



AGENDA REPORT

Meeting Date: January 12, 2010
Item Number: F-13
To: Honorable Mayor & City Council
From: Alan Schneider, Director of Project Administration
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND JEFFREY M. KALBAN & ASSOCIATES ARCHITECTURE, INC. FOR CONSULTANT SERVICES RELATED TO THE DEVELOPMENT OF A THREE-STORY OFFICE BUILDING AT 9400 SOUTH SANTA MONICA BOULEVARD; AND,

APPROPRIATING FUNDS IN THE AMOUNT OF \$125,000 THEREFOR; AND,

APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$127,722 TO JEFFREY M. KALBAN & ASSOCIATES ARCHITECTURE, INC. FOR THESE SERVICES

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to appropriate funds in the amount of \$125,000 as follows:

| From | | To | |
|-----------|---|-----------|--|
| \$125,000 | 08-30000 Capital Assets unrestricted fund balance | \$125,000 | 0898 - 9400 South Santa Monica project |

Staff further recommends that the City Council approve an agreement with Jeffrey M. Kalban & Associates Architecture, Inc. (Jeffrey Kalban) for architectural and engineering design services related to the development of a three-story office building located at 9400 South Santa Monica Boulevard, and approve a Purchase Order in the amount of \$127,722 for the first phase of design services. The total compensation for the services under this agreement is comprised of a fee of \$108,722 and an additional \$9,000 for contingencies and \$10,000 for reimbursable expenses.

INTRODUCTION

On December 1, 2009, staff presented to the City Council a report regarding the conceptual development of a three-story building on the City's vacant lot at the southwest corner of South Santa Monica Boulevard and Canon Drive, and the process to engage Jeffrey Kalban for a two-phase architectural services agreement. The City Council endorsed proceeding with the selection of Jeffrey Kalban as the architect for this project.

The building of approximately 14,500 square feet has been proposed to house ground floor retail, a Visitors Center, and City Store along with second and third floor office space. Separate negotiations are underway with the Chamber of Commerce under which they would occupy the full second floor office space. Parking for the building would be provided in the Crescent Garage project being developed separately. Part of the impetus to proceed expeditiously with the design services agreement is to maintain coordination with the timing of the pending agreement with the Chamber of Commerce.

DISCUSSION

The proposed project consists of an office building to be located at 9400 South Santa Monica Boulevard. The building is currently proposed to be three stories tall and will be designed as a shell and core building to accommodate multiple tenants or single floor tenants. Opportunities for direction from the City Council including review of the number of stories to be built will be included during the design process. As noted, the architectural services agreement is divided into two phases, with the first phase encompassing the design services. Separate City Council authorization will be sought before proceeding to the next phase for the preparation of construction documents.

Based on accepted conceptual plans, a proposal for full architectural and engineering design services was submitted by Jeffrey Kalban to provide the following scope of services.

The design services shall include design of the project building elements and all related structural, mechanical, plumbing, civil, and electrical engineering services. In addition, design services shall also include interior architectural services for the lobby, plumbing, engineering, HVAC engineering, fire protection engineering (excluding fire sprinklers system design and engineering except for performance specifications and coordination with the local Fire Department), elevators specifications, design of conduit for customary low voltage electrical systems (e.g., telephone/security and similar systems) roofing/waterproofing design, and as required by code; signage services (including graphics), and City's "green building ordinance" requirements in connection with the complete design of the Project.

The fee proposal for the above design services is \$108,722. In addition, a contingency of \$9,000 for unforeseen design considerations and reimbursable expenses of \$10,000 are included in the proposed agreement. The total compensation for the first phase is not to exceed \$127,722. The fee for the balance of the architectural and engineering services is approximately \$225,000. However, authorization to commence with the second phase of the design services is not being sought at this time.

The agreement stipulates that the design services will be completed in 15 weeks. The project schedule would allow construction to be bid in the fall of 2010 with building completion in the spring of 2012.

FISCAL IMPACT

The \$7.5 million estimated development cost for the building would be financed with taxable bonds supported by the building rents. Partial funding for this agreement is budgeted in the fiscal year 09-10 Capital Improvement Program (CIP) budget for Project #0898. The additional appropriation in the amount of \$125,000 will provide funding through the initial development of the project. It should be noted that this appropriation will be reimbursed with proceeds from the future bond issuance.



Scott G. Miller

Finance Approval



David D. Gustavson

Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
JEFFREY M. KALBAN & ASSOCIATES ARCHITECTURE, INC. FOR
CONSULTANT SERVICES RELATED TO DEVELOPMENT OF A
THREE-STORY OFFICE BUILDING AT 9400 SOUTH SANTA MONICA
BOULEVARD

NAME OF CONSULTANT: Jeffrey M. Kalban & Associates
Architecture, Inc.

