

MEETING DATE: February 17, 2009

AGENDA ITEM: Authorization to Enter into an Agreement with KTGy Inc. to Develop Conceptual Site Plan for the Washington National Project.

ATTACHMENTS

	<u>Pages</u>
1. KTGy/Psomas Proposal	1 - 17

February 4, 2009

Mr. Sol Blumenfeld
Assistant Executive Director
Redevelopment Agency
Community Development Department
9770 Culver Boulevard
P.O. Box 507
Culver City, CA 90232-0507

Re: **Site Planning Services to prepare: 1.) Conceptual Site Plan for Washington National Project and, 2.) Encroachment Permit Applications for proposed bus intermodal service.**

Culver City, California
KTTY No. 20090050

Dear Sol,

Our KTTY team has enjoyed working with the Culver City Community Development Department over this past year. We thank you for the opportunity to provide you with this proposal for both site planning services as well as the coordination of Caltrans engineered Encroachment drawings.

The KTTY team prides itself in its ability to translate a Client's needs and desires into an aesthetic, workable product which has lead to a history of successful, award-winning projects. Accordingly, the KTTY Group is pleased to submit the following proposal for the services necessary to provide you with conceptual design and planning documents for the City's transit oriented development project.

A description of this development, as we understand it based upon our meeting, KTTY's proposed scope of services and proposed compensation are as follows:

PROJECT DESCRIPTION

Conceptual site planning for an approximately 4.1 acre site located at the intersection of Washington and National Boulevards in Culver City, California. The program, as stated in our meeting with you, is as follows:

- I. **Bus Encroachment (As recommended by Transportation Department)**
- II. **Site Plan (Per preliminary plan approved by Agency)**
- III. **CAD Generated Parking Levels**

IV. Two (2) Diagrammatic Sections

Whether or not the Client is able to obtain Caltrans clearance bears no relevance to the requirements of this contract.

By signing this agreement, Client agrees to pay KTG Architecture on an hourly basis in accordance with the attached Rate Schedule referenced as Exhibit "A" plus reimbursable expenses.

SCOPE OF SERVICES AND COMPENSATION FOR SERVICES

Planning and Conceptual Design

During this phase, KTG will develop planning concepts and a conceptual design for inclusion into the City's future Request for Qualifications document for the site.

Client has provided KTG with a topographic/ALTA survey which KTG will be able to rely on for accuracy.

Client will supply street design and related dedications to show net site areas.

Scope of Work and Fee

- Development of the Engineered Encroachment drawings per the attached proposal from Psomas.
- Development of 1 site plan reflecting identified development program and project layout. The plan shall be drawn in CAD on a refined base reflecting the net site area.

Upon your review and comments, we shall continue refinement of the site plan as directed by the Client.

- Plans shall contain project summary, parking analysis, as well as additional preliminary site information required by the City of Culver City.

General

- Attendance at up to two (2) coordination meetings with planning staff, Client, or other Client retained consultants in the City of Culver City, as well as general project coordination, administration, etc.

Total fee for the aforementioned scope of services:

Engineered Encroachment drawings (Per attached proposal from Psomas)

\$39,500 X 1.15 =

\$45,425 (plus reimbursable expenses)

Architectural Conceptual Design and Site Planning

Hourly allowance not to exceed

\$18,000.00 (plus reimbursable expenses)

Non-scope Services

- The above-described services are based on routine applications that do not require special procedures or the preparation of additional information. All plans and other documents will be prepared only once. Items of service that are not specified in the scope shall not be assumed to be included.

Exclusions

The following items are further excluded from the scope of this Agreement:

- Verification of any existing off-site or on-site conditions; (To be supplied by the Client)
- Topographic, boundary or site surveys; (To be supplied by the Client)
- Soil Reports, investigation or recommendations; (To be supplied by Metro)

Additional Services/Changes in Service

It may be necessary for KTG Y to perform services beyond the scope of services described above. Should any unforeseen changes in the scope of service arise, to the extent feasible, you will be notified of the circumstances and we will obtain your authorization before performing such additional or revised services or incurring related additional out-of-pocket expenses. Such items of service may include, but are not limited to the following:

COMPENSATION

Compensation shall be as noted above for our services and shall be on an hourly basis using our standard hourly rate schedule which is attached as Exhibit "A", with a maximum as described above, plus reimbursable expenses.

