

DESIGN FUNDING AGREEMENT

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND CITY OF SANTA ROSA TRAFFIC SIGNAL DESIGN AT THE W. 3RD STREET GRADE CROSSING

THIS FUNDING AGREEMENT (“Agreement”) is entered into as of _____, 20___, by and between the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (SMART)**, a public entity duly established under the laws of California (District), and **CITY OF SANTA ROSA**, a municipal corporation (City).

Recitals

- A. The SMART rail corridor, historically known as the Northwestern Pacific Railroad Authority (NWPRA), generally parallels Highway 101 running north-south in Sonoma and Marin Counties. The corridor is owned by the District from Milepost (MP) 89.9 in Cloverdale southward to MP 11.4 in Corte Madera.
- B. District has completed California Environmental Quality Act (CEQA) review and designed and constructed a passenger rail service, Stations and accompanying multi use path along an approximately 45-mile existing rail corridor which will eventually extended to 70-miles from Cloverdale in Sonoma County, California, to Larkspur, Marin County, California (the “SMART Rail and Pathway Project”). Santa Rosa has determined that the addition of a signal would be CE.
- C. The District was awarded a construction grant to improve pedestrian access to the Santa Rosa Downtown SMART Station. This grant includes the construction of SMART’s non-motorized pathway from Joe Rodota Trail to W. 3rd Street in Santa Rosa which includes the completion of the sidewalk on the south side of W. 3rd Street adjacent to SMART’s property (“Pathway Project”).
- D. The City was awarded a grant for City’s improvements to the W. 3rd Street grade crossing consisting of adding a traffic signal, crosswalk, median, and completing the sidewalk on the north side of W. 3rd Street (“Grade Crossing Project”).
- E. The two projects have a nexus on the south side of W. 3rd Street allowing pedestrians to access the SMART Santa Rosa Downtown Station from the existing Joe Rodota Trail.
- F. SMART executed the Marin – Sonoma Non-Motorized Pathway Design and Permitting Project Contract to BKF Engineers (CV-DB-21-003). The contract includes the design and permitting of seven (7) segments of pathway in Marin and Sonoma Counties, one (1) of which is the Pathway Project.
- G. The City has requested that in conjunction with the District’s design work. SMART consider performing or causing to be performed certain additional design work for the city in order to better integrate and coordinate the Projects.
- H. SMART is interested in increasing coordination between the two projects and supports the City’s desire to coordinate the design projects.

- I. The parties desire to enter into this Project Funding Agreement to provide a complete design of the W. 3rd Street improvements (“Project”).
- J. The City is committed to fully funding and paying for the design and permitting of the City’s Grade Crossing Project. The parties desire to enter into this Project Funding Agreement so that the City’s project can be incorporated as a separate standalone task into an existing SMART design contract, at the City’s sole cost and expense.
- K. The City acknowledges and agrees that the City’s Grade Crossing Project, its design, specifications, subsequent approval and implementation is a separate stand alone City project and SMART is not responsible for and does not warrant, guaranty, or make any determination regarding the suitability of the City’s Grade Crossing Project. The approval and responsibility for the City’s Grade Crossing Project design and implementation rest solely with the City.
- L. The City, through this project funding agreement, has agreed to pay all costs associated with the design and permitting of the Grade Crossing Project which is estimated to cost \$153,854.80 and includes 10% contingency as shown in Exhibit B.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and District agree as follows:

1. RECITALS

- A. The above recitals are true and correct and are hereby incorporated in and expressly form a part of this Agreement.

2. COORDINATION

- A. District’s and City’s Representative for purposes of this Agreement shall be:

District
 Bill Gamlen
 Chief Engineer
 Sonoma - Marin Area Rail Transit (SMART)
 5401 Old Redwood Highway, Suite 200
 Petaluma, California 94954
 Phone: 707.794.3330
 Email: bgamlen@sonomamarintrain.org

City
 Jason Nutt
 Director – Transportation & Public Works
 City of Santa Rosa
 69 Stony Circle
 Santa Rosa, CA
 Phone: 707.543.3895
 Email: jnutt@srcity.org

3. SCOPE OF WORK

- A. Proposed Improvements: Design of a signalized grade crossing and completion of the north side sidewalk on W. 3rd Street in Santa Rosa. A concept sketch depicting the improvements is included as Exhibit A. The work will include design of a new traffic signal, an exit gate for westbound traffic, sidewalk completion on the north side including curb ramps for the new crosswalk, crosswalk, a new median, completion of

a draft CEQA Categorical Exemption (CEQA CE) that is ready for the City's review, approval, and delivery to the appropriate agency, and lane line changes to incorporate a new median (Grade Crossing Project).