CONSULTANT'S DESIGNATED
REPRESENTATIVE: Jeffrey M. Kalban, President

CONSULTANT'S ADDRESS: 10585 Santa Monica Blvd., Suite 160
Los Angeles, CA 90025

CITY'S ADDRESS: City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
Attention: Alan Schneider
Director of Project Administration

CITY'S DESIGNATED REPRESENTATIVE: Alan Schneider
Director of Project Administration

CONSULTANT'S SUB-CONSULTANTS As designated in Exhibit F

COMMENCEMENT DATE: Upon receipt of Notice to Proceed

COMPLETION DATE: June 30, 2010

COMPENSATION: Professional fees not to exceed \$108,722.00
based on the rates set forth in Exhibit D;
Contingency for additional work not to
exceed \$9,000.00, as more fully described
in Exhibits B and E-1;
Reimbursable expenses not to exceed
\$10,000 as described in Exhibits B and E;
Total compensation, including Professional
Fees, Contingency and Reimbursable
Expenses, not to exceed \$127,722.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
JEFFREY M. KALBAN & ASSOCIATES ARCHITECTURE, INC. FOR
CONSULTANT SERVICES RELATED TO DEVELOPMENT OF A
THREE-STORY OFFICE BUILDING AT 9400 SOUTH SANTA MONICA
BOULEVARD

THIS AGREEMENT is entered between the City of Beverly Hills ("City") and Jeffrey M. Kalban & Associates Architecture, Inc. ("Consultant"), a California corporation.

R E C I T A L S

- A. City desire to obtain the services of a consultant to provide design services for a three-story office building located at 9400 South Santa Monica Boulevard ("Project").
- B. The design services shall be based on the conceptual design plans dated September 2, 2009 set forth herein and more fully described in Exhibit G.
- C. Consultant represents that it is licensed, qualified and able to perform the services.
- D. Pursuant to the authority provided by Government Code Section 37103, City desires to engage Consultant to design the Project in the manner set forth herein and more fully described in Exhibit A.

NOW, THEREFORE, the parties agree as follows:

Section 1. Scope and Level of Services.

- A. Subject to the terms and conditions set forth in this Agreement, City hereby engages Consultant, and Consultant hereby accepts such engagement, to perform the technical and professional services necessary to prepare all drawings, specifications, design and other documents for the Project as described in Exhibit A, attached hereto and incorporated herein.
- B. In providing the Consultant's services, Consultant will review applicable laws, statutes, ordinances, codes, and other regulations affecting the Project, including without limitation, for the purpose of determining accessibility requirements, the State of California handicap accessibility requirements, and seismic requirements (collectively, "Laws"). The Consultant shall prepare all design documents in compliance with such Laws.
- C. Consultant hereby represents and agrees that it has the experience necessary to undertake the services to be provided herein. In light of such status and

experience, Consultant hereby covenants that it shall follow the customary professional standards in performing all services required hereunder.

D. Consultant shall provide prompt written notice to City if Consultant becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant's plans, specifications or working drawings.

E. By executing this Agreement, Consultant agrees that, to the extent required by the standard of practice, Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. Consultant agrees that Consultant, to the extent required by the standard of practice, has investigated the visible portions of the construction site(s) and is reasonably acquainted with the conditions there existing. Should Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform City of such fact and shall not proceed until written instructions are received from the City Representative.

Section 2. Time of Performance. Consultant shall commence the services described in Section 1 upon the City's giving to Consultant a written notice to proceed and shall diligently prosecute the services to completion on or before the Completion Date set forth in the Basic Contract Terms on the first page of this Agreement and in accordance with the Progress Schedule attached hereto as Exhibit A-1

Section 3. Compensation; Terms of Payment. City agrees to pay to Consultant, and Consultant agrees to accept in full satisfaction for the services described in this Agreement, an amount not to exceed the amount set forth above and further described in Exhibit B, attached hereto and incorporated herein and reimbursable expenses described Exhibit D, attached hereto and incorporated herein. City shall pay Consultant said consideration in accordance with the payment terms set forth in Exhibits B, D and E.

Section 4. City's Designated Representative and Consultants. The City's Designated Representative shall be authorized to act on the City's behalf with respect to the Project and shall be permitted to issue consents and approvals on behalf of City, but shall have no authority to issue changes or approve additional services which increase the Consultant's compensation hereunder. The City, in the City's sole and absolute discretion, may furnish the services of consultants other than those designated in the Exhibit F, attached hereto and incorporated herein. Consultant covenants with City to cooperate with, and to cause its consultants to cooperate with, City's Designated Representative and City's consultants in connection with the services provided by Consultant hereunder.

Section 5. Independent Contractor. Consultant is and shall at all times remain, a wholly independent contractor with respect to City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are

in any manner agents or employees of City. This Agreement shall not and is not intended to make Consultant an agent, servant, or employee of City and shall not and is not intended to create the relationship of partnership, joint venture or association between City and Consultant.

Section 6. Assignment. This Agreement covers professional services of a specific and unique nature. This Agreement may not be assigned in whole or in part by Consultant, without the prior written consent of City. Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder. Any attempt by Consultant to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

Section 7. Personnel.

A. The Consultant's Designated Representative is authorized to act on the Consultant's behalf with respect to City. The members of Consultant's staff set forth in Exhibit C, attached hereto and incorporated herein, shall be responsible for fulfilling Consultant's obligations under this Agreement in the capacities set forth in Exhibit C. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement, whether or not listed on Exhibit C, and Consultant shall at all times shall be responsible for satisfactory performance of all personnel engaged in performing services required by this Agreement. All personnel used by Consultant in the performance of the services required pursuant to this Agreement shall be qualified by training and experience to perform their assigned tasks. At the request of City, Consultant shall not use any personnel hereafter deemed by City to be incompetent, careless, unqualified to perform the work assigned to him, or otherwise unsatisfactory to City. Consultant represents and warrants that Jeffrey M. Kalban & Associates Architecture, Inc. are licensed California architects and shall keep and maintain such licenses in good standing and in full force and effect at all times while Consultant is performing services included in this Agreement.

