

**CITY OF CHULA VISTA
CONSULTANT SERVICES AGREEMENT
WITH KIMLEY-HORN AND ASSOCIATES, INC.
TO PROVIDE CIVIL ENGINEERING CONSULTING SERVICES FOR VARIOUS CAPITAL
IMPROVEMENT PROGRAM PROJECTS**

This Agreement is entered into effective as of November 1, 2017, or when approved by the City Council of the City of Chula Vista, whichever is later ("Effective Date") by and between the City of Chula Vista, a chartered municipal corporation ("City") and Kimley-Horn and Associates, Inc., a North Carolina corporation ("Consultant") (collectively, the "Parties" and, individually, a "Party") with reference to the following facts:

RECITALS

WHEREAS, the City desires to procure qualified civil engineering services to assist the City's civil engineering design staff due to the current number and pace of Capital Improvement Program projects and the proposed large infrastructure effort associated with the recently voter approved Measure P in Chula Vista; and

WHEREAS, on June 9, 2017, the City issued a Request for Proposal (RFP) for Civil Engineering Consulting Services; and,

WHEREAS, the City of Chula Vista received thirteen (13) proposals from firms interested in providing Civil Engineering services; and,

WHEREAS, after the City completed its review of the proposals seven (7) firms were selected for interviews in July 2017; and,

WHEREAS, after the interview process for all seven (7) firms, the consultant selection committee determined KIMLEY-HORN AND ASSOCIATES, INC., as one of the four best qualified Consultants to provide the services described in the Agreement; and,

WHEREAS, the consultant selection process has been conducted in accordance with Section 2.56.110C of the Chula Vista Municipal Code; and

; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

[End of Recitals. Next Page Starts Obligatory Provisions.]

OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

1. SERVICES

1.1 Required Services. Consultant agrees to perform the services, and deliver to City the "Deliverables" (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the "Required Services."

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City's Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services ("Additional Services"). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, "Additional Services" shall also become "Required Services" for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Security for Performance. In the event that Exhibit A Section 4 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City's information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all

subcontractors and personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4 Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Consultant.

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for

payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City's Risk Manager.. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be "Primary." Consultant's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that

Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The "Retro Date" must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of this Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant's obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Consultant shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys' fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the foregoing, if the services provided under this Agreement are design professional services, as defined by

California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Consultant agrees to pay any and all costs City incurs in enforcing Consultant's obligations under this Section 4.

4.6 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

6. REMEDIES

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

8.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related

Individuals”), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

8.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

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**SIGNATURE PAGE
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

KIMLEY-HORN AND ASSOCIATES, INC.

CITY OF CHULA VISTA

BY: 

DENNIS LANDAAL
SENIOR VICE PRESIDENT

KHACA
03

BY: 

MARY CASILLAS SALAS
MAYOR

ATTEST

BY: 

Kerry Bigelow, MMC
Acting City Clerk

APPROVED AS TO FORM

BY: 

Glen R. Googins
City Attorney

EXHIBIT A
SCOPE OF WORK AND PAYMENT TERMS

1. Contact People for Contract Administration and Legal Notice

A. City Contract Administration:

Roberto Yano
276 Fourth Ave, Chula Vista CA 91910
619-409-3805
RYano@ChulaVistaCA.org

For Legal Notice Copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

KIMLEY-HORN AND ASSOCIATES, INC.

Kirk Ammerman, Associate
Contract Project Manager
401 B Street, Suite 600
San Diego, CA 92101

For Legal Notice Copy to:

Dennis Landaal, Senior Vice President
401 B Street, Suite 600
San Diego, CA 92101

2. Required Services

A. General Description:

Consultant shall provide general civil engineering consultant services at the direction and to the satisfaction of the City Engineer or designee during the planning, design, and construction phases of projects.

Tasks may include but are not limited to: Construction Support, Floodplain Management, Engineering Studies, Hydraulic / Hydrology Modeling, Wastewater Flow Metering, Wastewater Rate Case, Traffic Engineering & Analysis, Grant Writing and Grant Submittal, Studies/Designs/ Specifications/cost estimates/ for Pump Station, Street, Structural, Drainage, Wastewater infrastructure, and other duties as assigned by City at its sole discretion.

B. Detailed Description:

1. The number and scope of such civil engineering consultant service projects (each a "Project", collectively, the "Projects") will vary at the sole discretion of the City from year-to-year. The City, in many cases, will provide the Consultant with Land Surveying data that has been prepared by City staff and/or by other firms. Additionally, the City may provide Geotechnical and pothole services/data.