4. DISTRICT'S RESPONSIBILITIES

District agrees to perform the following:

- A. Management: The District shall manage the Project design. This will include modifying SMART current contract with BKF Engineers to implement the Project.
- B. Design: District shall direct its design consultant, BFK Engineers, to develop design and construction documents as necessary for future construction of the Project.
- C. Crossing Authority: The District shall prepare and submit a General Order 88B Application (GO-88B) request to alter an existing grade crossing to the California Public Utilities Commission (CPUC).
- D. Contracting:
 - i. District shall cause the work contemplated herein to be let in accordance with District's rules and procedures and all applicable laws, rules and regulations which shall be part of the larger SMART "Marin-Sonoma Non-Motorized Pathway Design and Permitting" project as an additive task to the existing contract.
 - ii. District shall invoice the City on a monthly basis for the work performed. The parties hereto understand and agree that at the time of the execution of this Agreement, the City has available and appropriated funding as defined in Exhibit B.
- E. City Review of City's Project Documents: The District shall cause to be prepared and submit the following documents to the City for review and approval:
 - i. Site layout plan depicting all warning devices, conduits, pull boxes, crossing panels, tactile warning strips, traffic signals, fencing, and associated path of travel changes.
 - ii. GO-88B application.
 - iii. Draft CEQA Categorical Exemption.

5. CITY'S RESPONSIBILITIES

City agrees to supply the following:

- A. Environmental Clearance:

i. CEQA Clearance-

1. The City shall be responsible for securing CEQA clearance, including but not limited to, the costs associated with any environmental clearance, analysis, compliance documentation, permits or other entitlements as may be required under CEQA (collectively "environmental clearances").

2. The cost of a draft CEQA Categorical Exemption that will be ready for the City's review, approval, and delivery to the appropriate agency has been included in the Design Consultant's scope of work for the Grade Crossing Project. Any additional work for the Grade Crossing Project would be an additional cost at the City's expense.

- B. Contract: The City agrees that the City's design project will be incorporated into the District's design contract "Marin-Sonoma Non-Motorized Pathway Design and Permitting" contract as an additive task order (CV-DB-21-003).
- C. Payment: The City shall fund the total cost of the City's Grade Crossing Project within 30 days of receipt of an invoice from the District.
- D. City Review Project Documents: The City shall promptly review all design details and will have 14 calendar days to review and respond to submittals from the District related to the City's Grade Crossing design Project. If no comments are received within 14 calendar days, the documents and designs details will be deemed approved.
- E. Changes: The City shall be solely responsible for all costs resulting from any changes initiated by the City, (including, but not limited to changes required by regulators) or resulting from differing site conditions with respect to the Grade Crossing design Project

6. **ADDITIONAL REQUIREMENTS**

A. Amendments to Agreement

This Agreement may be amended only by the mutual written consent of both parties.

B. Indemnification

Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation of the amount or type of acts, disability benefit acts, or other employee benefit acts.

C. Termination

Either party may terminate this Agreement by giving 30-days prior written notice to the other party, in the manner described in Section 7.D of this Agreement of its intent to terminate. City shall pay District for all expenses associated with the proportion of work completed as of the termination date.

D. Notice

Unless otherwise requested by a party, all notices, demands, requests, consents or other communications which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the party to whom the same is to be given by hand delivery or by deposit in the United States mail addressed to the party as follows:

District: Bill Gamlen, P.E.
 Chief Engineer
 Sonoma-Marín Area Rail Transit District
 5401 Old Redwood Highway
 Petaluma, CA 94954

City: Jason Nutt, P.E.
 Director – Transportation and Public Works
 City of Santa Rosa
 69 Stony Circle
 Santa Rosa, CA

When a notice is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

E. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

F. Entire Agreement

This instrument contains the entire agreement between the parties, and no statement, promise, or inducement made by either party or agents of the parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties.