B. All services required under this Agreement shall be performed by Consultant or under Consultant's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such services.

C. Consultant shall be responsible for payment of all employees' and subconsultants' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, attorneys, volunteers, and agents serving as independent contractors in the role of city or agency officials, from any and all liability, damages, claims, costs and expenses of any nature arising from Consultant's alleged violations of personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a

result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 7.

Section 8. Conflicts of Interests. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained pursuant to this Agreement.

Section 9. Insurance. The following insurance shall be provided and maintained by Consultant:

A. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG00 01 11 85 or 88. Total limits shall be no less than two million dollars (\$2,000,000) per occurrence for all coverages and two million dollars (\$2,000,000) general aggregate. City and its employees and agents shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 (in no event will City accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered under the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policies shall have concurrent starting and ending dates.

B. Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than two million dollars (\$2,000,000) per accident. Starting and ending dates shall be concurrent. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

C. Worker's Compensation/Employer's Liability Insurance. Coverage shall be written on a policy form providing worker's compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella

policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its employees or agents.

D Professional Liability Insurance. Coverage shall be written on a policy form providing "design professional liability" or "architects and engineers" liability insurance or equivalent coverage. The policy limit shall be no less than one million dollars (\$1,000,000) per claim and in the aggregate.

Unless otherwise approved by City in writing, Consultant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's Insurance Guide rating of "A-:IV." Self-insurance will not be considered to comply with these insurance specifications.

Except for Workers Compensation, the insurance provided by Consultant shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Consultant agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability and umbrella liability policies using ISO form CG 20 10 11 85. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Consultant agrees to provide complete copies of policies to City upon request.

Consultant agrees to require all consultants and other parties hired for the Project to maintain insurance which meets all of the requirements of this Agreement. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Consultant agrees to require that no contract used by any consultant, or contracts Consultant enters into, will reserve the right to charge back to City the cost of insurance required by this Agreement. Consultant agrees that upon request, all agreements with consultants or others with whom Consultant contracts on behalf of City, will be submitted to City for review. Failure of City to request copies of such agreement will not impose any liability on City, or its employees.

Consultant shall not commence the performance of the services until the above insurance has been obtained and certificate(s) of insurance evidencing all of the coverages required and additional insured endorsement(s) have been filed with and approved by City. Procurement of insurance by Consultant shall not be construed as a limitation of

Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless, and defend under this Agreement.

Section 10. Indemnification.

A. In connection with the professional services required by this Agreement, Consultant shall defend, hold harmless and indemnify City, and its elected officials, officers, employees, designated volunteers, and agents serving as independent contractors in the role of city officials, ("Indemnitees"), from any claim, demand, damage, liability, loss, cost or expense, including but not limited to death or injury to any person and injury to any property ("claims"), arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, subconsultants, or agents in the performance of its professional services under this Agreement. Consultant shall defend Indemnitees in any actions filed in connection with any such claims with counsel of Indemnitees' choice, and shall pay all costs and expenses, including actual attorney's fees, incurred in connection with such defense.

B. In connection with all claims not covered by Paragraph A, Consultant shall defend, hold harmless and indemnify Indemnitees from any claim, demand, damage, liability, loss, cost or expense, including but not limited to death or injury to any person and injury to any property ("claims"), arising out of, pertaining to, or relating to Consultant's performance of this Agreement. Consultant shall defend Indemnitees in any action or actions filed in connection with any such claims with counsel of Indemnitees' choice, and shall pay all costs and expenses, including actual attorney's fees, incurred in connection with such defense.

Section 11. Termination by City.

A. City may cancel this Agreement at any time upon five (5) days written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services satisfactorily performed by Consultant in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation based on the hourly rates set forth in Exhibit D, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.

C. In the event that the City's termination is based on a default by Consultant, City may pursue any and all rights and remedies it may have at law or in equity, and City's pursuit of any such right or remedy shall not be deemed a waiver of any other right or remedy of City.

D. In the event of termination under this Section, City may retain another Consultant for the Project.

Section 12. Ownership of Work Product.

A. Ownership of Plans. All plans, specifications, reports, studies, tracings, maps, drawings, blueprints, or other written material prepared or obtained by Consultant in the course of performing the services required by this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City, and Consultant shall convey and transfer all copyrightable interests in such plans, specifications, reports, studies, tracings, maps, drawings, blueprints, documents, and in the Building to City. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Consultant under this Agreement shall, upon request, be made available to City. Such material shall not be the subject of a copyright application by Consultant. Any alteration or reuse by City of any such materials on any project other than the Project for which they were prepared shall be at the sole risk of City unless City compensates Consultant for such use. City agrees to indemnify, defend and hold harmless Consultant against any claims, losses, costs or damages as a result of City's alteration or reuse of such plans, drawings and specifications without compensation to Consultant. In the event of the return of the plans, drawings or specifications to Consultant or its representative, Consultant shall be responsible for their safe return to City. Consultant shall be entitled to retain copies of the plans, drawings and specifications for Consultant's files. Under no circumstances, other than non-payment, shall Consultant fail to deliver any draft or final plans, drawings or specifications to City upon written demand by City for their delivery, notwithstanding any disputes between Consultant and City concerning payment, performance of the Agreement, or otherwise unless City has failed to pay Consultant any undisputed amount lawfully due Consultant under this Agreement. This covenant shall survive the termination of this Agreement.