2. Consultant will provide personnel that are experienced in all areas of Civil Engineering which is required to satisfy the Agreement. Knowledge of City codes, procedures, and regulations is required. The City shall have the right to make a determination as to the qualifications of individual personnel and shall have the right to require substitution of personnel.

3. Consultant will provide Civil Engineering services in response to the City's request for such services. Consultant acknowledges and agrees that service requests from the City under this Agreement will be on an "as-needed" and/or per Project basis at the sole discretion of the City. Each Project will include a not-to-exceed fee for all time, materials, and costs permitted to be incurred for that Project. Consultant acknowledges and agrees that the City is not required to request any services from Consultant under this Agreement. Consultant acknowledges and agrees that it is not entitled to any compensation under this Agreement until such time that it has provided Required Services as explicitly authorized and approved by the City pursuant to the process identified herein

4. Consultant will identify software and methodology to be used, which shall require approval of the City.

5. Consultant will provide all original field notes, data, reports, records, etc. of field and office tasks to the City. Further, the Consultant shall maintain copies of all records related to the project tasks performed for a period of five years. This period may be extended when requested by the City at no additional cost to the City.

6. Consultant will provide the digital files for each project in Civil 3D format (City AutoCAD template), furnish digital photos and all other records or material related to each Project to the City.

7. Consultant will submit billing forms and comply with all procedures acceptable to the City. Consultant shall provide separate invoices for each City Project identified. Every invoice will list all work performed on Project. Each invoice shall show total amount billed to date for Project, payments received, and amount due. All work elements shall be itemized. Consultant shall only be paid for work done at the request of the City's Project Manager. If additional work is requested by others, Consultant shall obtain a written authorization from the Project Manager.

The Consultant shall forfeit and will not receive payment for work performed and billed to City more than sixty (60) calendar days after performance of the Required Services.

8. Scoping meeting

At the beginning of each Project, Consultant shall be required to meet with the City Project Manager and identify the scope of the Project and deliverables for the Project. Consultant shall provide the City with a cost proposal per section 4 below and schedule for work no more than 10 working days after the scope meeting unless otherwise agreed upon by the City. Said cost proposal shall set a not-to-exceed price and break down hours per task and personnel doing the work. Schedule shall include 30%, 60%, 90%, Final product, begin construction, end construction milestones and as-builts. In said scope meeting, the City shall decide how the topographic survey and the boundary survey will be obtained. Land Survey limits shall be proposed by Consultant and approved by the City. All as-built, utility and field research required shall be the responsibility of the Consultant and coordinated by the City. The Consultant shall identify all other test, permits, reports or other information needed to complete the Project in proposed scope (i.e. Geotechnical and Pothole).

City written approval of scope provided by the Consultant is required prior to the start of work on a Project. Environmental permitting shall be done by the Consultant, coordinated by the City and shall be estimated in the schedule. The City reserves the right to request more than one cost proposal per Project

and assign work to any consultant that provides the best value for the Project. Consultant is not permitted to provide services for or incur costs on any Project prior to receipt of a Notice to Proceed from the City.

9. Progress checks

Consultant shall submit a Professional Engineer (P.E.) reviewed complete package at each of the milestones identified that include but is not limited to studies, reports, plans, specifications and engineering cost estimate (PSE). The number of copies shall be determined prior to submittal. Consultant shall estimate a two-week turnaround time (ten working days) for the City review (actual time may vary). All City comments will be addressed by the Consultant and accepted by the City Project Manager in writing.

10. Final product

All Projects shall be in CCS 83 and NAVD 88 unless otherwise approved by City in writing. All Projects shall also be drafted in Civil 3D (City template) using City style standards unless otherwise approved by City in writing. Drawings with pertinent notes and details consistent with the current City standards and the current accepted standards of practice for the professions involved. Consultant shall utilize the current City adopted Edition of the Greenbook Standard Specifications for Public Works Construction, Chula Vista Standard Special Provisions, Regional Standards, and Chula Vista Construction Standards. Consultant shall also provide details and specifications to successfully construct the project. Said specifications shall also conform to the City's standards for each funding source. The findings and recommendations from any and all reports and studies for the Project appropriately incorporated. The topography, property lines, right of way lines, easement limits, existing utilities, and field survey points accurately incorporated into and to the extent needed for the Project. Plans, Details and specifications shall be in compliance with all applicable State, Local and Federal requirements and acceptable to the City's Project Manager. Consultant will be responsible for any Request for Information (RFI) during bidding.

