**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

PREAMBLE

This Agreement is entered into as of the City's execution date (Effective Date) between the City of Santa Clara, California, a chartered California municipal corporation (City) and Kimley-Horn and Associates, Inc., a North Carolina corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A.   City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services";

B.   On December 13, 2021, City published a Request for Proposals ("RFP") seeking an Advanced Traffic Management System (ATMS) with Adaptive Traffic Control System (ATCS) and, on February 11, 2022, Contractor submitted a written response to the RFP, which was followed by an in-person and hands-on demonstration of Contractor's product and Services;

C.   City's agreement to award the contract for the Advanced Traffic Management System with Adaptive Traffic Control System to Contractor in accordance with the terms and conditions set forth in this Agreement is based upon its reliance upon the written and demonstrative information submitted by Contractor in response to City's RFP; and,

D.   The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1.   AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A   –   Scope of Services

                    Appendix A1: Preliminary Project Implementation Schedule

Appendix A2: Licensed Software

Appendix A3: ATCS Locations

Appendix A4: Final System Acceptance Certificate

Exhibit B   –   Schedule of Fees

Exhibit C   –   Insurance Requirements

Exhibit D   –   Software License Agreement

Exhibit E   –   City of Santa Clara RFP 21-22-18

Exhibit F   –   Kimley-Horn Proposal Response

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in the Appendices to the Exhibits. Exhibits E and F are incorporated by reference, and shall be relied upon to aid in interpretation of Exhibits A through D and the terms in the body of the Agreement. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly, and the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

Notwithstanding the foregoing, the terms of the Software License Agreement shall prevail with respect to the specific terms therein.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement and shall not be binding upon the Parties unless the Parties specifically agree in writing to incorporate said terms via an amendment to this Agreement or unless otherwise provided for in this Agreement.

2.   TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on May 1, 2023 and terminate on April 30, 2033.

3.   SCOPE OF SERVICES & PERFORMANCE SCHEDULE

A.   <u>Scope of Services.</u> Contractor agrees to provide the Software and perform the Services as set forth in the Scope of Services (Exhibit A) and the Software License Agreement (Exhibit D), which are attached hereto and incorporated as though fully set forth herein.

B.   Notification. Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet any requirement of this Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. For example, such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

C.   Contractor's Software. The terms for the use of Contractor's Software in conjunction with support and maintenance services shall be as set forth in the Software License Agreement (Exhibit D), which is attached hereto and incorporated herein.

D.   Schedule of Performance. Time is of the essence in this Agreement. Contractor shall meet the delivery requirements as set forth in the Preliminary Project Schedule (Appendix A1 to Exhibit A) and any modifications thereto by written agreement of the Parties. Times for performance shall be extended, as mutually agreed, for delays which are caused by reason of: floods, earthquakes, fires or other catastrophes outside of Consultant's reasonable control.

4.   WARRANTY

A.   Services. Contractor expressly warrants that all materials and services covered by this Agreement shall conform to the specifications, requirements and instructions upon which this Agreement is based, and the applicable industry standard for the services provided. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

B.   Software. Warranties applicable to the Software are set forth in Exhibit D (Software License Agreement).

5.   QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it is qualified in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is set forth in Section 1 of Exhibit B, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.

B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.

C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

D. If City fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, Contractor may terminate this Agreement upon ten (10) days notice to City.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the

cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14.   HOLD HARMLESS/INDEMNIFICATION

A.   To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, to the extent arising out of, pertaining to, or relating to the negligence, recklessness or willful misconduct of the Contractor in the performance of the Services by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.

B.   Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

C.   To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15.   INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

> City of Santa Clara
> Attention: Public Works Department
> 1500 Warburton Avenue
> Santa Clara, CA 95050
> and by e-mail at cmobeck@santaclaraca.gov

And to Contractor addressed as follows:

> Kimley-Horn and Associates, Inc.
> 4637 Chabot Drive Suite 300
> Pleasanton, CA 94588
> and by e-mail at brian.sowers@kimley-horn.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards (http://santaclaraca.gov/home/showdocument?id=58299).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor

and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20.   FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21.   NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22.   GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23.   SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24.   CHANGE PROCEDURES AND AUTHORIZATION

A.   Change Orders. Any changes to this Agreement that relate to (i) the deletion of Services, (ii) adding additional Services, or (iii) changing or modifying Services, not to exceed the maximum compensation of this Agreement, shall be made by a written change order authorized by the Director of Public Works.

B.   Amendments. Any changes to this Agreement that relate to (i) an increase in the maximum compensation of this Agreement, or (ii) the term of this Agreement, or (iii) any other terms or conditions of the Agreement not covered by the Change Order provisions set forth above, may only be

made by a written amendment duly authorized and executed by the Parties to this Agreement.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: Dated: _____

_____   _____
Office of the City Attorney   Office of the City Manager
City of Santa Clara   City Manager
                                                                    1500 Warburton Avenue
                                                                    Santa Clara, CA 95050
                                                                    Telephone: (408) 615-2210
                                                                    Fax: (408) 241-6771

<div align="center">"CITY"</div>

KIMLEY-HORN AND ASSOCIATES, INC.
a North Carolina corporation

Dated: 3/30/2023

By (Signature): _____

Name: Brian Sowers

Title: Senior Vice President

Principal Place of Business Address: 4637 Chabot Drive Suite 300 Pleasanton, CA 94588

Email Address: brian.sowers@kimley-horn.com

Telephone: 925.398.4840

Fax: ( )

<div align="center">"CONTRACTOR"</div>

EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are set forth below.