G. Authority of City

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of City.

H. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

I. Time of Essence

Time is and shall be of the essence of this Agreement and every provision hereof.

J. Construction

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

K. Consent

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

L. No Third-Party Beneficiaries

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

M. Captions

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

N. Acceptance of Electronic Signatures and Counterparts

The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the District and the City have executed this Agreement as of the date first above written.

CITY OF SANTA ROSA:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT:

By: _____
Maraskeshia Smith, City Manager

By: _____
Eddy Cumins, General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM FOR DISTRICT:

By: _____

By: _____
Tom Lyons, SMART Counsel

EXHIBIT A

CONCEPTUAL DESIGN

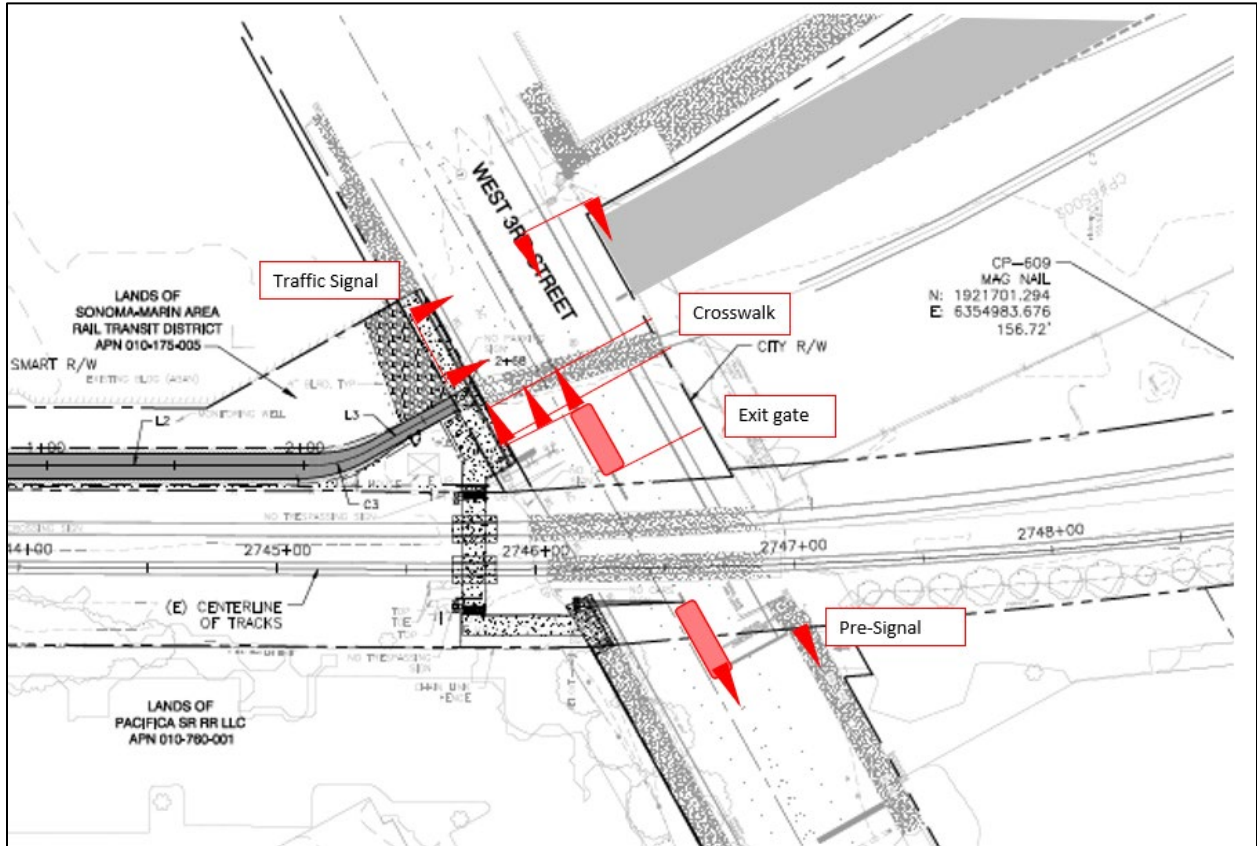


EXHIBIT B

FEE SCHEDULE

| Description | Amount |
|--------------------|---------------|
| Design* | \$139,868.00 |
| Contingency (10%) | \$13,986.80 |
| Total | \$153,854.80 |

*See Exhibit C for more details.