11. Construction support and for the As-built.

Consultant shall compile As-builts on final plans.

12. Plan Review

Consultant will also be requested to review PSE, Studies and general engineering documents prepared by other engineers. Consultant shall provide the City with a cost proposal per section 4 below and schedule for work no more than 10 working days after the scope meeting unless otherwise agreed upon by the City.

13. Personnel

The City's Project Manager shall be the single point of contact for the City. The City shall reserve the right of refusing personnel assigned to a Project by the Consultant. Consultant shall be the Engineer of Work on all Projects assigned.

14. Meetings

All meetings are to be included in Project scope and minutes shall be provided to the City for approval.

15. Conflict of Interest

Consultant shall not retain any clients who are doing work under permits or contractual agreements with the City unless otherwise approved in writing by City Engineer.

16. Work not listed in Schedule

If an occasion arises whereby the City requests work to be done which is not listed in this schedule, the price of providing this work shall be negotiated in good faith between the City and the Consultant. The negotiated price(s) shall not exceed the Schedule of Charges labeled as Exhibit D to this Agreement.

3. **Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin [November 1, 2017] and end on [October 31, 2019] for completion of all Required Services.

4. **Compensation:**

A. Form of Compensation

☒ **Time and Materials.** For performance of the Required Services by Consultant as identified in Section 2.B., above, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of the Required Services, at the rates or amounts as indicated below:

See Exhibit D for applicable hourly rates under this Agreement.

B. Reimbursement of Costs

☒ **Invoiced or agreed-upon amounts as follows:**

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

Initial Scope meeting	No Cost
In County Travel Time	No Cost
Reports, Original, Mylar	No Cost
Copies, Reproductions of Final Reports/Mylars	Cost Plus 10%
Outside Services	Cost Plus 15%
Delivery	Cost Plus 10%
Long Distance Telephone Charges	No Cost
Other Actual Identifiable City- Approved Direct Costs	Cost Plus 10%
Mileage	IRS Standard Mileage Rate

Limitation without Further Authorization on Time and Materials Arrangement. Each Project assigned will set a not-to-exceed fee for all time, materials, and costs permitted to be incurred for that Project. In addition, the combined total for all time, materials, and costs on all assigned Projects from the Effective Date through [October 31, 2018] shall not exceed \$500,000.00, and the combined total for all time, materials, and costs on all assigned Projects from November 1, 2018 to October 31, 2019 shall not exceed \$500,000. If the City exercises its option to extend the Agreement, the amount to be paid to the Consultant for all time, materials, and costs provided during the term of that extension shall not exceed \$500,000.00. If the City exercises all additional options to extend the Agreement, the total amount to be paid to the Consultant for all time, materials, and costs during the Term and optional extension periods shall not exceed \$2,000,000.00.

Consultant acknowledges and agrees that it shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense.

5. Special Provisions: CHECK ANY THAT APPLY OR SELECT "NONE," AND DELETE ALL INSTRUCTIONS.

☒ Permitted Sub-Consultants: [The List Of Permitted Sub-Consultants is found on Exhibit E.]

☒ Security for Performance: ["None"]

☒ Notwithstanding the completion date set forth in Section 3 above, City has the option to extend this Agreement for two (2) additional terms, defined as a one-year increment. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be modified upon written agreement of the parties. The City shall give written notice to Consultant of the City's election to exercise the extension via the Notice of Exercise of Option to Extend document. Such notice shall be provided at least 30 days prior to the expiration of the term.

☒ Other:

Consultant and each of its subconsultants/subcontractors will comply with the State of California's prevailing wage rate requirements in accordance with California Labor Code, and all Federal, State, and local laws and ordinances applicable to persons employed by them for public works in a covered work classification. When payment of prevailing wages apply to the Required Services the wage rates and transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations, State of California (DIR). The State's prevailing wage rates determinations are available from the DIR home page at www.dir.ca.gov/oprl/. The City has ascertained that general prevailing wage rates may be applicable to all or a portion of the work to be performed for the Required Services. To verify compliance with State prevailing wage requirements, the DIR maintains an online registry of contractors to which Consultant and/or its subconsultants/subcontractors will be required to submit certified payrolls. Subject to the exceptions provided in the California Labor code, no Consultant or any of its subconsultants/subcontractors shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered with the DIR and qualified to perform public work pursuant to California Labor Code section 1725.5. When payment of prevailing wages apply to the Required Services, this Agreement becomes subject to compliance monitoring and enforcement by the DIR. Nothing contained above shall be construed to any way limit Consultant's obligations to comply with all laws and regulations.