B. Title to Intellectual Property. Consultant represents that it has secured all necessary licenses, consents or approvals to use the components of any intellectual property, including computer software, used in the rendering of services and the production of the materials produced under this Agreement, and that City has full legal title to and the right to reproduce such materials. Consultant agrees to defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, volunteers, and agents serving as independent contractors in the role of city or agency officials, harmless from any loss, claim or liability in any way related to a claim that City is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the services and materials produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, Consultant, at its expense, shall: (i) secure for City the right to continue using the materials by suspension of any injunction or

by procuring a license or licenses for City; or (ii) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

Section 13. Effect of City Approvals. City's approval of any documents prepared in connection with the Project (in City's proprietary capacity under this Agreement as the owner of the Project) shall not be deemed to limit Consultant's liability under this Agreement or otherwise affect Consultant's duties and responsibilities under this Agreement.

Section 14. Confidentiality. Consultant, in the course of its duties, may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

Section 15. Attorneys' Fees. In the event either party to this Agreement shall institute any action or proceeding against the other party to this Agreement, which action or proceeding concerns a controversy arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to reimbursement from the unsuccessful party for all reasonable costs and reasonable attorneys' fees arising out of such action or proceeding. In addition to the foregoing award of reasonable attorneys' fees and costs, the prevailing party shall be entitled to its reasonable attorneys' fees and costs incurred in any post-judgment or post-arbitration proceedings to enforce any judgment in connection with this Agreement. This provision is separate and several and shall survive the merger of this provision into any judgment.

Section 16. Notices. Any notice required to be given by this Agreement shall be deemed duly and properly given upon delivery, if sent by U.S. mail, postage prepaid, return receipt requested, to the address set forth on the first page of this Agreement, or personally delivered to such address or other address specified in writing and delivered in accordance with the requirements of this Section.

Section 17. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

Section 18. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 20. Time of Essence . Time is of the essence of this Agreement. Consultant acknowledges that City is entering into this Agreement based on the representation that the Consultant's schedule contained in Exhibit A-1 can be maintained. In the event City determines that the progress of Consultant's work and services is behind the progress anticipated in the schedule (and not due to events caused by City), City may require Consultant to take such actions as City deems necessary to expedite progress of the work and services in conformance with the progress anticipated by the schedule, which actions may include, without limitation, increasing the number of workmen performing the work and services, utilizing overtime work and requiring additional work shifts. Such action by City to place Consultant back on schedule shall not entitle Consultant to receive any additional compensation for these activities. In addition, if the Project is delayed due to Consultant's fault, negligence or breach of this Agreement, Consultant shall be responsible for the reasonable additional costs and expenses incurred by City, including without limitation, any acceleration costs, impact costs and any additional compensation due to City's other consultants, as a result of such delays, to the extent permitted by California law.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the _____ day of _____, 200____, at Beverly Hills, California.

City:
CITY OF BEVERLY HILLS,
a municipal corporation

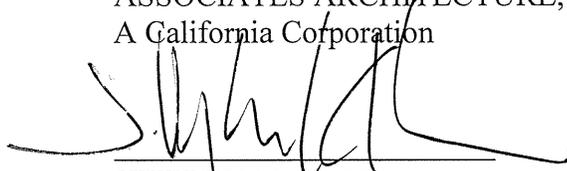
NANCY KRASNE
Mayor of the City of
Beverly Hills, California

[Signatures continue]

ATTEST:

BYRON POPE
City Clerk

Consultant:
JEFFREY M. KALBAN &
ASSOCIATES ARCHITECTURE, INC.
A California Corporation



JEFFREY M. KALBAN
President & Secretary

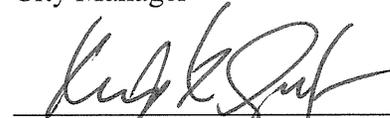
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, ICMA-CCM
City Manager



DAVID D. GUSTAVSON
Director of Public Works &
Transportation



ALAN SCHNEIDER
Director of Project Administration



KARL KIRKMAN
Risk Manager

EXHIBIT A

Scope of Services

Consultant shall provide the following scope of services in connection with the development of the three story office building at 9400 Santa Monica Boulevard ("Project").

ARTICLE 1. GENERAL RESPONSIBILITIES

A schedule for the development and construction of the Project, including a schedule for the performance of Consultant's services, is attached hereto as Exhibit A-1. Any adjustments to the Consultant's schedule shall be of no force and effect unless such adjustments are agreed to in writing by City or are delays in the Consultant's performance caused for reasons beyond the control of Consultant.