EXHIBIT C

BKF ENGINEERS' PROPOSAL



Alexandra Majoulet, Associate Engineer
Sonoma-Marín Area Rail Transit Dist.
5401 Old Redwood Highway, Suite 2000
Petaluma, CA 94954
Transmitted Via Email

**Subject: SMART Sonoma-Marín Non-Motorized Pathways
Additional Service Request
3rd Street Crossing and Sidewalk Gap Closure, Santa Rosa**

Alexandra:

BKF Engineers welcomes the opportunity to submit this proposal for additional services related to the on-going non-motorized pathway design at Segment 3 / 3rd Street Santa Rosa. We understand that SMART is interested in exploring an adjustment to the project scope to include additional elements originally planned to be designed and constructed by the City of Santa Rosa. These elements generally include a traffic signal at the new 3rd Street grade crossings; approximately 200-feet of sidewalk gap closure on the north side of 3rd Street; and a new pedestrian track crossing. As this work will need to be closely interfaced with the design that has been progressing for the original Segment 3 work limits (Joe Rodota Trail to 3rd Street) we anticipate this additional work becoming part of the same Segment 3 design package. Design of these new elements would be progressed up to the 75% milestones, then would be combined with our already-completed work on the south side of 3rd Street and advanced as a uniform project through Issued for Construction (IFC) level of completion. Below is our proposed scope of services for this additional design and coordination work.

I. SCOPE OF SERVICES

TASK 1: DATA COLLECTION, SITE ANALYSIS AND CONCEPTUAL DESIGN

Task 1.1: Project Management

The objective of this task is to track the project scope, budget, and schedule to ensure project goals are being met and work is monitoring and coordinated to meet SMART's requirements.

Routine project check-in meetings with SMART will be held to review progress, identify action items, and discuss items of work requiring direction from SMART. To keep SMART apprised on the status of the project, we are proposing to hold these check-in meetings once every two weeks. A check-in meeting will be used to review our milestone submittal with SMART. An agenda for each meeting will be circulated in advance of the meeting. Meeting minutes and project action logs will be completed and released after each meeting.

Additionally, periodic project development team coordination meetings will be held with the goal of discussing status across the disciplines, identifying critical project information needs, and monitoring workflow.

Preparation of monthly reports will be undertaken by the Project Manager to document current and projected budget, schedule, and critical path items that need to be addressed to minimize impacts to the project. This report will coincide with our monthly invoices.

- ❖ Deliverables:
 - *Meeting Agendas, Minutes, and Action Logs*
 - *Monthly Progress and Performance Reports*
 - *Monthly Invoices*

Task 1.2: Topographic Survey

BKF will collect supplemental topographic survey at and around new track grade crossing. BKF will utilize topographic survey data that was previously collected for an adjacent develop to further supplement our topographic mapping. At the conclusion of the survey data collection, BKF will coordinate with Cinquini and Passarino, Inc. (CPI) to stitch the new topographic data into the existing SMART AutoCAD topo tile network. The updated topo tile(s) will be utilized as a background for our design drawings.

- ❖ Deliverables:
 - *Updated AutoCAD Topo Tiles*

Task 1.3: Traffic Data Research

The project team will coordinate with local agencies to obtain historical traffic data for the affected project corridors and the nearby project intersections. The Alta team plans to review this data to identify peak periods and trends with respect to trip origin/destination and utilize this information to inform signal timing design.