EXHIBIT B INSURANCE REQUIREMENTS

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit Additional Insured Endorsement or Blanket AI Endorsement for City* Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01 <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input checked="" type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: "NONE"

EXHIBIT C

CONSULTANT CONFLICT OF INTEREST DESIGNATION

The Political Reform Act² and the Chula Vista Conflict of Interest Code³ ("Code") require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.⁴

☒ A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED⁵ from disclosure.

☐ B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES

(Category descriptions available at www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code.)

Name	Email Address	Applicable Designation
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – If individuals have different disclosure requirements, duplicate this row and complete separately for each individual.	Enter email address(es)	<input type="checkbox"/> A. Full Disclosure <input type="checkbox"/> B. Limited Disclosure (select one or more of the categories under which the consultant shall file): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification: <input type="checkbox"/> C. Excluded from Disclosure

1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of "Consultant," pursuant to FPPC Regulation 18700.3, must file a Form 700.

2. Required Filing Deadlines

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 *2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant's requirement to comply with the disclosure requirements set forth in the Code.

Completed by: Enter City Staff Person's Name

2 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

3 Chula Vista Municipal Code §§2.02.010-2.02.040.

4 Cal. Gov. Code §§53234, *et seq.*

5 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; FPPC Reg. 18700.3 (Consultant defined as an "individual" who participates in making a governmental decision; "individual" does not include corporation or limited liability company).

EXHIBIT D
RATE SCHEDULE
KHA

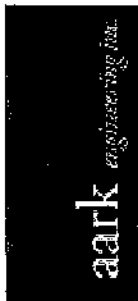
Position	Hourly Rate
Principal In Charge	\$260
QC/QA Manager	\$225
Contract Manager	\$210
Task Order Manager/Senior Professional	\$190
Project Engineer	\$170
Analyst	\$145
Accountant	\$115
Support Staff	\$ 90

PCG UTILITY CONSULTANT INC - FEE SCHEDULE

The following fee schedule represents average hourly rates for each work category and will be used in determining applicable fees for work performed by PCG personnel unless otherwise indicated in the contract agreement:

DESCRIPTION	RATES			
	Sep 2017 to Aug 2018	Sep 2018 to Aug 2019	Sep 2019 to Aug 2020	Sep 2020 to Aug 2021
Principal/Project Manager	\$178.73	\$178.73	\$184.09	\$189.61
Engineer	150.27	150.27	154.78	159.42
Senior Designer / Drafter Supervisor	85.13	85.13	87.68	90.31
Utility System Designer	71.73	71.73	73.88	76.10
Drafter	55.78	55.78	57.45	59.18
Project Analyst	47.80	47.80	49.23	50.71

Hourly billing rates include: base salaries, overheads, and profits and are exclusive of reimbursable or other expenses.



FEE SCHEDULE

for Professional Engineering Services

Hourly Rates

<u>Personnel Classification</u>	<u>September 2017 - August 2019</u>	<u>September 2019 - August 2020</u>	<u>September 2020 - August 2021</u>
Principal Structural Engineer	\$165.00	\$169.85	\$175.05
Senior Managing Engineer	\$145.00	\$149.35	\$153.83
Senior Project Manager	\$133.00	\$136.99	\$141.10
Project Manager	\$128.00	\$131.84	\$135.80
Senior Project Engineer	\$123.00	\$126.69	\$130.49
Project Engineer	\$118.00	\$121.54	\$125.19
Assistant Engineer (EIT)	\$95.00	\$97.85	\$100.79
Senior Designer	\$95.00	\$97.85	\$100.79
Designer	\$80.00	\$82.40	\$84.87
Administrative/Clerical	\$60.00	\$61.80	\$63.65
Registered Structural Engineer Expert Witness Testimony	\$295.00	\$303.85	\$312.97



