

RESOLUTION NO. 99-16
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
APPROVING AGREEMENT FOR ENGINEERING SERVICES
AVALON DRIVE CURB AND GUTTER ASSESSMENT DISTRICT

NOW THEREFORE, BE IT RESOLVED that this City Council approves that certain agreement between the City of Los Altos, and A.C. & H. for design engineering services for Avalon Drive Curb and Gutter Assessment District, City of Los Altos, Santa Clara County, California, dated the 8th day of June, 1999, and attached to this resolution.

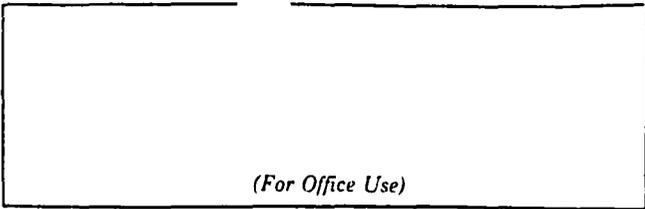
This City Council authorizes the Mayor to sign the agreement and the City Clerk is authorized to attest its execution.

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Los Altos, California, at a meeting thereof held on the 8th day of June, 1999, by the following vote of members thereof:

AYES: Mayor Becker, Councilmembers Casto, La Poll, Lear, and Moss
NOES: None
ABSENT: None


Louis E. Becker, Mayor


City Clerk



(For Office Use)

400 Capitol Mall, Suite 232, Sacramento, CA (916) 444-3060
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of Civil Engineers and Land Surveyors

STANDARD FORM OF AGREEMENT BETWEEN CLIENT AND CONSULTANT

AGREEMENT entered into at Los Altos

made this 8 day of June, 1999, by and between

City of Los Altos

One North San Antonio Road, Los Altos

hereinafter called "client," and A. C. & H. CIVIL Engineers
2443 Ash Street

Palo Alto, CA 94306

hereinafter called "consultant."

Client intends to Build Curb and Gutter on Avalon Drive through
an assessment district, including driveways and pavement overlay
as specified in the "Scope of Work" dated May 14, 1999.

hereinafter called "project."

The present record owner is:

Name: City of Los Altos, for street right of way.

Address: _____

The lender is (if none, state below):

Name: None

Address: _____

Client and consultant for mutual consideration hereinafter set forth, agree as follows:

A. Consultant agrees to perform the following services:

Survey, design, construction staking, and assessment
diagram as listed on the proposal dated May 26, 1999. See
attached proposal.

B. Client agrees to compensate consultant for such services as follows:

See proposal. Total compensation \$20,500 for the items of
work listed. Any changes in scope of work to be billed at usual
rates. Payment to be made monthly for completed work.

C. Client has read and understands all the standard Provisions of Agreement set forth on the reverse hereof and the Exhibits hereto, and agrees all Standard Provisions and Exhibits are a part of this Agreement and are binding on client.

client's initials

D. Client and consultant agree that the late payment charge provided for in Paragraph 33 of the Standard Provisions of Agreement shall be one percent per month

client's initials

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

CONSULTANT:

By Alan Hutzinger

(Signature)

Name ALAN HUNTZINGER

(Print)

Title PRESIDENT

CLIENT:

By _____

(Signature)

Name _____

(Print)

Title _____

STANDARD PROVISIONS OF AGREEMENT

Client and consultant agree that the following provisions shall be part of their agreement:

1. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of client and consultant.
2. This agreement shall not be assigned by either client or consultant without the prior written consent of the other.
3. This agreement contains the entire agreement between client and consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both client and consultant.
4. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on client and consultant.
6. Consultant is not responsible for delay caused by activities or factors beyond consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of client to furnish timely information or approve or disapprove consultant's work promptly, faulty performance by client or other contractors or governmental agencies. When such delays beyond consultant's reasonable control occur, client agrees consultant is not responsible in damages nor shall consultant be deemed to be in default of this agreement.
7. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits.
8. Consultant shall only act as an advisor in all governmental relations.
9. If client institutes a lawsuit against consultant for any alleged negligence, error, omission or other failure to perform, and if client fails to obtain a judgment in client's favor, or if the lawsuit is dismissed, or if judgment is rendered for consultant, client agrees to pay consultant all costs of defense, including attorneys' fees, expert witness fees, court costs and any and all other expenses of defense. Such payment shall be made immediately following dismissal of the case or upon entry of judgment.
10. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
11. Client agrees that in the event client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which consultant's principal place of business is located, and client waives the right to bring, try or remove such litigation to any other county or judicial district.
12. All original papers, documents, drawings and other work product of consultant, and copies thereof, produced by consultant pursuant to this agreement, except documents which are required to be filed with public agencies, shall remain the property of consultant and may be used by consultant without the consent of client.
13. All services provided pursuant to this agreement may be used by client only for the project described on the face hereof.
14. Client and consultant agree to cooperate with each other in every way on the project.
15. Upon written request, client and consultant shall execute and deliver, or cause to be executed and delivered, such additional instruments and documents which are necessary to perform the terms of this agreement.
16. This agreement shall not be construed to alter, affect or waive any lien or stop notice rights which consultant may have for the performance of services pursuant to this agreement.
17. If payment for consultant's services is to be made on behalf of client by a third-party lender, client agrees that consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.
18. Consultant makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and consultant shall not be responsible for fluctuations in cost factors.
19. Consultant does not guarantee the completion or quality of performance of contract or the completion or quality of performance of contracts by the construction contractor or contractors, or other third parties, nor is he responsible for their acts or omissions.
20. Consultant makes no warranty, either express or implied, as to his findings, recommendations, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.
21. Consultant makes no representations concerning soil conditions unless specifically included in writing in this agreement, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.
22. Estimates of areas provided under this agreement are not to be considered precise unless consultant specifically agrees to provide the precise determination of such areas.
23. In the event that changes are made in the plans and specifications by client or by any other person other than consultant, which changes affect consultant's work, any and all liability arising out of or resulting from such changes is waived by client against consultant, and client assumes full responsibility and liability for such changes unless client gives consultant prior written notice of such changes and consultant consents in writing to such changes. Client agrees to indemnify consultant against any and all liability, loss, costs, damages, fees of attorneys and other expenses which consultant may sustain or incur as a result of such unconsented changes.
24. Client agrees not to use or permit any other person to use plans, drawings, or other documents prepared by consultant, which plans, drawings, or other documents are not signed by consultant. Client agrees to be liable and responsible for any such use of unsigned plans, drawings, or other documents not signed by consultant and waives liability against consultant for their use.
25. Consultant has a right to complete all services agreed to be rendered pursuant to this contract. In the event this agreement is terminated before the completion of all services, unless consultant is responsible for such early termination, client agrees to release consultant from all liability for work performed.
26. If client fails to pay consultant within thirty (30) days after invoices are rendered, client agrees consultant shall have the right to consider such default in payment a material breach of this entire agreement, and, upon written notice, the duties, obligations, and responsibilities of consultant under this agreement are terminated. In such event, client shall promptly pay consultant for all fees, charges, and services provided by consultant.
27. Client agrees that consultant will not perform on-site construction review for this project unless specifically provided for in this agreement, that such services will be performed by others, and that the client will defend, indemnify, and hold consultant harmless from any and all liability arising from or resulting from the performance of construction review by other persons.
28. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and client further agrees to defend, indemnify and hold consultant harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of consultant.
29. Client agrees to limit consultant's liability to client and to all contractors and subcontractors on the project, due to professional negligence, acts, errors or omissions of consultant, to the sum of \$50,000 or consultant's fees, whichever is greater.
30. Client agrees to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name consultant as an additional insured as their interest may appear.
31. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this agreement.
32. Client agrees that the periodic billings from consultant to client are correct, conclusive, and binding on client unless client within ten (10) days from the date of receipt of such billing, notifies consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing.
33. Client agrees to pay a late payment charge which will be computed at the periodic rate specified on the front hereof and will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing.
34. If consultant, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field work, and such plans, specifications, and other documents and/or field work are required by one or more governmental agency, and one or more such governmental agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field work thereby required shall be paid for by client as extra work.
35. In the event of any increase of costs due to the granting of wage increases and/or other employee benefits to field or office employees due to the terms of any labor agreement, or rise in the cost of living, during the lifetime of this agreement, such percentage increase shall be applied to all remaining compensation.
36. Client agrees that if client requests incidental services not specified pursuant to Paragraph A on the front hereof, client agrees to pay for all such incidental services as extra work.
37. In the event that any staking is destroyed, damaged, or disturbed by an act of God or parties other than consultant, the cost of restaking shall be paid for by client as extra work.
38. Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this agreement.
39. In the event all or any portion of the work prepared or partially prepared by consultant be suspended, abandoned, or terminated, client shall pay consultant for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein.
40. This agreement shall be governed by and construed in accordance with the laws of the State of California.



A.C. & H. CIVIL ENGINEERS, INC.

ASSOCIATION OF JOHN G. R. CLEGG & ALAN HUNTZINGER
2443 ASH STREET PALO ALTO, CALIF. 94306
(650) 327-3900 (408) 294-4000

May 26, 1999

Mr. Bruce Bane
Director of Public Works
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Re: Assessment District - Avalon Drive

We are pleased to submit a proposal for the assessment district to repave the street and build curbs and gutters on Avalon Drive. As I mentioned to you, I have done assessment districts for the City of San Jose for similar projects. Our proposal is for the items of work listed, as follows:

1. Survey to locate existing facilities, driveways, trees, utilities, signs, etc.	\$5,000
2. Design curb and gutter and driveways, new street grades,	\$4,000
3. Cost estimate	\$2,000
4. Construction staking	\$7,500
5. Assessment Diagram	\$2,000
Total	<u>\$20,500</u>

Please let us know when you wish to proceed.

Sincerely,

Alan Huntzinger

Civil Engineer