If Architect hires professional consultants, Architect is hiring them for coordination purposes only. Architect is not an expert in any of their disciplines and assumes no responsibility for their work product.

Additional services, if required, would be billed on an hourly basis per the standard rate schedule, attached as Exhibit "A".

Reimbursable expenses, including printing, photography, plotting, airfare, car rental, etc. shall be billed at a rate of 1.15 times that invoiced to us.

If this proposal is acceptable to you, under the terms and conditions in Exhibit "B" please indicate by signing below as well as providing us with the retainer referenced above.

If you have any questions regarding this proposal or need any further clarification, please do not hesitate to call.

Sincerely,

KTGY GROUP, INC.

Laurel Gillette, AIA
Studio Director

Mr. Sol Blumenfeld
Assistant Executive Director
Redevelopment Agency
Community Development Department

Finance _____

Date: _____

Exhibit "A"

**KTGY Group, Inc.
Hourly Rate Schedule**

Level I:	PRINCIPALS	\$190.00/Hour
Level II:	DIRECTORS (Design/Planning/Architecture/ Senior Project Management)	\$170.00/Hour
Level III:	ASSOCIATE DIRECTORS (Design/Planning/Architecture/ Project Management)	\$155.00/Hour
Level IV:	SENIOR PROFESSIONALS (Senior Designer/Planner/Architect)	\$140.00/Hour
Level V:	PROFESSIONALS (Project Designer/Planner/Architect)	\$125.00/Hour
Level VI:	PROFESSIONAL STAFF (Designer/Planner/Job Captain)	\$100.00/Hour
Level VII:	SENIOR STAFF (Designer/Planner/Senior CADD)	\$ 90.00/Hour
Level VIII:	TECHNICAL STAFF (Graphics/CADD)	\$ 80.00/Hour
Level IX:	ADMINISTRATIVE STAFF (Dept. Asst./Word Processing)	\$ 65.00/Hour

Exhibit "B"

Additional services will be compensated on an hourly basis on the rates set forth in our standard rate schedule as provided in Exhibit "A" attached hereto, against the fees as provided in the proposal.

Progress Payments: Payments for Basic and Additional Services and Reimbursable Expenses shall be due and payable upon receipt of the invoice. Our invoices for progress payments for Services shall be based on hours incurred on the Project during the previous billing period, unless the basis of compensation is a lump sum unit rate, or percentage fee, in which case progress payments shall be based on our determination of the percentage of services performed through the previous billing period. Disputes or questions regarding an invoice or a portion of an invoice shall not be cause for withholding payment for the remaining portions due. Amounts unpaid thirty (30) days after the issue date of our invoice shall be assessed a service charge of one and one-half percent (1-1/2%) per month on outstanding balances.

Additional or Hourly Services of Consultants: For Additional Services or other hourly services, compensation shall be a multiple of plus one and one-fifteenth (1.15) times any consultants' invoices to us.

Reimbursable Expenses: For the Reimbursable Expenses, our compensation shall be computed based on a multiple of 1.15 times the amounts invoiced to us.

No deductions, offsets or withholdings shall be made from our compensation for any reason unless the Architect has been found to be legally liable for such amounts. Payments to us for compensation and Reimbursable expenses due shall not be contingent on the construction, completion, or ultimate success of the project. Payment to us shall not be withheld, postponed, or be contingent upon receipt by the Client of offsetting reimbursement or credit from the Contractor or other parties causing Additional Services or expenses.

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on an hourly basis shall be available to the owner or the owner's authorized representative at mutually convenient times. If the Client requests that we provide copies of invoices, vouchers or any other backup documentation, we shall be compensated for providing such copies, at our current printing and hourly rates.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by us and our employees and consultants, if any, in the interest of the Project, as identified in the following clauses:

Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel, including mileage at the standard Federal rate as provided for under Internal Revenue code; long-distance communications, sales taxes; and fees paid for securing approval of authorities having jurisdiction over the Project.

Expense of reproductions, postage, messengers, delivery, telecopying, facsimile, and handling of drawings other document, and other data communications and telecommunications.

If authorized in advance by the Client, expense of overtime work at 1.5 times the employee's billable rate which is in addition to that required under the Basic Services.

Expense of renderings, models, mock-ups, photography, and reprographics not included under Basic Services.

Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Client in excess of that normally carried by us and our consultants if any.