AGUIRRE & ASSOCIATES

SCHEDULE OF HOURLY BILLING RATES

Effective January 1, 2017 through December 31, 2019

LAND SURVEYING SERVICES - OFFICE

Principal Land Surveyor	PLS	\$165.00
Land Surveyor	LS	126.00
CAD Technician	CAD	80.00

LAND SURVEYING SERVICES - FIELD

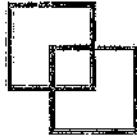
1-Person Survey Crew	1PSC	125.00
1-Person Survey Crew (Prevailing Wage)	1PSC-PW	170.00
1-Person Survey Crew (GPS)	1PSC-GPS	125.00
GPS Crew Assistant	GPS-A	60.00
1-Person Survey Crew (GPS) (Prevailing Wage)	1PSC-GPS-PW	170.00
GPS Crew Assistant (Prevailing Wage)	GPS-A-PW	150.00
Survey Crew Party Chief	PC	125.00
Survey Crew Chainman	CH	60.00
Survey Crew Party Chief (Prevailing Wage)	PC-PW	170.00
Survey Crew Chainman (Prevailing Wage)	CH-PW	150.00

OTHER SERVICES

Depositions and Court Testimony	\$300.00
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DIRECT COSTS

Prints and Copies	Cost
Delivery Charges	Cost
Photogrammetry	Cost



BENDER ROSENTHAL, Inc.

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841
phone: 916.978.1900 • fax: 916.978.4904
www.benderrosenthal.com

September 2017-August 2019 BILLING RATES

Project Manager – Jane Wiggins	\$165/hr
Senior Appraiser (BRI staff)	\$165/hr.*
Relocation Specialist (Deryl Neal)	\$145/hr.
Senior Acquisition Agent – Mickey Zeichick, Deryl Neal	\$145/hr.
Acquisition Agent (BRI staff)	\$115/hr.
Appraiser (BRI staff)	\$145/hr.*
Other Associated Professional Staff	\$ 90/hr.
Researchers	\$ 85/hr.
Administrative/Production	\$ 75/hr.



BRG Consulting, Inc.
Environmental Planning and Impact Assessment
Land Use Planning and Permitting

304 Ivy Street
San Diego, California 92101-2030
619-298-7127 FAX 619-298-0148

First Name	Last Name	Company Classification	Effective Date	Loaded Hourly Home Office
Erick	Lathers	President	NTP Date	\$ 311.45
Christina	Watts	Vice President/Sr. Project Manager	NTP Date	\$ 167.42
Neaiah	Henderson	Sr. Project Manager	NTP Date	\$ 151.38
Lee	Avens	Associate Environmental Analyst/Asst PM	NTP Date	\$ 116.44
Rodney	Rowe	Environmental Analyst	NTP Date	\$ 66.61
TBD		GIS Coordinator	NTP Date	\$ 90.83
John	Adelsteinbrooke	Document Manager	NTP Date	\$ 74.18



2017 PROFESSIONAL FEE SCHEDULE

CLASSIFICATION	\$/HR	CLASSIFICATION	\$/HR
Technician I	77	Project Administrator/Word Processor/Dispatcher	72
Technician II / Special Inspector	88	Information Specialist	89
Senior Technician / Senior Special Inspector	95	CAD Operator	108
Prevailing Wage (field soils / materials tester) *	122	GIS Specialist	126
Prevailing Wage (Special Inspector) *	128	Staff Engineer / Geologist / Scientist	131
Prevailing Wage (Source Inspector, NDT, and Soil Remediation O&M) *	131	Senior Staff Engineer / Geologist / Scientist / ASMR	140
System Operation & Maintenance (O&M) Specialist	128	Operations / Laboratory Manager	158
Non Destructive Testing (NDT)	131	Project Engineer / Geologist / Scientist	158
Deputy Inspector	128	Senior Project Engineer / Geologist / Scientist / SMR	178
Field / Laboratory Supervisor	128	Associate	194
Source Inspector I	122	Principal	212
Source Inspector II	128	Senior Principal	248
Source Inspector III	131		

* See Prevailing Wages in Terms and Conditions

Platt/Whitelaw Architects Inc. PROFESSIONAL RATES 2017, 2018 and 2019



PLATT/WHITELAW ARCHITECTS, INC.