Task 1.4: Conceptual Layout and Site Review Meeting

To ensure that the project design is developed in line with City and SMART expectations, an initial 10 percent design layout of the conceptual improvements will be developed based on our understanding of the project intent. Following the development of the conceptual layout, BKF will coordinate a site meeting with City and SMART to review the concept relative to the site conditions. Input received during this site meeting will be incorporated into the layout to be used for future design milestones.

- ❖ Deliverables:
 - *10 Percent Design Layout*

Task 2: 50 Percent Design Level Package

Following review and comments on the 10 percent design layout, BKF will progress the design into the 50 percent design drawings of the proposed improvements, including the grade crossing over 3rd Street, the 3rd Street traffic signal, approximately 200-feet of sidewalk gap closure improvements on the north side of 3rd Street, and the track crossing improvements. We will coordinate with the team and verify that the proposed plan conforms to existing conditions, boundary, and site constraints. BKF will verify, based on the available record information, if there are any identifiable conflicts between proposed and existing improvements or any conflicts with the existing Right of Way limits. Drawings will illustrate pathway and sidewalk grading, drainage improvements, grade crossing layout and grading, and structural retaining wall design. The design team will coordinate with the City of Santa Rosa regarding potential larger signal corridor impacts caused by potential proposed timing changes required to support the new signalized pedestrian crossing. Any exceptions to the SMART Design Criteria Manual will be documented in memorandum format and reviewed with SMART. Grade crossing drawings produced at this milestone will be suitable for initial presentation to the CPUC.

Drawings will be established following SMART's Design Criteria Manual and utilizing the applicable standard designs shown in SMART's Reference Drawings. The formatting of the drawings will be in conformance with SMART's CADD Manual.

BKF will prepare a 50 percent Engineer's Estimate of the probable construction costs associated with the project. Additional supporting materials will be provided at this milestone and will include a pothole plan, a utility composite plan and utility relocation matrix.



Draft Signal Pre-Emption Calculations and Traffic Model Output for the street crossing location will be developed along with the signal design plans.

❖ Deliverables:

- *50 Percent Design Drawings and Calculations*
- *50 Percent Engineer's Estimate*
- *Draft Pothole Plan*
- *Draft Utility Composite Plan*
- *Draft Utility Relocation Matrix*

Task 3: 75 Percent Design Level Package

BKF will expand and finalize the 75 percent design drawings based on feedback received from the SMART following review of the 50 percent design submittal. It is our understanding that these documents will be used by SMART to coordinate a site diagnostics meeting with CPUC to review the grade crossings; as such the documents will be detailed to the level required by the CPUC. The site diagnostics meeting will occur during the preparation of the 75 percent design drawings.

BKF will prepare preliminary hydrology and hydraulics calculations and submit our findings in memorandum format.

BKF and the sub-consultant team will prepare a 75 percent Technical Specification Package for elements included in our scope of work to supplement SMART's standard specifications.

❖ Deliverables:

- *75 Percent Design Drawings and Calculations*
- *75 Percent Engineer's Estimate*
- *75 Percent Technical Specification Package*
- *CPUC Site Diagnostics Meeting Exhibits*
- *Draft Pothole Plan*
- *Draft Utility Composite Plan*
- *Draft Utility Relocation Matrix*

Task 4: 95 Percent Design Level Package

BKF will expand and finalize the 95 percent design drawings based on feedback received from the SMART following review of the 75 percent design submittal. It is our understanding that these documents will be used by SMART to perform the bidding process; as such the documents will be detailed to the level required by the contractor to bid and construct. The GO-88B application will be submitted concurrent with the preparation of the 95 percent design documents.

BKF will finalize the hydrology and hydraulics calculations and submit our findings in memorandum format. BKF and the sub-consultant team will prepare a 95 percent Technical Specification Package for elements included in our scope of work to supplement SMART's standard specifications. These specifications can be used during project bidding. BKF will prepare a 95 percent Engineer's Estimate of the probable construction costs associated with the project. Additional supporting materials will be provided at this milestone and will include a pothole plan, a utility composite plan and utility relocation matrix. Final Signal Pre-Emption Calculations and Traffic Model Output for the street crossing location will be developed along with the signal design plans.