1. INTRODUCTION

1.1. Under this Agreement, Contractor shall deliver and deploy a new Advanced Traffic Management System (ATMS) with Adaptive Traffic Control System (ATCS) (hereinafter collectively referred to as "System") to enhance management, monitoring, and control of the signalized intersections in the City of Santa Clara (the "Project").

1.2. Contractor shall provide a turnkey solution that includes:

1.2.1. Software (refer to Appendix A2)

1.2.2. All professional services related to implementation of the software

1.2.3. Technical support and maintenance related to the software after City's final acceptance

1.2.4. Additional services as required by the City

2. DEFINITIONS

2.1. **"KITS"** or **"KITS ATMS"** shall mean Contractor's proprietary Advanced Traffic Management System (ATMS) software.

2.2. **"Kadence"** or **"Kadence ATCS"** shall mean Contractor's proprietary Advanced Traffic Control System (ATCS) software.

2.3. **"Traction"** shall mean Contractor's proprietary cloud-hosted system that provides the following available modules

2.3.1. Traction Metrics - Automated Traffic Signal Performance Measures (ATSPM) capabilities, including on premise and cloud-hosted options.

2.3.2. Traction Connect - connected vehicle capabilities, including on premise and cloud hosted options.

2.3.3. Traction Priority - transit signal priority and emergency vehicle preemption, including on premise center-to-center based approach or cloud hosted GPS with virtual detection zones.

2.3.4. Traction Workflow – cloud-based work order tracking.

2.3.5. Traction Travel - crowdsourced travel time data that operates with the KITS platform.

2.4. **"D4 Utilities"** shall mean Contractor's proprietary software suite that includes software tools for interacting and maintaining the City's D4 controllers.

3. DOCUMENTS

3.1. This Exhibit contains the following appendices:

3.1.1. Appendix A1 – Preliminary Project Implementation Schedule

3.1.2. Appendix A2 – Licensed Software

3.1.3. Appendix A3 – ATCS Locations

3.1.4. Appendix A4 – Final System Acceptance Certificate

4. PROJECT MANAGEMENT AND SCHEDULE

4.1. Contractor Responsibilities

4.1.1. Contractor shall assign a Project Manager ("PM") to lead the tasks for the implementation. The PM shall be the primary person communicating with the City and keeping City fully apprised on the status and progress of the project. The PM shall also be responsible for project schedule updates; creation and preparation of progress reports and meeting minutes; adherence to project scheduling; and general project coordination.

4.1.2. Contractor agrees to work closely with City staff in the performance of services and shall be available to City staff, stakeholders, and other staff at all reasonable times.

4.1.3. Contractor shall develop and maintain a detailed project schedule containing all deliverables, tasks, and milestones as described in Section 4.3 (Project Schedule).

4.2. City Responsibilities

4.2.1. City shall provide oversight for the entire project, but Contractor must provide overall project management for all tasks in the scope of this contract.

4.2.2. City shall assign a project manager who shall work closely with Contractor to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the City and their cooperation with and participation in such process. The City's Project Manager shall maintain project communications with Contractor's Project Manager.

4.2.3. City shall provide Contractor information required to configure the System.

4.2.4. The City acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the City and its staff, and agrees to act reasonably and cooperate fully with Contractor to achieve the completion of the Project.

4.2.5. The City will furnish the labor for the installation of all hardware related to the System. If the City has not properly installed the required hardware, Contractor shall have the right to suspend the Project and the related scheduled time frames until these issues have been dealt with by City sufficiently and to Contractor's reasonable satisfaction.

4.3. Project Schedule

4.3.1. The system implementation schedule is detailed in Appendix A1 – Preliminary Project Implementation Schedule ("Project Schedule"), which lists the tasks, corresponding project deliverables ("Deliverables"), and dates and durations assigned to each task. The Project Schedule must be in a general Microsoft Office Gantt chart (or other similar project planning tool as approved by the City).

4.3.2. It is the City's expectation that the Contractor shall meet all the Deliverables and dates in accordance to the Project Schedule. Any changes to the Project Schedule which will impact the completion date of each deliverable must be mutually agreed to and incorporated into a revised Project Schedule.

4.3.3. Any additional time and resources that may be required to meet the project scope as defined in this Exhibit shall not constitute justification for any future change orders. Any changes to scope as discovered after the Scope of Services may result in a future change order.

4.3.4. Contractor shall implement the System according to the tasks as detailed in the following sections.

5. SYSTEM IMPLEMENTATION

5.1. Task 1 – Project Management

5.1.1. Project Kickoff Meeting

5.1.1.1. Within one week of receiving the notice to proceed, Contractor shall schedule and conduct a kickoff meeting. The kickoff meeting shall include an introduction of each party's project team members and their respective roles, the preliminary project schedule, task deliverables, an agreed-upon approach to complete the Project, foreseeable issues and proposed solutions, and any other administrative details.

5.1.1.2. Within five (5) calendar days from the project kickoff meeting, Contractor shall prepare and submit to the City:

5.1.1.2.1. the meeting minutes in electronic format. The minutes must include names of attendees and all items under discussion; and

5.1.1.2.2. an updated Project Schedule.

5.1.2. Status Meetings

5.1.2.1. After the project kickoff meeting, Contractor shall conduct and attend project status meetings monthly or as may be required to keep the project on schedule, discuss current status of each task, identify potential issues and solutions, and update the project schedule.