Category	Hourly Rate
Principal Architect	\$220.00
Project Manager	\$180.00
Project Architect	\$165.00
Architect	\$150.00
Spec Writer	\$141.00
Project Coordinator	\$119.00
CAD Tech 1	\$109.00
CAD Tech 2	\$85.00
Clerical	\$74.00

Alison M. Whitelaw, FAIA
SENIOR PRINCIPAL

Sandra S. Creamley, AIA
PRINCIPAL

Naveen H. Woney, AIA
PRINCIPAL

David M. Madigan
ASSOCIATE

Personnel classifications may be amended based on potential staff changes. Any new classification will be subject to prior approval by the client.

EXHIBIT E

LIST OF SUBCONSULTANTS

<u>Subconsultant</u>	<u>Role</u>
Ark Engineering	Structural Engineering - Buildings
Aguirre & Associates	Surveying
Bender Rosenthal, Inc.	Right-of-Way/Property Appraisal and Acquisition Services
BRG Consulting, Inc.	CEQA / NEPA Planning and Support Services
Leighton Consulting	Geotechnical Engineering
PCG Utility Consultants	Utility Research and Base Mapping/Utility Permitting
Platt/Whitelaw Architects	Building Architecture

**FIRST AMENDMENT
to Agreement between the
City of Chula Vista
and
Kimley-Horn and Associates, Inc
to provide Civil Engineering Consulting Services for Various Capital Improvement
Program Projects**

This FIRST AMENDMENT (“Amendment”) is entered into effective as of July 9, 2019 (“Effective Date”) by and between the City of Chula Vista (“City”) and Kimley-Horn and Associates, Inc (“Consultant”) with reference to the following facts:

RECITALS

WHEREAS, City and Consultant previously entered into the City of Chula Vista Consultant Services Agreement with Kimley-Horn and Associates, Inc. to Provide Civil Engineering Consulting Services for Various Capital Improvement Program Projects, , Agreement Control Number 17116 and Resolution Number 2017-178, on November 1, 2017 (“Original Agreement”); and

WHEREAS, the City has identified additional services that it desires to have Consultant perform pursuant to the terms of the Original Agreement; and

WHEREAS, the Parties anticipate that the performance of the additional services will require payment to Consultant in excess of the annual not-to-exceed amount of \$500,000 as set forth in Section 4.B of the Original Agreement; and

WHEREAS, Section 8.1 of the Original Agreement provides that the parties are permitted to modify the Agreement by means of a written amendment executed by both Parties; and

WHEREAS, the Parties wish to increase the Original Agreement’s annual not-to-exceed amount as shown in Exhibit A, Section 4 of the Original Agreement, from \$500,000 to \$750,000 and total contract maximum not-to-exceed amount from \$2,000,000 to \$2,250,000.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties set forth herein, City and Consultant agree as follows:

1. Exhibit A, Scope of Work and Payment Terms, Section 4.B of the Original Agreement is amended as follows:

“Limitation without Further Authorization on Time and Materials Arrangement. Each Project assigned will set a not-to-exceed fee for all time, material, and costs permitted to be incurred for that Project. In addition, the combined total for all time, materials, and costs on all assigned Projects from the Effective Date through October 31, 2018 shall not exceed \$500,000.00 and the combined total for all time, materials, and costs on all assigned Projects from November 1, 2018 to October 31,

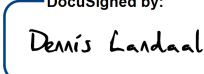
2019 shall not exceed ~~\$500,000~~ \$750,000. If the City exercises its option to extend the Agreement, the amount to be paid to the Consultant for all time, materials, and costs provided during the term of that extension shall not exceed \$500,000.00. If the City exercises all additional options to extend the Agreement, the total amount to be paid to the Consultant for all time, materials, and costs during the Term and optional extension periods shall not exceed ~~\$2,000,000.00~~ \$2,250,000.00.”

2. Except as expressly provided herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.
3. Each party represents that it has full right, power and authority to execute this FIRST Amendment and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Amendment on the behalf of such party are duly authorized agents with authority to do so.