ARTICLE 2. CHANGES IN CONSULTANT'S SERVICES

Changes in services of the Consultant, including services required of the Consultant's architects, may be accomplished after execution of this Agreement, without invalidating the Agreement, provided that changes in the services required of the Consultant are initiated by City, would entitle the Consultant to an adjustment in compensation, and Consultant obtains City's prior written authorization for an adjustment in compensation in each instance. Such adjustment in compensation shall be made by mutual agreement of the parties.

ARTICLE 3. PROJECT ADMINISTRATION

A. The Consultant shall manage the Consultant's services and administer the Project. The Consultant shall consult with the City, research applicable design criteria, attend Project meetings during and through completion of the Design phase prior to commencement of construction documents phase, communicate with members of the Project team and issue progress reports. The Consultant shall coordinate the services provided by the Consultant and the Consultant's consultants with those services provided by the City and the City's consultants.

B. Upon written request of City, the Consultant shall prepare for City's and City's Designated Representative's review and approval, an update of the Consultant's portion of the progress schedule attached hereto as Exhibit A-1 that shall identify milestone dates for decisions required of the City, design services furnished by the Consultant, and completion of documents provided by the Consultant. Such update schedule shall be consistent with the initial Progress Schedule attached hereto as Exhibit A-1.

C. The Consultant shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

D. Upon request of the City, the Consultant shall make a presentation to explain

the design of the Project to representatives of the City or as otherwise requested by City.

E. The Consultant shall submit design documents to the City at intervals appropriate to the design process for purposes of evaluation and approval by the City. The Consultant shall be entitled to rely on written approvals received from the City in the further development of the design except as limited by Section 4 of the Agreement.

F. If requested by the City's Designated Representative, the Consultant shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

ARTICLE 4. EVALUATION OF BUDGET AND COST OF THE WORK

A. The Consultant shall have a qualified professional prepare a preliminary estimate of the cost of the work for the Project (the "Cost of Work"). This estimate may be based on current area, volume or similar conceptual estimating techniques. All estimates of the cost of Work shall be subject to City's review and approval. The Consultant shall advise the City of any adjustments to previous estimates of the Cost of the Work required by changes in Project requirements or general market conditions. If at any time the Consultant's estimate of the Cost of the Work exceeds the City's budget, the Consultant shall make appropriate recommendations to the City to adjust the Project's size, quality or budget.

B. Evaluations of the City's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Consultant represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant does not warrant or represent that bids or negotiated prices will not vary from the City's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Consultant.

C. In preparing estimates of the Cost of the Work, the Consultant shall be permitted to include contingencies for design, bidding and price escalation; to reasonably assume (unless known) what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project with City's prior written approval and, with City's prior written approval in each instance, to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the City's budget for the Cost of the Work.

ARTICLE 5. PRELIMINARY EVALUATIONS AND PLANNING SERVICES

A. The Consultant shall provide a preliminary evaluation of the information furnished by the City under this Agreement, including the City's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Consultant shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the City of any other information or Consultant services that may be reasonably needed for the Project.

B. The Consultant shall report to the City immediately if the City's budget is deficient to design and construct the program under the conditions and requirements that the City has established.

C. The Consultant shall review the City's proposed method of contracting for construction services and shall notify the City of anticipated impacts that such method may have on the City's program, financial and time requirements, and the scope of the Project.

ARTICLE 6. DESIGN SERVICES

A. A description of the desired Project/building elements for the Project is attached hereto as Exhibit G. The Consultant's design services shall include design of such Project building elements and all structural, mechanical, plumbing, civil, and electrical engineering services relating thereto.

B. In addition to the foregoing, design services shall also include interior architectural services for the Lobby, plumbing, engineering, HVAC engineering, fire protection engineering (excluding fire sprinklers system design and engineering except for performance specifications and coordination with the local Fire Department). Title 24 requirements, elevators specifications, design of conduit for customary low voltage electrical systems (e.g., telephone/security and similar systems) roofing/waterproofing design, and as required by code, signage services (including graphics), and City's "green building ordinance" requirements in connection with the complete design of the Project.

C. Consultant shall also (1) engage with City's designated contractors, engineers, designers and consultants, in their "value engineering analysis" of structural, architectural, electrical, mechanical and related design alternatives, and shall, with the written approval of City, incorporate any economy so identified in the design of the Project; (2) conduct periodic meetings with City and City's separate consultants and (3) cooperate and coordinate the Consultant's design services with the services of the City's separate consultants. The coordination services described in clause (4) above shall not make Consultant responsible for the adequacy or timeliness of any plans and specifications prepared by City's consultants; however, if Consultant knows or reasonably suspects that any such plans and specifications are not consistent with sound design or construction practices, Consultant shall immediately notify City in writing.

D. In no event shall Consultant: (1) utilize or replace any consultants or subcontractors in connection with the performance of the services hereunder unless City gives its prior written approval of such consultants or subcontractors (or their replacements, as applicable); (2) prepare "performance" specifications or "design-build" documents as part of Consultant's services hereunder unless Consultant receives City's prior written consent for such "performance" specifications or "design-build" documents (City's approval of any such "performance" specifications or "design-build" documents may result in an appropriate downward adjustment to the Consultant's fee for design services); or (3) prepare design documents that call for "proprietary" equipment or material in which Consultant has a

financial or other interest, unless Consultant receives City's prior written approval to prepare design documents that call for such "proprietary" equipment or material. Consultant will not commence work on any phase of design services until Consultant receives a written authorization from City directing Consultant to so proceed. City and Consultant acknowledge that there may be, at times, some reasonable overlapping of the services performed by Consultant in the Design phases (i.e., the City may authorize or instruct the Consultant to proceed into a phase prior to completion of the preceding phase, and that the Consultant may be providing services in more than one phase of the Project concurrently).