5.1.2.2. Within five (5) calendar days after each project status meeting, Contractor shall submit to the City draft project status meeting minutes in electronic format. The minutes shall include names of attendees and all items under discussion. The City will have five (5) business days from receipt of the draft project status meeting minutes to submit any comments.

5.1.2.3. Contractor shall submit final project status meeting minutes in electronic format within two (2) business days after receipt of any City comments.

5.1.3. Task 1 Deliverables

5.1.3.1. Kickoff Meeting and Minutes

5.1.3.2. Status Meeting and Minutes

5.2. Task 2 – Design

5.2.1. Data Collection and Field Review

5.2.1.1. Contractor shall perform a field review of the existing vehicle detection systems at all the adaptive signal locations. Based on field and operational status reviews, Contractor shall provide recommendations for additional detection or changes to existing detection to improve Kadence operations. Contractor shall provide a technical memorandum identifying the detection configuration and necessary updates to the existing setup that meets all goals of the City for equipment uniformity and all City and State standards.

5.2.1.2. Based upon the preliminary review of the as-builts provided by the City, Contractor's field review, and Contractor's understanding of the traffic operations on the proposed adaptive corridors, Contractor shall finalize the anticipated modifications to the detection at each of the locations listed in Appendix A3.

5.2.2. Design Plans

5.2.2.1. Based upon the detection evaluation and recommended detection upgrades, Contractor shall prepare Plans, Specifications, and Cost Estimates (PS&E), and opinions of probable construction cost estimate (OPCC) for the proposed improvements. The traffic signal

plans shall show the existing layout of signal poles, signal head placement, signal phasing, pull boxes, and conduit, along with existing and proposed detection. The plans will be of sufficient detail to show the required modifications necessary for the detection upgrades and are expected to include an abbreviated (reduced) conductor and pole schedule. For locations requiring additional detector wiring, Contractor shall calculate conduit fill and check for all conduit runs with new cabling. Contractor shall propose new conduits, as needed, when conduit fill issues are identified.

5.2.2.2. Contractor shall prepare the traffic signal plans at a scale of 1"=40'' showing two intersections per sheet, or other appropriate scale sufficient to clearly show proposed modifications. Contractor shall prepare the PS&E at the 65%, 95%, and 100% levels.

5.2.3. Before and After Study

5.2.3.1. Contractor shall coordinate with City to develop an appropriate evaluation plan for the before-and-after studies as well as the times and days of the studies.

5.2.3.2. Contractor shall perform field data collection after the ATCS is implemented and tuned to acceptable levels to the Contractor and City to assess the effectiveness of the ATCS.

5.2.3.3. Data to be collected will be travel time data and ADT traffic volumes.

5.2.3.4. Utilizing the data collected, Contractor shall evaluate and summarize performance measures including travel time, travel time reliability, speed, delay, queue, number of stops, degree of saturation, and approach delay of minor streets.

5.2.3.5. Contractor shall perform a benefit/cost analysis.

5.2.3.6. Contractor shall prepare a draft Before-and-After Study Report for City review and comment. After receiving comments, Contractor shall prepare a Final Report which shall include but not be limited to project background, performance metrics, data collection, evaluation methodology, analysis results, lessons learned, and summary.

5.2.4. Task 2 Deliverables

5.2.4.1. Technical Memorandum for Recommended Detection Upgrades at All ATCS Locations

5.2.4.2. Engineering Design Plans

5.2.4.3. Specifications and Engineer's Estimate

5.2.4.4. Draft Before-and-After Study Report

5.2.4.5. Final Before-and-After Study Report

5.3. Task 3 – ATMS/ATCS Installation and Device Testing

5.3.1. Contractor shall furnish, configure, and integrate KITS and Kadence software on the City provided servers and up to twenty (20) workstations and laptops. The City IT staff are responsible for supplying and installing server hardware, MS SQL Server License, and MS Office License. Contractor shall configure SQL server as appropriate for KITS and Kadence. Contractor shall test connectivity of all clients with the servers and work with City IT staff to ensure successful completion.

5.3.2. Contractor shall provide all of the following services:

5.3.2.1. Create a plan to test all new devices to meet the ATMS requirements, ensure correct configuration, and match existing operation.

5.3.2.2. Provide citywide base map graphics.

5.3.2.3. Provide 156 intersection background/aerial images.

5.3.2.4. Configure 156 intersections, including GPS coordinates, into the ATMS to provide controller timing status, current plan, output status, and input status using graphics.

5.3.2.5. Configure 156 intersections to provide all signal graphics, attributes, sections, arterials, areas, reports, signal health dashboards, as well as all ATMS requirements.

5.3.2.6. Configure 156 intersections to provide signal health/status/operational/alarm reports (non-ATSPM performance reports).

5.3.2.7. Configure up to 100 signals in up to 10 corridors in the Traction ATSPM system, including all detector mappings and configurations with field controllers to collect high-resolution data. Contractor shall validate the operation of each location with sample reports and graphics and resolve any configuration issues to obtain correct reports and displays.

5.3.2.8. Provide any equipment and software required to complete the testing plan (i.e., suitcase tester, virtual suitcase tester, controller interface device, etc.).

5.3.2.9. Furnish, program, configure, and test all new devices within controller cabinets identified in Task 2, and in accordance with the testing plan. This includes controller unit database programming and configuration.

5.3.2.10. Document all steps and results of the testing plan.

5.3.3. Contractor shall configure 22 signals for Kadence ATCS operation. Field and central configuration include:

5.3.3.1. Location and length of all detectors and operational status of loops, cameras, or cards/racks.

5.3.3.2. Detectors set for presence and not pulse operation.

5.3.3.3. Detector number assignments for each lane and which phase each detector calls (for interchanges, identify which phases are controlled by the same detectors).