Attorneys Fees: In the event it is necessary for either party to employ an attorney to interpret, enforce or otherwise give effect to this agreement, then the prevailing party shall be entitled to recover reasonable attorneys' fees and costs whether or not the matter proceeds to trial.

Limitation of Liability: In light of the limited ability of the Architect to affect the risks inherent in the Project, and of the disparity between Architect's fee and the potential liability exposure for problems or alleged problems with the Project, Client agrees that if Architect should be found liable for loss or damage due to a failure on the part of Architect, its liability shall be limited to an amount equal to the refund of Architect's fee, or the sum of fifty thousand dollars (\$50,000.00), whichever sum shall be less, as liquidated damages and not as a penalty, and this liability is exclusive. This paragraph shall apply in the event of loss or damage, directly or indirectly to person or property from the performance or non-performance of the obligations set forth by the terms of this Agreement, or from the negligence, active or passive, of Architect, its architects, agents, employees, or independent contractors.

EXHIBIT 'A'
KTGY GROUP, INC.
WASHINGTON-NATIONAL PROJECT
SCOPE OF SERVICES
February 5, 2009

ENGINEERING AND SURVEY PROJECT UNDERSTANDINGS:

This project consists of the design and preparation of survey and civil engineering documents related to the Washington-National Project, located in Culver City. This proposal is based on the following assumptions related to the proposed project:

- Client will provide agency fees for filing applications and plan checking.
- Client will provide Current Title Report, if required.
- Client will provide Soils Reports, if required.
- Client will process all plans, no processing will be provided by Psomas.
- Client will provide architectural drawings including foundation plans.
- The project will be designed and constructed in one phase.
- Client will contract separately with a consultant specializing in dry-utility coordination. These services are not included in this scope.
- To our knowledge, this proposal was prepared without the benefit of review of the site plan by the local agencies or issuance of governmental requirements. If upon agency review, the requirements for off-site improvements or substantial revisions are imposed, Psomas has the right to adjust this Scope of Services and associated fees.
- Should the project be put on hold by the Client or Agency, for a period of six (6) months or longer, Psomas will have the right to review the contract fee summary and make appropriate revisions based on annual adjustments to Psomas fee schedule, changes to the scope of services, as well as start up costs incurred by Psomas.
- This proposal and fee summary is valid for 90 days from the date of preparation. If a contract is not executed within this time frame, Psomas has the right to adjust the scope of services and/or fee summary based on changes in project direction, new information provided to our office, or an adjustment made to the Psomas fee schedule.

SECTION A - SURVEY SERVICES:

1. Design Survey – While we have provided survey for the site before, road widening per Caltrans standards require some additional design survey. This service includes field and office survey of the approximately 40' wide by 250' long area to be widened. Additional surface elevations and culture will be collected along this strip, and cross-sections will be prepared at an interval of 25' plus 50' at each end. This service will be provided one time only, on a fixed fee basis.

SECTION B - ENGINEERING SERVICES:

2. Research and Site Review – Psomas will visit the site and contact the appropriate agencies and internal sources to obtain relevant reference information for the project. This information and documentation may include: record plans, centerline ties, available improvement plans, general design criteria, and utility drawings as needed and available to establish the base information and constraints for the project. We estimate a budget of fifteen (15) hours. We propose to provide the service one time only, on a fixed fee basis.

EXHIBIT 'A'
KTGY GROUP, INC.
WASHINGTON-NATIONAL PROJECT
SCOPE OF SERVICES
February 5, 2009

3. Construction Plan – We will prepare a Caltrans format Street Widening Plan per the Caltrans requirements. The four (4) sheet plan will be prepared at a scale of 1"=20' and will include the following:
 - a. Cover Sheet
 - b. Plan & Profile for street widening
 - c. Street Lighting Plan
 - d. Traffic Control PlanWe propose to provide this service one time only, on a fixed fee basis.
4. Meetings and Coordination – Management and meetings time will be provided for Client, Client's consultants, in-house and agency coordination for the design, production, and minor as required by the local agencies. Psomas will provide the Client or the Client's architect with pertinent information to be incorporated into the development review application. We estimate a budget of twenty (20) hours and propose to provide the service on a time and materials basis. If additional budget is necessary, we will request a budget increase.
5. As-Builts – Based upon the understanding that no additional revisions will be required, we will prepare and process the As-builts plans for the above listed plans per Caltrans and Culver City requirements for bond release. We propose to provide this service one time only, on a fixed fee basis.
6. Support During Construction – After plans approval, and prior to and during construction, we will meet with the construction manager, conduct site visits, and respond to RFI's as requested for clarification of our construction plans on an as needed basis, and as directed by the Client. We will not advise the contractor on means and methods of construction. Due to the unknown level of effort required for this effort, we propose to provide this service on a time and materials basis with an expected budget. This budget is based on approximately twenty (20) hours of effort during the construction period based on a project of this type. If due to unforeseen issues, additional budget is required, we will notify you in writing for a budget increase.