ARTICLE 7. DESIGN DOCUMENTS

A. The Consultant shall provide Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. At the Consultant's option, Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

B. Design Documents shall include, without limitation, floor plan of each floor; site plan; building elevations; building sections; key details; and outline specifications, describing building materials; and SMEP (structural, mechanical, electrical, plumbing) design concepts. Design Documents for common areas shall include, without limitation, space plan, typical interior details, and finish selection. Design Documents shall be prepared in sufficient detail for submission of completed applications for approval to all applicable governmental agencies.

C. Consultant shall reasonably cooperate in the scheduling of meetings necessary for City's review and approval of the Design Documents, which meetings shall be attended by the Consultant at the request of City.

D. Consultant shall provide a cost estimate update.

E. Project background and additional scope are indicated in Exhibit A-2.

FUTURE SERVICES

The Consultant shall provide future services consisting of the following phases to be incorporated herein by an amendment to this Agreement:

Construction Documents Phase
Bid Phase
Construction Administration Phase

EXHIBIT A-1

Progress Schedule

The Consultant proposes the following work schedule which shall commence at the discretion of the City:

Commencement of work: Upon receipt of a notice to proceed following a kick-off meeting with City and design team wherein the mutually agreed upon program, schedule, and budget are confirmed.

Design Documents: Commence upon receipt of notice to proceed and complete in fifteen (15) weeks

EXHIBIT A-2

Project/Building Elements

The proposed project consists of an office building to be located at 9400 South Santa Monica Boulevard, Beverly Hills. The building is to be three stories tall and will be designed as a shell and core building to accommodate multiple tenants or single floor tenants. The general building elements are illustrated in the attached Conceptual Plans, Exhibit G representing the site area, floor area ratio, total net and gross square footage for each floor level.

Services are limited to architectural, structural, mechanical, electrical, plumbing, civil engineering, and cost estimating.

EXHIBIT B

Compensation/Payment Terms

- A. City shall compensate Consultant for the satisfactory performance of services described in this Agreement an amount not to exceed One Hundred Eight Thousand Seven Hundred Twenty-Two Dollars (\$108,722.00) for professional fees. City shall pay Consultant for reimbursable expenses reasonably incurred in the performance of this Agreement as described in Exhibit E, attached hereto and incorporated herein, an amount not to exceed Ten Thousand Dollars (\$10,000.00).
- B. In the event the City authorizes in writing Contingency services not included as a part of the services specified in Exhibit E-1, attached hereto and incorporated herein, the payment shall be based on the hourly rates in Exhibit D or a lump sum as may be mutually agreed, but shall not exceed Nine Thousand Dollars (\$9,000.00). This amount shall be in addition to that indicated in the previous paragraphs.
- C. Consultant shall provide City with monthly invoices in a form acceptable to the City for services performed. Such invoices shall describe in detail the work performed during the previous month by task, and shall request that payment be made in proportion to the portion of total services required. City shall pay satisfactory invoices within thirty (30) days.
- D. If City exercises its right to terminate this Agreement other than for cause pursuant to Section 11 of the Agreement, compensation to the Consultant shall be based on the actual work completed at the time of termination, but in no case exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.
- E. In no event shall the total compensation for all services permitted under the Agreement exceed One Hundred Twenty-Seven Thousand Seven Hundred Twenty-Two Dollars (\$127,722.00).

EXHIBIT C

Responsible Personnel

The following key personnel will be dedicated for the duration of the Project:

Jeffrey M. Kalban Design Principal

Edward Hernandez Project Architect

EXHIBIT D

Schedule of Hourly Rates

| <u>Title</u> | <u>Project Title</u> | <u>Rate</u> |
|-------------------|----------------------|-------------|
| Partner | Principal | \$200 |
| Associate Partner | Project Architect | 175 |
| Senior Associate | Architect | \$165 |
| Associate | Associate | \$155 |
| None | Designers/Drafters | \$125 |
| None | Technical Assistant | \$80 |

EXHIBIT E

Reimbursable Costs

Reimbursable expenses for printing and plotting, and computer rendering of the design, reasonably incurred by the Consultant and the Consultant's employees in connection with the Project shall be billed at direct cost. City shall be responsible for reproduction of bid sets. A budget not exceed Ten Thousand Dollars (\$10,000.00) shall cover such reimbursable expenses.