5.3.3.4. Phase to movement assignments.

5.3.3.5. Default sequence and all allowable sequences.

5.3.3.6. Identification of which phases are on min. or max. recall and desirability or necessity to remain on this mode.

5.3.3.7. Identification of which detectors are currently tied together and whether or not they can be separated in the cabinet pull box.

5.3.3.8. Available space for additional detection cards or racks for additional inputs.

5.3.3.9. IP communications parameters.

5.3.3.10. Distance between intersections (stop-bar to stop-bar).

5.3.3.11. Offset reference mode.

5.3.3.12. Display status of four (4) adaptive corridors control parameters, associated reports and performance metrics.

5.3.4. For field controller integration, Contractor shall supply all necessary suitcase tester hardware for bench testing of field configuration settings before deploying each controller in the field cabinet. Contractor shall then test all configuration features in the field to ensure that the signal operates as expected with the new controller and controller firmware.

5.3.5. To perform the database conversions, City shall provide to Contractor an electronic copy (typically Adobe PDF) of existing timing information for each location to be converted. This includes information such as phasing, base

timing, coordination, and time-of-day scheduling information and IP/networking settings for each location.

5.3.6. At the conclusion of system implementation, Contractor shall submit to the City a configuration memorandum outlining all central and field configuration details for KITS and Kadence, any notable exceptions to standard configurations, and all results of bench and integration testing.

5.3.7. The City can provide GIS data and files necessary for integration, intersection signal timing sheets, and intersection phase diagrams. If possible, the City will export the existing controller databases into Adobe PDF or CSV format.

5.3.8. Task 3 Deliverables:

5.3.8.1. ATMS and ATCS Device Testing Plan and Checklists

5.3.8.2. ATMS and ATCS Configuration Memo

5.3.8.3. Bench and integration testing results

5.4. Task 4 – Bid and Construction Support and Device Installation

5.4.1. Contractor shall provide Bid and Construction Support services to modify traffic signals as identified in the PS&E package that includes:

5.4.1.1. Review "shop drawings" and submittals specified in the bid contract documents dealing specifically with design elements.

5.4.1.2. Respond to Request for Information (RFI).

5.4.1.3. Prepare record "as-built" drawings based on redlined markups of the Construction Bid Set.

5.4.2. Contractor shall install the new 1C module with D4 firmware within each field controller cabinet. Contractor shall perform this work during a non-peak period such that traffic control is not needed. Contractor shall coordinate this work with the City.

5.4.3. Contractor shall document all steps and results of installing devices.

5.4.4. Deliverables:

5.4.4.1. Record Drawings

5.4.4.2. 1C Module with D4 firmware installation

5.4.4.3. Documentation of device installation

5.5.   Task 5 – ATMS/ATCS Integration and Verification

5.5.1.   Contractor shall integrate KITS and Kadence for communication to traffic signals running the D4 firmware in accordance with the per signal or sitewide license agreement. Contractor shall provide an acceptance test plan that will identify the steps to validate that the ATMS and ATCS, and will include tests to verify setup of ATMS servers, ATMS database connectivity, verification of server to field communications, and KITS application security parameters. Contractor shall provide ports and port ranges for system for communications with client applications, servers and field devices. City IT and traffic engineering staff will configure and troubleshoot City network for successful communication and resolve issues identified by the Contractor.

5.5.2.   At a minimum, Contractor must provide the following services:

5.5.2.1.   Create a plan to integrate the ATMS and ATCS.

5.5.2.2.   Create an acceptance test plan to verify functionality of all devices using the ATMS and ATCS.

5.5.2.3.   Coordinate with the construction contractor to integrate all new devices required for ATMS and ATCS functionality as identified in Task 3 in accordance with the plans.

5.5.2.4.   Document all steps and results of the integration and verification plan.

5.5.3.   Task 5 Deliverables:

5.5.3.1.   ATMS and ATCS Integration Plan and Checklists

5.5.3.2.   ATMS and ATCS Verification Plan and Checklists

5.5.3.3.   Report of new devices installed and integration/verification results

5.6.   Task 6 – ATCS Signal Parameter Calculations

5.6.1.   Contractor shall perform field visits to signals to observe traffic conditions on ATCS corridors. In addition, Contractor shall collect traffic counts, if necessary, to validate the current performance of the existing signal timing plans in signal plan design programs such as Synchro.

5.6.2.   Contractor shall configure and adjust the following Kadence tuning parameters based on operational experience and discussions with City traffic engineering staff:

5.6.2.1.   Frequency of timing plan updates (cycles), per location and per TOD period

5.6.2.2.   Allowable cycle time minimum/maximum and cycle time step sizes

5.6.2.3. Allowable split min/max and split maximum change sizes

5.6.2.4. Allowable offset min/max and offset step sizes

5.6.2.5. Minimum projected improvement thresholds

5.6.2.6. Critical phase designations for cycle tuning

5.6.2.7. Cycle tuning AND/OR logic

5.6.2.8. Decision support system trigger logic (grouping/ungrouping, incident response, queue clearance, etc.)

5.6.2.9. Preemption reaction logic

5.6.2.10. Communications failure logic

5.6.2.11. Allowable and non-allowed sequences

5.6.2.12. Left-turn re-service allow/disallow

5.6.2.13. Allow or disallow tuning splits below the pedestrian clearance time (per phase)

5.6.3. At a minimum, Contractor shall provide the following services:

5.6.3.1. Collect and analyze traffic count data for the locations specified in Task 3.

5.6.3.2. Calculate adaptive signal timing parameters.

5.6.3.3. Create a plan to test all new devices to meet the ATCS operational requirements.

5.6.3.4. Provide any software required to complete the testing plan.

5.6.3.5. Program and configure databases with adaptive signal timing parameters.

5.6.3.6. Program and configure ATCS as needed.

5.6.3.7. Test adaptive signal control in accordance with the testing plan.

5.6.3.8. Document all steps and results of the signal timing calculation and testing plan.

5.6.3.9. Fine tune calibration of the ATCS a minimum of 30 days after implementation on a specific corridor.

5.6.4. **Task 6 Deliverables:**

    5.6.4.1. Memo summarizing signal timing adjustments and ATCS Settings

    5.6.4.2. ATCS Adaptive Signal Control Testing Plan

    5.6.4.3. Report of signal timing calculation/test results

    5.6.4.4. Configuration and Tuning of ATCS

5.7. **Task 7 – ATMS/ATCS Validation and Acceptance**

5.7.1. Contractor shall provide a validation plan to ensure that each report and display in KITS and Kadence are working as expected.

5.7.2. Contractor shall resolve any errors or issues during the execution of the validation plan

5.7.3. Contractor shall resolve issues identified later as part of the support and maintenance agreement with the City.

5.7.4. At a minimum, Contractor must provide the following services:

    5.7.4.1. Create a plan to validate and accept all new devices, adaptive signal control, the ATMS, and the ATCS.

    5.7.4.2. Validate and accept all responses to requirements within this Attachment.

    5.7.4.3. Validate and accept all requirements within Attachment A.

5.7.5. **Task 7 Deliverables:**

    5.7.5.1. ATMS and ATCS Validation Plan

    5.7.5.2. Report of validation/acceptance results

5.8. **Task 8 – Training, Documentation, Warranty, and Maintenance**

5.8.1. Contractor shall provide system documentation as follows:

    5.8.1.1. Electronic operational manuals for KITS and Kadence.

    5.8.1.2. Quick Start Guides for KITS and Kadence

    5.8.1.3. Configuration technical memorandums for both KITS and Kadence which shall document but not be limited to KITS and Kadence operational parameters, network diagrams, server configuration details, controller model, controller software version, detection setups and mapping for Kadence signals, group definitions, and arterial definitions.

5.8.1.4. D4 programming manual and D4 tech notes.

5.8.2. Contractor shall provide up to five (5) sessions of remote/onsite training for twenty (20) City staff. City staff will consist of operations and engineering, field maintenance, and IT system management and support staff. The training shall provide the necessary knowledge and practical skills for City staff to effectively operate, manage, and maintain KITS, Kadence, and D4 firmware.

5.8.3. Contractor shall work with City to customize the content of the training to ensure topics are applicable. Content may include operational scenarios like the best procedures and user interfaces to use to respond to citizen complaints. Training shall at a minimum cover system capabilities and limitations, field system configuration, system optimization, operational and troubleshooting procedures. Training shall incorporate screen captures and live demonstrations.

5.8.4. Training materials such as a syllabus and training handouts including presentation slides, sample databases, and figures will be provided to the City for review prior to the training.

5.8.5. Deliverable:

5.8.5.1. System documentation/manuals in PDF format

5.8.5.2. Training plan and manuals

5.8.5.3. Training classes (minimum of 5 sessions)

6. TASK 9 – ATMS/CAD CENTRAL TSP INTEGRATION AND VERIFICATION

6.1. Contractor shall supply and configure the sitewide license of the on-premise Traction Priority module of the KITS ATMS. The module will include a center-to-center Application Programming Interface (API) to receive TSP on and off requests from a Computer Aided Dispatch (CAD) provider.

6.2. Contractor shall supply the CAD provider and the City with the API documentation to support the integration. Contractor shall attend up to six (6) coordination and integration meetings to support the integration effort of the City IT and CAD provider.

6.3. Contractor shall integrate and verify up to forty (40) traffic signal locations in the Traction Priority module. The City is responsible for configuration of the traffic signal controller firmware with TSP early green and/or green extension parameters to support the commands from the Traction Priority module.

6.4. Following successful integration of the CAD provider with the API, Contractor shall provide a weekly update to the City and CAD provider including a log of signals receiving commands for up to two (2) months. The CAD provider and City may utilize this data to confirm the CAD provider is sending the correct commands.

6.5. The City IT are responsible for providing communication to support the API integration with the CAD solution.

6.6. Deliverable

    6.6.1. Integration and Verification of up to forty (40) traffic signals

7. TASK 10 – ATMS/CAD CENTRAL TSP VALIDATION AND ACCEPTANCE

7.1. Contractor shall create an acceptance test memorandum to include:

    7.1.1. An overview of the validation and acceptance process, API, and integration with the CAD provider, and

    7.1.2. A validation table including a list of the signals where TSP has been configured including the method of validation that the signal is being provided TSP by the Traction Priority module.

7.2. Deliverables

    7.2.1. Acceptance test memorandum

8. TASK 11 – ATMS/CAD CENTRAL EVP INTEGRATION AND VERIFICATION (OPTIONAL)

8.1. Contractor shall supply and configure the sitewide license of the on-premise Traction Priority module of the KITS ATMS. The module will include a center-to-center Application Programming Interface (API) to receive EVP on and off requests from a CAD provider.

8.2. Contractor shall supply the CAD provider and the City with the API documentation to support the integration. Contractor shall attend up to six (6) coordination and integration meetings to support the integration effort of the City IT and CAD provider.