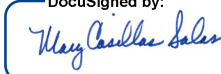
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**SIGNATURE PAGE TO FIRST
AMENDMENT
TO
THE CITY OF CHULA VISTA CONSULTANT SERVICES AGREEMENT WITH
KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CIVIL ENGINEERING
CONSULTING SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM
PROJECTS**


KIMLEY-HORN AND ASSOCIATES, INC

DocuSigned by:

BY: 39334A45E0834E3
DENNIS LANDAAL
SENIOR VICE PRESIDENT

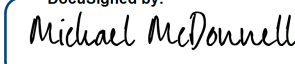
CITY OF CHULA VISTA

DocuSigned by:

BY: 062BED7C0386456
MARY CASILLAS SALAS
MAYOR

ATTEST

DocuSigned by:

BY: 3074D104EAF342E...
KERRY K. BIGELOW, MMC
CITY CLERK

APPROVED AS TO FORM

DocuSigned by:

BY: FD76561E77CE458... For
GLEN R. GOOGINS
CITY ATTORNEY

**SECOND AMENDMENT
to Agreement between the
City of Chula Vista
and
Kimley-Horn and Associates, Inc. |
To Provide Civil Engineering Consulting Services For Various Capital Improvement
Program Projects |**

This SECOND AMENDMENT (“Second Amendment”) is entered into effective as of March 16, 2021 (“Effective Date”) by and between the City of Chula Vista (“City”) and Kimley-Horn and Associates, Inc. (“Consultant”) with reference to the following facts:

RECITALS

WHEREAS, City and Consultant previously entered into 20-0516 - Attachment 3 - Second Amendment to Agreement (“Original Agreement”) on November 1, 2017; and

WHEREAS, Section 8.1 of the Original Agreement provides that the parties are permitted to modify the Agreement by means of a written amendment executed by both Parties; and

WHEREAS, on July 19, 2019, the parties entered into a First Amendment to the Original Agreement (“First Amendment”) to increase the annual not-to-exceed amount for the second year of the term of the Original Agreement from \$500,000 to \$750,000; and

WHEREAS, on or about November 1, 2019, the parties executed the first Notice of Exercise of Option to Extend the Agreement (“First Option”) through October 31, 2020 with a maximum compensation for the First Option term of \$500,000; and

WHEREAS, on or about November 1, 2020, the parties executed the second Notice of Exercise of Option to Extend the Agreement (“Second Option”) through October 31, 2020 with a maximum compensation for the Second Option term of \$500,000; and

The Original Agreement, First Amendment, First Option, Second Option, and this Second Amendment (if approved and executed) may be collectively referred to herein as the “Agreement”; and

WHEREAS, City and Consultant desire to enter into this Second Amendment to add additional required services, add subconsultants for the required additional services, increase the annual and total not-to-exceed amount during the Second Option term, and extend the length of the Second Option term, all as more specifically set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties set forth herein, City and Consultant agree as follows:

1. Exhibit A, Scope of Work and Payment Terms, Section 4.B of the Agreement is amended and restated as follows:

“Limitation without Further Authorization on Time and Materials Arrangement. Each Project assigned will set a not-to-exceed fee for all time, material, and costs permitted to be incurred for that Project. The combined total for all time, materials, and costs on all assigned Projects from the November 1, 2017 through October 31, 2018 shall not exceed \$500,000.00. The combined total for all time, materials, and costs on all assigned Projects from November 1, 2018 to October 31, 2019 shall not exceed \$750,000. The combined total for all time, materials, and costs on all assigned Projects from November 1, 2019 to October 31, 2020 shall not exceed \$1,300,000. The combined total for all time, materials, and costs on all assigned Projects from November 1, 2020 to October 31, 2021 (or later date if extended in accordance with this Agreement) shall not exceed \$1,300,000. The total amount to be paid to the Consultant for all time, materials, and costs during the Term and optional extension periods shall not exceed \$3,050,000.00.”

2. The Rate Schedule for Consultant’s performance of Required Services on and after October 31, 2021 will be as follows:

Description	Proposed Rate
PRINCIPAL IN CHARGE	\$ 275.60
QC/QA MANAGER	\$ 238.50
CONTRACT MANAGER	\$ 222.60
T.O. MANAGER/SR. PROFESSIONAL	\$ 201.40
PROJECT ENGINEER	\$ 180.20
ANALYST	\$ 153.70
ACCOUNTANT	\$ 121.90
SUPPORT STAFF	\$ 95.40

3. Exhibit E, List of Subconsultants of the Agreement is amended and restated as follows:

LIST OF SUBCONSULTANTS

<u>Subconsultant</u>	<u>Role</u>
Aark Engineering	Structural Engineering - Buildings
Aguirre & Associates	Surveying
Bender Rosenthal, Inc.	Right-of-Way/Property Appraisal and Acquisition Services
BRG Consulting, Inc.	CEQA/NEPA Planning and Support Services
Leighton Consulting	Geotechnical Engineering
PCG Utility Consultants	Utility Research and Base Mapping/Utility Permitting
Platt/Whitelaw Architects	Building Architecture
D-MAX	Water Quality, Technical Grant Writing Support
Rocks Biology Consulting (RBC)	Environmental and Regulatory Agency Support
ASM Affiliates	Environmental Support, Cultural Resource

4. Exhibit A, Scope of Work and Payment Terms, Section 3 of the Agreement is amended and restated as follows:

Term: In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin November 1, 2017 and end on October 31, 2021. If work on one or more Projects are in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by administrative amendment prior to the expiration of the Agreement to extend the time as needed to complete the in-progress Projects.