EXHIBIT 'A'
KTGY GROUP, INC.
WASHINGTON-NATIONAL PROJECT
SCOPE OF SERVICES
February 5, 2009

ENGINEERING AND SURVEY EXCLUSIONS:

1. The following services are specifically excluded from this scope as not provided by Psomas:

- Title Company fees for all preliminary and final reports and documents.
- Soils Engineering
- Structural Engineering (including retaining wall calculations, structural details, and retaining wall profiles)
- Landscape and Irrigation Plans and Calculations
- Noise study
- Hydrant flow tests
- Owner will be responsible for implementation of site monitoring and inspecting program as described in the SWPPP.
- Site monitoring, inspection, and reporting program implementation as described in the SWPPP and the certification section of the NOI.
- Quantities and estimates prepared by this office will be for comparison purposes only. All contractors should budget their bids according to their own estimates.
- Other agency or legislative requirements outside the General Permit
- Annual Certification as described in the SWRCB General Permit No. CAS000002, Order No. 99-08-DWQ.
- Traffic studies
- Any additional items not specifically stated in the scope

2. The following services can be provided by Psomas, but are specifically excluded from this proposal:

- Separate revisions to work completed or underway due to a change in information or instruction provided to Psomas by the Client or Client's consultant(s).
- Erosion Control Plan
- Plans Processing
- Other construction plans
- Engineering studies
- Assistance in relocation of overhead utility lines.
- Changes to any designs resulting from a revision to or re-definition of Agency policies
- Construction Staking Services
- Preparation of any separate instrument dedications, legal descriptions or exhibits other than those noted above. Also excluded are revisions as requested by client once the legal descriptions have been submitted to the client.
- Research and plotting of utilities or excavation of or further investigation of the utility type or material. Also excluded is any subsurface detection or location of any transit or related structures.
- SWPPP Report, SUSMP Report, NOI Submittal.
- Any additional items not specifically stated in the scope.

SCHEDULE 'A'
KTGY GROUP, INC.
WASHINGTON-NATIONAL PROJECT
FEES
February 5, 2009

THE CLIENT AGREES TO PAY THE CONSULTANT AS COMPENSATION FOR THE ABOVE-NAMED PROFESSIONAL SERVICES:

<u>TASK</u>	<u>FEE</u>
SECTION A - SURVEY SERVICES:	
1. Design Survey	\$ 5,500
SECTION B - ENGINEERING SERVICES:	
2. Research and Site Review	\$ 3,000
3. Construction Plan	\$ 20,000
4. Meetings and Coordination	\$ 5,000*
5. As-Builts	\$ 2,500
6. Support During Construction	\$ 3,500*
Subtotal:	\$ 34,000
TOTAL BUDGET:	\$ 39,500

** Services to be provided on a time and materials basis.*

Payment is due upon receipt of invoice.

Consultant's work will stop if invoices are outstanding by more than 60 days. If work is stopped, Consultant shall be held harmless for consequential damage. A minimum restart fee of \$2,000.00 shall be applied if work is stopped at the request of the Client or as a result of delinquent invoices.

As may be requested by the Client, additional services beyond those described in Exhibit 'A,' Scope of Services, shall require additional fees to be negotiated between the Client and Consultant.

Psomas shall not be held responsible for lack of information or erroneous information or direction given to either the Client or Consultant by government officials.

AGREEMENT BETWEEN CLIENT AND CONSULTANT

Project No. _____

Agreement entered into at Los Angeles, California on this date of February 5, 2009, by and between:

Client: **KTGY GROUP, INC.**

Consultant: **PSOMAS**

Owner's Representative: **Ms. Laurel Gillette**

Name: **Michael J. Crehan, P.E.**

Address: 1411 5th Street, Suite 300
Santa Monica, CA 90401

Address: 555 S. Flower Street, Suite 4400
Los Angeles, California 90071

Phone: (310) 394-2623 Fax: (310) 394-2625

Phone: (213) 223-1400 Fax: (213) 223-1444

Email: **lgillette@ktgy.com**

Email: **mcrehan@psomas.com**

License No: _____

Client and Consultant agree as follows:

A. Client retains Consultant to perform services for:

Survey and Engineering Services Related to the Washington-National Project, located in Culver City, California.
hereinafter called "project."