8.3. Contractor shall integrate and verify up to forty (40) traffic signal locations in the Traction Priority module. City is responsible for configuration of the traffic signal controller firmware with EVP parameters to support the commands from the Traction Priority module.

8.4. Following successful integration of the CAD provider with the API, Contractor shall provide a weekly update to the City and CAD provider including a log of signals receiving commands for up to two (2) months. The CAD provider and City may utilize this data to confirm the CAD provider are sending the correct commands.

8.5. The City IT is responsible for providing communication to support the API integration with the CAD solution.

8.6. Deliverable

    8.6.1. Integration and Verification of up to 40 traffic signals

9. **TASK 12 – ATMS/CAD CENTRAL EVP VALIDATION AND ACCEPTANCE (OPTIONAL)**

9.1. Contractor shall create an acceptance test memorandum to include:

9.1.1. An overview of the validation and acceptance process, API, and integration with the CAD provider.

9.1.2. A validation table including a list of the signals where EVP has been configured including the method of validation that the signal is being provided EVP by the Traction Priority module.

9.2. Deliverables

9.2.1. Acceptance test memorandum

10. **FINAL SYSTEM ACCEPTANCE**

10.1. Contractor shall prepare and submit a project close out memorandum to the City that includes documentation for completion of tasks identified in this scope of services. Reference will be made to the acceptance documentation created for the individual tasks.

10.2. Upon the City's verification of the completion of tasks identified in this scope of services including any outstanding items, City and Contractor will memorialize the event by promptly executing the Final System Acceptance Certificate (Appendix A4)

10.3. Deliverables

10.3.1. Project close out memorandum including Final System Acceptance Certificate

10.3.2. Executed Final System Acceptance Certificate

11. **WARRANTY, MAINTENANCE AND SUPPORT**

11.1. Contractor shall warranty all parts, materials, and labor following receipt of acknowledgement of formal system acceptance by the City, for a period of twelve (12) consecutive months (hereinafter "warranty period"). All-inclusive costs (parts, labor, maintenance, warranty repairs, travel time, expenses, etc.) incurred during the warranty period shall be provided without additional cost to the City.

11.2. Contractor shall provide ongoing support and maintenance in subsequent years by phone, e-mail, and/or on-site support as needed during regular business hours. The support to be provided by Contractor shall include at a minimum:

11.2.1. Software patches/updates

11.2.2. Quarterly check-ups and tune-ups to validate system performance

11.2.3. 24/7 Telephone support

11.3. Contractor shall fix any defects/errors in the system within ten (10) working days from the time the issue is reported or discovered.

11.4. Contractor shall coordinate with City at least two (2) weeks in advance of planned software maintenance or updates.

APPENDIX A1
PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Implementation of this project will proceed in accordance with this Preliminary Project Implementation Schedule set forth below, except as may be modified into a Final Project Implementation Schedule that is approved by the City. The Final Project Implementation Schedule will become the governing project schedule incorporated into the Agreement.

The Project Implementation Schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 8:00 AM to 5:00 PM), with the exception of City holidays. However, the Contractor may work on extended hours and weekends with prior authorization from the City at no additional cost to the City.

See next page.

APPENDIX A1 - PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Schedule

Task Name	2023									2024												2025				2026-2033
	April	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Q1	Q2	Q3	Q4	
Task 1 – Project Management																										
PM, Meetings, and Coordination																										
Task 2 - Design																										
Data Collection and Field Review																										
Review Detection Upgrades																										
Base Mapping																										
65% PS&E																										
95% PS&E																										
100% (Final) PS&E																										
Before and After Studies, Final Report																										
Task 3 – ATMS/ATCS Installation and Device Testing																										
Install KITS/Kadence/Traction on City Servers																										
Procure controller 1-C Cards																										
Convert signal timing and program new controller cards																										
"Controller" test plan, testing, and report																										
Configure/set-up KITS/Traction - Test and Validate Signals																										
Task 4 – Bid and Construction Support and Device Installation																										
Bid and Construction Support							Bid & Construction (By Others)																			
Controller 1-C Card Installation																										
Assist with Detection Set-up																										
Record Drawings																										
Task 5 – Integration and Verification																										
Integration Plan and Checklists																										
Verification Plan and Checklists																										
Task 6 – ATCS Signal Parameter Calculations																										
Signal Timing Adjustments and Kadence Settings																										
ATCS Testing Plan																										
Configure and Tune Kadence																										
Task 7 – Validation and Acceptance																										
Operational Scenarios Validation Plan																										
Validation																										
Task 8 – Training, Documentation, Warranty, and Maintenance																										
System Documentation																										
Training																										
Support and Maintenance																										
Task 9 – ATMS/CAD Central TSP Integration and Verification																										
Installation of Traction Priority Module																										
CAD Integration/Coordination																										
Configure 40 signals for TSP																										
Task 10 – ATMS/CAD Central TSP Validation and Acceptance																										
TSP Acceptance Test Plan and Acceptance																										
Task 11 (Optional) – ATMS/CAD Central EVP Integration and Verification																										
CAD Integration/Coordination																										
Configure 40 signals for EVP																										
Task 12 (Optioanl) – ATMS/CAD Central EVP Validation and Acceptance																										
EVP Acceptance Test Plan and Acceptance																										

Legend:
- ▇ Task Summary
- ▇ Agency Review Period
- ★ Deliverable
- ◆ Project Meeting

APPENDIX A2
LICENSED SOFTWARE

Contractor shall provide the following licenses including ongoing maintenance and support:

Software	Description	Type	License
KITS ATMS	Advanced Traffic Management System	On premise	Site License
Kadence ATCS	Adaptive Signal Control Technology	On premise	Site License
Traction Priority	On premise Center-2-Center solution or cloud-based GPS solution for EVP and TSP activations.	On premise	Site License
Traction Metrics	On premise browser solution for Automated Traffic Signal Performance Measures.	On premise	Site License

APPENDIX A3
ATCS LOCATIONS

ID	North/South Street	East/West Street	Existing Detection	Anticipated Modifications
7	Saratoga Ave	Keystone Ave	Loops. Full as-built not provided so the status of detection unknown.	Confirm existing detection. Separate loops for lane-by- lane detection or install video(as necessary)
8	Cypress Ave	Pruneridge Ave	Appears to be loops (per field). As-built not provided so lane-by-lanedetection unknown.	Separate loops if not lane-by-lane or install video
9	Saratoga Ave	Pruneridge Ave	Loops. Advanced and stopbar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operation in field.
114	Stern Ave	Stevens Creek Blvd	Loops. All detection appearslane-by-lane.	Existing detection most likely sufficient. Confirm configuration/operation in field.
143	Calvert Dr	Calvert Ct	Loops. Advanced and stopbar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operation in field.
1	Calvert Dr/I-280	Stevens Creek Blvd	Loops. All detection appearslane-by-lane.	Existing detection most likely sufficient. Confirm configuration/operation in field.
2	Agilent Tech	Stevens Creek Blvd	Loops. No mainline stop bar detection and mainline advanced not lane-by-lane.Side street stop bar lane- by-lane.	Install video detection to provide mainline detection.
3	Lawrence Expy	Stevens Creek Blvd	Appears to be video(per field).	Confirm and adjust zone layout(if needed) to lane-by-lane detection
4	Cabot Ave/ Loma Linda Dr	Stevens Creek Blvd	Appears to be loops (per field). As-built not provided so lane-by-lane detection unknown.	Separate loops if not lane-by-lane or install video
6	Woodhams Rd	Stevens Creek Blvd	Loops. Stop bar appear lane-by-lane. No advanceddetection shown on signal as-built.	Existing detection may be sufficient. Confirm configuration/operation in field. As a minor intersection, offset tuning could be turned off at this location if advanced detection not available.

ID	North/South Street	East/West Street	Existing Detection	Anticipated Modifications
5	Cronin Dr	Stevens Creek Blvd	Loops. Stop bar detection appears lane-by-lane. No advanced detection shownon as-builts.	Existing detection may be sufficient. Confirm configuration/operatio n in field. As a minor intersection, offset tuning could be turned off at this location if advanceddetection not available.
10	Kiely Blvd	Pruneridge Ave	Loops. Mainline & side advanced combined. Stop bar detection appears lane-by-lane.	Separate loops if not lane-by-lane or install video
13	Kiely Blvd	Forbes Ave	Loops. Mainline advancedand stop bar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operatio n in field.
19	Kiely Blvd	Homestead Rd	Appears to be video (per field). No as-built provided.	Confirm and adjust zone layoutto lane-by-lane detection and preferred configuration
31	Kiely Blvd	Kaiser Dr	Loops. Advanced and stopbar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operation in field.
33	Kiely Blvd	Benton St	Loops. Advanced and stopbar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operation in field.
54	Bowers Ave	Warburton Ave	Loops. Full as-built not provided so status of detection unknown. Bike stenciling suggests lane-by-lane detection at stop bar.	Confirm existing detection. Separate loops for lane-by-lane detection or install video(as necessary)
57	Bowers Ave	Barkley Ave	Loops. Full as-built not provided so status of detection unknown. Bike stenciling suggests lane-by-lane detection at stop bar.	Confirm existing detection. Separate loops for lane-by-lane detection or install video(as necessary)
58	Bowers Ave	Cabrillo Ave	Loops. Lane-by-lane unknown.	Separate loops if not lane-by-lane or install video

ID	North/South Street	East/West Street	Existing Detection	Anticipated Modifications
62	Bowers Ave	Monroe St	Loops. All detection appearslane-by-lane.	Existing detection most likely sufficient. Confirm configuration/operation in field.
65	Bowers Ave	Chromite Dr	Loops. Mainline advanced appear lane-by-lane. Mainline stop bar appearscombined.	Separate loops that are not lane-by-lane
72	Bowers Ave	Mead Ave	Loops. Advanced and stopbar appear lane-by-lane.	Existing detection may be sufficient. Confirm configuration/operation in field.

APPENDIX A4
FINAL SYSTEM ACCEPTANCE CERTIFICATE

After the City is satisfied with all test results and resolutions, as specified herein, the City will initiate execution of the Final System Acceptance Certificate.

Customer Name: **City of Santa Clara ("City")**

Project Name: **Advanced Traffic Management System (ATMS) with Adaptive Traffic Control System (ATCS)**

This Final System Acceptance Certificate memorializes the occurrence of System Acceptance.

Contractor and the City acknowledge that:

1. Contractor has completed all Deliverables promised under this Agreement.

2. The System is accepted, and all punch list items generated during testing have been completed.

3. By acknowledging the Final Acceptance of the System, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including previously withheld retainage.

City of Santa Clara   **Kimley-Horn and Associates, Inc.**
("City")   **("Contractor")**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

EXHIBIT B
SCHEDULE OF FEES

1. MAXIMUM COMPENSATION

1.1. The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Million One Hundred Ninety-Four Thousand Two Hundred Fifty-Eight Dollars ($2,194,258)** during the term of this Agreement, subject to annual appropriation of funds. See Table B1 for the summary.