EXHIBIT E-1

Contingency

Consultants not included in the base contract, but which could be added as additional services, include:

- Landscape Architect
- Waterproofing and Roofing Consultant (Peer Review)
- Special Lighting Design Consultant
- LEED or equal Consultant (Compliance Documentation)
- Security Consultant
- Building and Tenant Identification Graphics
- Acoustical Consultant

EXHIBIT F

Architect's Consultants

| | |
|---|--|
| ELECTRICAL ENGINEER: Project Engineer: | Moses & Associates Ray Moses 447 S. Robertson Bl., Suite #201 Beverly Hills, CA 90211 |
| MECHANICAL/PLUMBING: Project Engineer: | Davar & Associates Gilbert Dilanchian 1844 E. Walnut Street, Suite A Pasadena, CA 91107 |
| STRUCTURAL ENGINEER: Project Engineer: | William K. Koh & Associates William Koh, S.E. 15477 Ventura Bl., Suite 101 Sherman Oaks, CA 91403 |
| COST ESTIMATOR: Project Engineer: | Bernards Jeff Bernards 555 First Street San Fernando, CA 91204 |

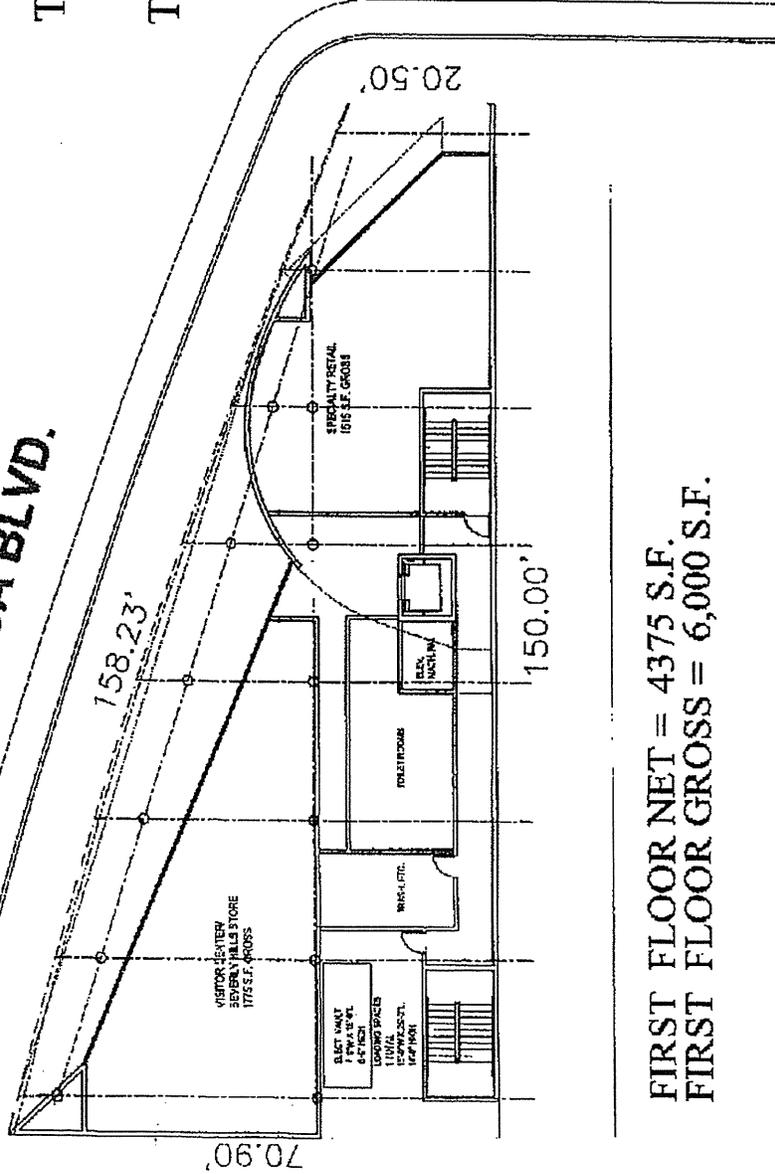
EXHIBIT G
Conceptual Plans

EXHIBIT G

SITE = 7,099 S.F.
 F.A.R. @ 2:1 = 14,198 S.F.
 TOTAL NET = 15375 S.F.

TOTAL GROSS = 18,950 S.F.

S. SANTA MONICA BLVD.



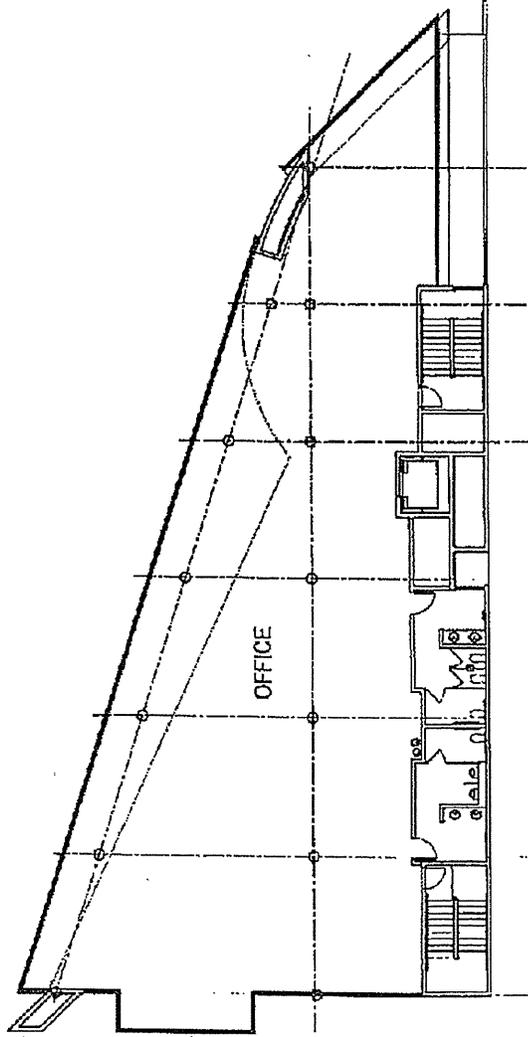
N. CANON DR.