B. Consultant agrees to perform the following scope of services:

See attached Exhibit "A" dated February 5, 2009

C. Client agrees to compensate Consultant for such services as follows:

See attached Schedule "A" dated February 5, 2009

D. This agreement is subject to the Provisions of Agreement contained in paragraphs 1 through 47, and the provisions of the exhibits attached hereto and made a part hereof. (List exhibits below.)

PROVISIONS OF AGREEMENT

Client and Consultant agree that the following provisions shall be part of this agreement:

1. **Right to Complete Services.** Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. 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 services performed. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to Paragraph 20. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to Paragraph 20.

2. **Cooperation.** Client and Consultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this agreement. Both Client and Consultant shall endeavor to maintain good working relationships among members of the project team.

3. **Permits.** If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.

4. **Surveys.** If the scope of Consultant's services to be performed pursuant to this agreement includes an ALTA survey, Client agrees that Consultant may sign one of the ALTA survey statements attached to this agreement and incorporated herein by reference. In the event Consultant is required to sign a statement or certificate which differs from the ALTA survey statements contained in the attachment to this agreement, Client hereby agrees to indemnify and hold Consultant harmless from any and all liability arising from or resulting from the signing of any statement which differs from those statements contained in the attachment.

5. **Grading Plans.** If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and the preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this agreement for such services as extra services in accordance with Paragraph 20.

6. **Construction Phase.** If the scope of services of this agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by others and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the

sole negligence or willful misconduct of Consultant.

7. **Fees Due.** All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension or termination costs or expenses.

8. **Invoices.** Client agrees that all billings from Consultant to Client are correct 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 billing.

9. **Late Payment.** Client agrees to pay a monthly late payment charge, which will be the lesser of one and one-half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing.

10. **Governmental Fees.** Upon Consultant's request, Client shall execute and deliver, or cause to be executed and delivered, such additional information, documents or money to pay governmental fees and charges which are necessary for Consultant to perform services pursuant to the terms of this agreement.

11. **Bankruptcy.** Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment issued by the Bankruptcy Court. If the suspension of performance of Consultant's obligation pursuant to this agreement continues for a period in excess of ninety (90) days, Consultant shall have the right to terminate all services pursuant to this agreement.

12. **Mechanics Liens.** This agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the present name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.

13. **Lenders.** 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 to receiving payment for services.

14. **Added Government Requirements.** If Consultant, pursuant to this agreement, produces plans, specifications, or

other documents and/or performs field services, and such plans, specifications, or other documents and/or field services are required by any governmental agency, and such governmental agency changes its ordinances, codes, policies, procedures or requirements after the date of this agreement, any additional office or field services thereby required shall be paid for by Client as extra services in accordance with Paragraph 20.

15. Fee Schedule. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees due to the terms of any labor agreement, or increase in the cost of living, during the lifetime of this agreement, a percentage increase shall be applied to all remaining fees and charges to reflect the increased costs.

16. Restaking. In the event that any staking or record monuments are 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 services in accordance with Paragraph 20.

17. Field Conditions. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by Client as extra services in accordance with Paragraph 20.

18. Government Fees. Client shall pay the costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other similar charges not specifically covered by the terms of this agreement.

19. Record of Survey. Client acknowledges and agrees that if Consultant provides surveying services, which services require the filing of a Record of Survey, or a Corner Record, all of the costs of preparation, examination and filing for the Record of Survey or Corner Record will be paid by Client as extra services in accordance with Paragraph 20.

20. Extra Services. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this agreement.

21. Ownership of Instruments of Service. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all costs involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.

22. Use of Documents. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports, or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and

stamped or sealed by Consultant. Client shall be responsible for any such use of non-final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client further agrees that final plans, specifications, drawings, estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project which is the subject of this Agreement. Such final plans, specifications, drawings, estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant. If signed check-prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.