5. Except as expressly provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

6. Each party represents that it has full right, power and authority to execute this Second Amendment and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Second Amendment on the behalf of such party are duly authorized agents with authority to do so.

**SIGNATURE PAGE TO
SECOND AMENDMENT
TO
20-0516 - ATTACHMENT 3 - SECOND AMENDMENT TO AGREEMENT**

KIMLEY-HORN AND ASSOCIATES, INC. CITY OF CHULA VISTA

BY: _____
[ENTER NAME OF SIGNATORY]
[ENTER TITLE OF SIGNATORY]

BY: _____
[MARY CASILLAS SALAS]
[MAYOR]

[ATTEST

BY: _____
KERRY K. BIGELOW, MMC
CITY CLERK

APPROVED AS TO FORM

BY: _____
GLEN R. GOOGINS
CITY ATTORNEY

**THIRD AMENDMENT
TO AGREEMENT BETWEEN THE
CITY OF CHULA VISTA
AND
KIMLEY-HORN AND ASSOCIATES, INC.
TO PROVIDE CIVIL ENGINEERING CONSULTING SERVICES FOR VARIOUS
CAPITAL IMPROVEMENT PROGRAM PROJECTS**

This THIRD AMENDMENT (“Third Amendment”) is entered into effective as of October 31, 2021 (“Effective Date”) by and between the City of Chula Vista (“City”) and Kimley-Horn and Associates, Inc. (“Consultant”) with reference to the following facts:

RECITALS

WHEREAS, City and Consultant previously entered into the City of Chula Vista Consultant Services Agreement to Provide Civil Engineering Consulting Services for Various Capital Improvement Program Projects (“Original Agreement”) on November 1, 2017; and

WHEREAS, Section 8.1 of the Original Agreement provides that the parties are permitted to modify the Agreement by means of a written amendment executed by both parties; and

WHEREAS, on July 19, 2019, the parties entered into a First Amendment to the Original Agreement (“First Amendment”) to increase the annual not-to-exceed amount for the second year of the term of the Original Agreement from \$500,000 to \$750,000; and

WHEREAS, on March 16, 2021, the parties entered into a Second Amendment to the Original Agreement (“Second Amendment”) to add additional required services, add subconsultants, increase the annual and total not-to-exceed amount during the Second Option term, and extend the length of the term; and

WHEREAS, the parties desire to enter into this Third Amendment to extend the length of the term to complete the in-progress Projects as of the date of this Third Amendment.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties set forth herein, City and Consultant agree as follows:

1. Exhibit A, Scope of Work and Payment Terms, Section 3 of the Agreement is amended and restated as follows:


Term: In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin November 1, 2017 and end on June 30, 2022.

2. Except as expressly provided herein, all other terms and conditions of the Original Agreement, as amended, shall remain in full force and effect.

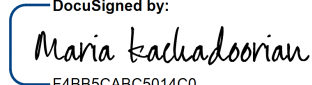
3. Each party represents that it has full right, power, and authority to execute this Third Amendment and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Third Amendment on the behalf of such party are duly authorized agents with authority to do so.

**SIGNATURE PAGE TO THIRD AMENDMENT TO
THE CITY OF CHULA VISTA CONSULTANT SERVICES AGREEMENT WITH
KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CIVIL ENGINEERING
CONSULTING SERVICES FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM
PROJECTS**

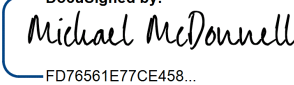
KIMLEY-HORN AND ASSOCIATES, INC.

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DENNIS LANDAAL
SENIOR VICE PRESIDENT

CITY OF CHULA VISTA

BY:  DocuSigned by:
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MARIA V. KACHADOORIAN
CITY MANAGER

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CITY ATTORNEY