FIRST FLOOR NET = 4375 S.F.
 FIRST FLOOR GROSS = 6,000 S.F.

CANON & SANTA MONICA
 September 2nd, 2009 scale: 1/16"=1'-0"

Jeffrey M. Kalban & Associates
 Architecture, inc.

EXHIBIT G

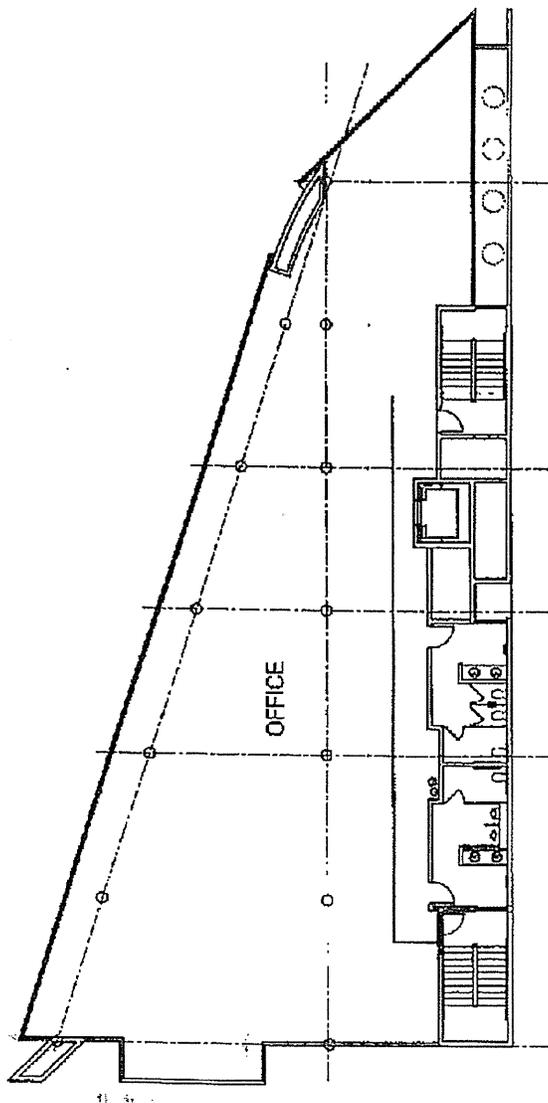


SECOND FLOOR NET = 5,500 S.F.
SECOND FLOOR GROSS = 6,350 S.F.

Jeffrey M. Kalban & Associates
Architecture, Inc.

September 2nd, 2009 scale: 1/16" = 1'-0"

EXHIBIT G



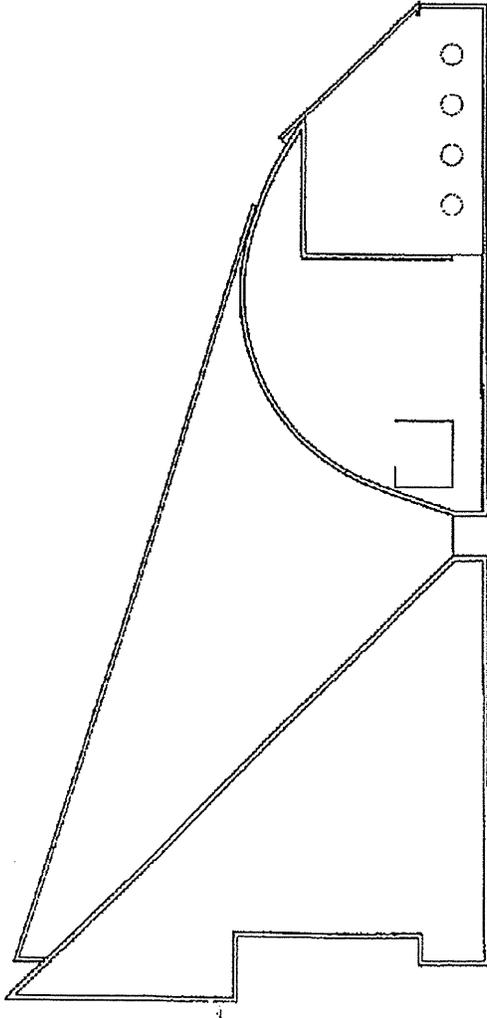
THIRD FLOOR NET = 5,500 S.F.
THIRD FLOOR GROSS = 6,600 S.F.

CANON & SANTA MONICA

September 2nd, 2009 scale: 1/16"=1'-0"

Jeffrey M. Kalban & Associates
Architecture, Inc.

EXHIBIT G



ROOF PLAN

CANON & SANTA MONICA
September 2nd, 2009 scale: 1/16"=1'-0"

Jeffrey M. Kalban & Associates
Architecture, Inc.