❖ Deliverables:

- *95 Percent Design Drawings and Calculations*
- *95 Percent Engineer's Estimate*
- *95 Percent Technical Specification Package*
- *Final Pothole Plan*



- *Final Utility Composite Plan*
- *Final Utility Relocation Matrix*

Task 5: IFC Design Level Package

The Issued for Construction Drawings will capture any updates made during the bidding process to address questions or incorporate feedback received from the bidding Contractors and from SMART. BKF and the sub-consultant team will finalize the technical specifications to develop Issued for Construction Technical Specification Package. Updates to the technical specification package will be based on any modifications that were identified during the bidding phase.

- ❖ Deliverables:
 - *Issued for Construction Drawings*
 - *Issued for Construction Technical Specification Package*

II. SCHEDULE

We are ready to proceed with these services immediately upon authorization.

III. FEES FOR PROFESSIONAL SERVICES

BKF proposes to provide the services on a lump sum basis. We will invoice for our services on a percent complete basis per task summarized as follows:

| Task | Description | Fee |
|------------------------|--|------------------|
| 1 | Data Collection, Site Analysis and Conceptual Design | \$ 23,385 |
| 2 | 50% Design Level Package | \$ 36,457 |
| 3 | 75% Design Level Package | \$ 30,186 |
| 4 | 95% Design Level Package | \$ 32,691 |
| 5 | IFC Design Level Package | \$ 16,648 |
| Total Labor Fee | | \$139,368 |

Reimbursable expenses are anticipated for reproduction, mileage, express and messenger deliveries, and computer deliverable plots. Reimbursable expenses are included in the fee above.

For tasks requested by SMART, The City or CPUC not defined in this scope of services, BKF will identify them as potential extra work. We can provide a scope and fee for these items or they may be tracked separately as extra work and billed on a time and materials per our attached rate schedule.

BKF will provide our services consistent with the professional skill and care ordinarily provided by consultants practicing in the same locality under similar circumstances. Our services shall be limited to those expressly summarized in this proposal and we shall have no other obligations or responsibilities, unless otherwise agreed upon.


Should you have any questions, or would like additional clarification on any aspect of the scope of work, please feel free to contact me at 415-930-7964.

Respectfully,
BKF Engineers



Jason Kirchmann, PE, PLS, QSD/P
Vice President



|  SMART Pathway Design and Permitting (BKF No. 210237) ADDITIONAL SERVICES 3rd Street, Santa Rosa | | Fee |
|--|---|-------------------|
| Task | Description | |
| SEGMENT 3a - 3rd St. Crossing and North Side Improvements | | |
| 1 | DATA COLLECTION, SITE ANALYSIS AND CONCEPTUAL DESIGN | |
| 1 | Project Management | \$ 6,766 |
| 2 | Topographic Survey | \$ 8,055 |
| 3 | Traffic Data Research | \$ 2,499 |
| 5 | Conceptual Layout and Site Meeting | \$ 6,066 |
| 1 DATA COLLECTION, SITE ANALYSIS AND CONCEPTUAL DESIGN Subtotal: | | \$ 23,385 |
| 2 | 50% DESIGN LEVEL PACKAGE | |
| 1 | Project Management | \$ 6,392 |
| 2 | 50 Percent Design and Supporting Docs | \$ 30,066 |
| 2 50% DESIGN LEVEL PACKAGE Subtotal: | | \$ 36,457 |
| 3 | 75% DESIGN LEVEL PACKAGE | |
| 1 | Project Management | \$ 4,692 |
| 2 | 75 Percent Design and Supporting Docs | \$ 25,494 |
| 3 75% DESIGN LEVEL PACKAGE Subtotal: | | \$ 30,186 |
| 4 | 95% DESIGN LEVEL PACKAGE | |
| 1 | Project Management | \$ 6,392 |
| 2 | 95% Design and Supporting Docs | \$ 26,300 |
| 4 95% DESIGN LEVEL PACKAGE Subtotal: | | \$ 32,691 |
| 5 | IFC DESIGN LEVEL PACKAGE | |
| 1 | IFC Design Level Package | \$ 16,648 |
| 5 IFC DESIGN LEVEL PACKAGE Subtotal: | | \$ 16,648 |
| Total Additional Fee | | \$ 139,368 |