23. Electronic Media. In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Consultant, Client covenants and agrees that all such electronic files are instruments of service of Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. Client agrees not to reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this agreement. Client agrees not to transfer these electronic files to others without the prior written consent of Consultant. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than Consultant.

Client and Consultant agree that any electronic files furnished by either party shall conform to the CADD specifications, if any. Any changes to the CADD specifications by either Client or Consultant are subject to review and acceptance by the other party. Additional services by Consultant made necessary by changes to the CADD or other software specifications shall be compensated for as additional services.

Electronic files furnished by either party shall be subject to an acceptance period of fifteen (15) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

Client is aware that differences may exist between the electronic files delivered and the printed hard copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed and stamped or sealed hard copy construction documents shall govern.

In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than Consultant or from any reuse of the electronic files without the prior written consent of Consultant.

Under no circumstances shall delivery of electronic files for use by Client be deemed a sale by Consultant, and Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Consultant be liable for indirect or consequential damages as a result of Client's use or reuse of the electronic files.

24. In the event: 1) Client agrees to, authorizes, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by

Consultant; 2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant; or 3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, agents, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from the unauthorized changes.

25. Examination by Contractor. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction-phase work. If the contractor or subcontractors determines there are deficiencies, conflicts, errors, omissions, code violations, improper uses of materials, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors and subcontractors shall notify Client so those deficiencies may be corrected by Consultant prior to the commencement of construction-phase work.

26. Changed Field Conditions. If during the construction phase of the project Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph. Any extra work performed by Consultant pursuant to this paragraph shall be paid for as extra services pursuant to Paragraph 20.

27. Indemnity. Consultant and Client shall each indemnify and hold harmless the other from any and all damages to the extent resulting from their own negligent acts, errors or omissions or those of their respective officers, agents or employees in the performance of the services under this agreement. Notwithstanding the foregoing, neither party shall be liable to the other for any consequential damages. Client agrees to limit the liability of Consultant, its principals, employees and subconsultants to Client and to all contractors and subcontractors on the project (whether to a single agreement or multiple agreements), and to third parties for any claim or action arising in tort, contract, or strict liability, to the total cumulative sum of \$50,000 or Consultant's fee, whichever is greater. Client shall hold harmless, defend and indemnify Consultant from any claims or damages in excess of such amount. Client and Consultant acknowledge that this provision was expressly negotiated and agreed upon.

28. Site Safety. Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors 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, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or

coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.

29. Soils. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement, and shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing. If Consultant retains a soils consultant as a subconsultant, Client shall look solely to such subconsultant for any errors or omissions on the part of such subconsultant.

30. Increased risks. Consultant shall not be required to execute any documents subsequent to the signing of this agreement that in any way might, in the judgment of Consultant, increase Consultant's contractual or legal obligations or risks, or the availability or costs of his or her professional or general liability insurance.

31. Delays. Consultant is not responsible for delay caused by activities or factors beyond Consultants 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 of Consultant's services or instruments of service promptly, faulty performance by Client or other contractors or governmental agencies. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause Consultant to perform extra services, such services shall be paid for by Client as extra services in accordance with Paragraph 20.

32. Actions of Government Agencies. 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, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.

33. Estimates of Quantities/Areas. If the scope of services requires Consultant to estimate quantities, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate. If the scope of services requires Consultant to provide its opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions of probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs. Estimates of land areas and/or soil quantities provided under this agreement are not intended to be, nor should they be considered to be, precise. The estimate will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance.

34. Third Parties. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

35. Standard of Care. Consultant makes no warranty, express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance as practiced in the locality.

36. Hazardous Materials. Client acknowledges that Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, suspend or terminate work on the project until such time as Client retains a qualified contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

Client hereby agrees to bring no cause of action on any basis whatsoever against Consultant, its officers and directors, principals, employees, agents and subconsultants if such claim or cause of action in any way would involve Consultant's services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or any hazardous or toxic materials. Client further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subconsultants from any asbestos and/or hazardous or toxic material related claims that may be brought by third parties as a result of the services provided by Consultant pursuant to this agreement, except claims caused by the sole negligence or willful misconduct of Consultant.

37. Insurance. Client agrees to purchase and maintain, or cause Contractor to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name Consultant as an additional named insured as its interest may appear. Client shall require that its construction contractor maintain general liability insurance with limits of at least \$1,000,000 per occurrence and require that Consultant be named as an additional insured on such policy.

