Council on the ADA Self Evaluation and Transition Plan as part of one of the City advisory board meetings.

**Exhibit B
Fee Schedule**

Task #	Tasks Task Description	Labor								Subconsultants****						ODC's			Total Total Fee	
		Principal-in-Charge	Project Manager	Sr. Tech. Architect	Sr. Policy Specialist	GIS Specialist	Access Surveyor	Technical Staff	Total Hours	Total Labor Costs	Title	Title	Title	Title	Title	Title	Other Direct Costs			
		Sally Swanson	Jasper Kirsch	Ann Wright	Michael Paravagna	Brad Becker	(Various)	(Various)			Const. Name	Const. Name	Const. Name	Const. Name	Const. Name	Const. Name	Car & Gas (Weekly Rate @ \$250)	Car & Gas (Daily Rate @ \$65)		Profiler (Monthly Rate @ \$4,000)
\$225	\$160	\$160	\$160	\$95	\$95	\$95	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS	Fee/Hr or LS				
1	ADA Self Evaluation																			
	a. Develop Procedure and Forms		4	2	8				14	\$2,240.00										
	b. Conduct Self Evaluation Survey and Recommendations		8	2	20				30	\$4,800.00										
	c. Draft Self Evaluation Report		8	2	16			4	30	\$4,540.00										
	d. Final Self Evaluation Report		8	2	16			4	30	\$4,540.00										
2	City ADA Policy and Practices																			
	a. Review City Policy and Practices		4	2	8				14	\$2,240.00										
	b. Recommend Needed Changes and Propose Additional Policies		4	2	8				14	\$2,240.00										
3.1	Barrier Assessment - Buildings																			
	a. Survey Preparation and Data Collection (Facilities per Addendum #1 Exhibit A)		8						140	\$14,580.00							\$1,000.00			
	b. Draft ADA Compliance Assessment Reports		8	4				4	48	\$6,860.00										
	c. Final ADA Compliance Assessment Reports		8	4					24	\$4,200.00										
3.2	Barrier Assessment - Public Rights-of-Way**																			
	a. Survey Preparation and Data Collection (City Sidewalk & Trails)		8	4			8		688	\$71,080.00							\$2,375.00		\$12,000.00	
	b. Survey Preparation and Data Collection (Citywide Traffic Signals & Curb Ramps)		8	4			8		768	\$78,680.00							\$2,875.00			
	c. Draft ADA Compliance Assessment Reports		12	4					48	\$7,120.00										
	d. Final ADA Compliance Assessment Reports		8	4					24	\$4,200.00										
4	Comprehensive ADA Self Evaluation and Transition Plan																			
	a. Draft ADA Self Evaluation and Transition Plan		8	4	8				40	\$7,000.00										
	b. Final ADA Self Evaluation and Transition Plan		8	4	8				24	\$5,480.00										
5	Public Participation and Outreach																			
	a. Prepare Meeting Agenda and Assist City to Organize & Host a Community Meeting		8	2	8				4	\$3,260.00										
	b. Prepare Public Meeting Minutes		8		8				4	\$2,940.00										
6	Project Database and Mapping																			
	a. Draft Format for Database and Project Map		4				104		16	\$12,040.00										
	b. Final Format for Database and Project Map		4				56		16	\$7,480.00										
7	City Staff Training***																			
	a. Applicable Government Code, Statutes and Regulations		8						8	\$0.00										
	b. Field Inspections and Preparation of Report		8						8	\$0.00										
	c. Monitoring and Updating Database, ADA Self Evaluation and Transition Plan		8						8	\$0.00										
8	Meetings																			
	a. Project Meetings and Meetings with City Advisory Boards	2	8		2				12	\$2,050.00								\$260.00		
	b. Presentation to City Council on ADA Self Evaluation and Transition Plan	6	6		6				18	\$3,270.00								\$65.00		
	Proposal Subtotal	8	174	46	116	176	1600	320	2440	\$250,840.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,250.00	\$325.00	\$12,000.00	
	Optional Services																			
	1 -----								0	\$0.00										
	2 -----								0	\$0.00										
	3 -----								0	\$0.00										
	4 -----								0	\$0.00										
	5 -----								0	\$0.00										
	Total Optional Services	0	0	0	0	0	0	0	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	Total Including Optional Services	8	174	46	116	176	1600	320	2440	\$250,840.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,250.00	\$325.00	\$12,000.00	

**SSA assumes that this task will include the survey of the citywide traffic signals and curb ramps.
 ***SSA will provide up to 24 hours of technical support and training at no cost for the individual tasked with Transition Plan implementation and update.
 ****SSA providing all services in-house; no subconsultant services required.

INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant 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 of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultant's Profession: \$2,000,000 per claim.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.