38. Disputes. (a) Except as provided in subdivisions (b) and (c), in an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, Client and Consultant agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise. Client and Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

(b) Subdivision (a) shall not preclude or limit Consultant's right to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) shall not preclude or limit Consultant's right to record, perfect or enforce applicable mechanic's lien or stop notice remedies.

39. Arbitration. In the event the parties to this Agreement are unable to reach a settlement of any dispute arising out of this Agreement or related to the services under this Agreement, then such disputes may, with the written consent of both parties, be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or such other arbitration rules as the parties may choose. In any such arbitration, the laws of the State of where the Project is located shall apply.

40. Binding on Successors. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.

41. No Assignment. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.

42. Integration Clause. This agreement contains the entire agreement between Client and Consultant relating to the project and the provision of services for 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.

43. Waiver. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the agreement.

44. Invalid Provision. 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.

45. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the state where the Project is located.

46. Attorneys Fees. In the event of any litigation arising from or related to the services provided under this agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, experts' fees and other related expenses.

47. Venue. Client agrees that in the event Consultant 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 place of business is located, and Client waives the right to remove such litigation to any other county or judicial district.

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above.

Client: KTG GROUP, INC.

By: _____

Name: _____

Title: _____

Date Signed: _____

Consultant: PSOMAS

By: _____

Name: Michael J. Crehan, P.E.

Title: Vice President

Date Signed: _____

Billing Policies and Procedures

The relationship with our client works best when there is a mutual understanding about fees and payment terms. You are encouraged to discuss with us any questions you may have concerning these policies.

Billing

The value of our services is determined primarily by the time spent on each client matter. Our time records are kept on a weekly basis and invoices are prepared every four or five weeks, depending on our accounting calendar.

Payments

As there is a time lag between rendering professional services and mailing our bills, all invoices are due upon presentation. Any bills that are not paid within thirty days are classified as "delinquent," and a late charge of 1-1/2 % per month will be added. You have the option of paying any current invoice with a Visa or MasterCard.

Work Stoppage

Work will be stopped on any job that has invoices outstanding for more than **60 days**. Due to the costs and inefficiencies that results from stopping and restarting a job, an additional "start-up charge" will be assessed.

Retainers

It is our policy to obtain an advance retainer from all new clients and from exiting clients under certain circumstances. Also, it occasionally may be appropriate to require an advance retainer after the commencement of a project or to require an increase in a prior retainer. This depends in part on our client's payment history and the scope of the work involved.

Reimbursable Expenses

Costs, other than time charges, are based on usage. Therefore, the cost of blueprinting, messenger service, transportation, and other specific job related costs are charges as "reimbursable expenses." Generally, these are a very small portion of the total cost of a project. If requested, we will provide a computer printout which details these costs. We do not provide any additional backup for these generally nominal expenses.

PSOMAS



Loren L. Sokolow
Chief Financial Officer

**Land Development Services
Los Angeles/Santa Clarita/Bakersfield**

Planning, Engineering and Surveying

Hourly Rates

Office Services

\$ 65 - \$ 90	- Administrative and Project Assistants
\$100 - \$135	- Drafters and Design Drafters
\$105 - \$155	- Surveyors and Project Surveyors
\$105 - \$160	- Civil Engineering Designers and Engineers
\$115 - \$155	- Planners, Assistant Planners and Senior Planners
\$150 - \$180	- Project Engineers and Senior Project Engineers
\$150 - \$230	- Project Management, Directors
\$200 - \$250	- Principals

Field Services *

\$340	- Three-Person Survey Party
\$242	- Two-Person Survey Party
\$152	- One-Person Survey Party
\$152	- Field Engineer

Hourly rates for field survey parties include normal usage of electronic distance measuring equipment and survey vehicle expenses.

Per Diem is calculated at current State Department of Transportation rates (or other appropriate Agency rate).

Reimbursables

Mileage at \$.550 per mile (or current IRS allowable rate) and parking expenses incurred by office employees are charged at cost. Prints, plots, messenger service, subsistence, air travel, and other direct expenses will be charged at cost plus ten percent. The services of outside consultants will be charged at cost plus fifteen percent.

The above schedule is for straight time. Overtime will be charged at 150 percent of the standard hourly rates. Sundays and holidays will be charged at 200 percent of the standard hourly rates.

* Fees will be increased yearly on October 1 as granted under the current IUOE Local #12 Master Labor Agreement.