Table B1: Maximum Compensation

Cost Element	Total
System Implementation (Years 1 – 2)	$1,651,770
Ongoing Software Support and Maintenance (Years 3-10)	$352,900
Contingency	$166,000
Estimated Sales Tax	$23,588
Maximum Compensation	**$2,194,258**

1.2. Any additional services or products requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures.

2. SYSTEM IMPLEMENTATION

2.1. Contractor shall provide all labor, software, and hardware as specified in Exhibit A on a firm fixed fee as set forth in Table B2 below.

Table B2: System Implementation Fee Schedule

Del#	Task #	Deliverable	Estimated Completion (Months After NTP)	Total
A. PROFESSIONAL SERVICES				
1	Task 1	Project Management	24	$68,760
2	Task 2	Technical Memorandum for Recommended Detection Upgrades at All ATCS Locations	1	$20,280
3	Task 2	65% Engineering Design Plans, Specifications and Estimates (PS&E)	2	$68,320
4	Task 2	95% Engineering Design PS&E	3	$26,600
5	Task 2	100% Engineering Design PS&E	4	$11,640
6	Task 2	Draft Before-and-After Study Report	12	$15,000
7	Task 2	Final Before-and-After Study Report	15	$2,200
8	Task 3	ATMS and ATCS Device Testing Plan and Checklists	4	$10,000
9	Task 3	ATMS and ATCS Configuration Memo	4	$86,920
10	Task 3	Bench and integration testing results	5	$68,090

Del#	Task #	Deliverable	Estimated Completion (Months After NTP)	Total
11	Task 4	Record Drawings	12	$17,320
12	Task 4	1C Module with D4 firmware installation	6	$41,560
13	Task 4	Documentation of device installation	7	$5,000
14	Task 5	ATMS and ATCS Integration Plan and Checklists	2	$15,000
15	Task 5	ATMS and ATCS Verification Plan and Checklists	7	$15,000
16	Task 5	Report of New Devices Installed and Integration/Verification Results	7	$15,160
17	Task 6	Memo Summarizing Signal Timing Adjustments and ATCS Settings	6	$10,560
18	Task 6	ATCS Adaptive Signal Control Testing Plan	7	$4,000
19	Task 6	Report of signal timing calculation/test results	13	$2,000
20	Task 6	Configuration and Tuning of ATCS	14	$21,260
21	Task 7	ATMS and ATCS Validation Plan	15	$20,000
22	Task 7	Report of validation/acceptance results	16	$15,930
23	Task 8	System documentation/manuals	18	$10,000
24	Task 8	Training plan and manuals	18	$13,500
25	Task 8	Training classes (minimum of five sessions)	18	$23,500
26	Task 9	TSP Integration and Verification of up to 40 Traffic Signal	18	$56,260
27	Task 10	TSP Acceptance Test Memorandum	18	$34,610
28	Task 11	EVP Integration and Verification of up to 40 Traffic Signal	18	$56,610
29	Task 12	EVP Acceptance Test Memorandum	18	$34,610
		Subtotal (Tasks 1-12)		**$789,690**
B. SOFTWARE LICENSES				
30	N/A	KITS ATMS (site license)	1	$125,000
31	N/A	Traction Priority (site license)	1	$234,000
32	N/A	Kadence ATCS (site license)	12	$216,000
33	N/A	Traction Metrics (site license)	12	$25,000
		Subtotal (Software Licenses)		**$600,000**
C. HARDWARE				
34	N/A	1C Cards with D4 Firmware ($1680 each x 156)	1	**$262,080**
		Total (System Implementation)		**$1,651,770**

2.2. Payment Schedule

    2.2.1. Professional Services. Contractor will invoice the City following the City's acceptance of designated deliverables for each task as set forth in Table B2, except that Project Management (Task 1) will be billed at a rate of $2,865 per month over 24 months.

    2.2.2. Software Licenses. Contractor will invoice the City for software license fees upon deployment on City servers.

    2.2.3. Hardware. Contractor will invoice the City upon proof of purchase and receipt of the 1C Cards. The 1C Cards shall be entirely at Contractor's risk from the time they are placed in the possession of the carrier for shipment until the City provides Final System Acceptance.

    2.2.4. Retainage. City shall have no obligation to pay unless Contractor has successfully completed, and City has approved the deliverable for which payment is due. The City will withhold from each payment, as retainage, an amount equal to 10% of the invoice. Upon execution of the Final System Acceptance Certificate (Appendix A3), the City will release payment of any retainage.

2.3. Payment for any part or parts of the System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any and all the System, which does not conform to the specifications or other requirements of this Agreement. Components of the System which are rejected shall be promptly corrected or repaired by Contractor. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction or repair by Contractor in accordance with Contractor's warranty obligations.

2.4. Hardware cost assumes City will provide three (3) physical or virtual server computers.

3. ONGOING SOFTWARE SUPPORT & MAINTENANCE SERVICES

After Final System Acceptance, Contractor shall invoice the City annually for all applicable support and maintenance costs as shown in Table B3. City shall prepay a year in advance for the services. In the event of early termination of the Agreement, Contractor shall refund the City on a pro-rated basis any fees paid in advance that have not been expended as of the date of termination.

Table B3: Ongoing Software Support & Maintenance Services Fee Schedule

Software	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
A. KITS ATMS	$17,500	$18,000	$18,500	$19,000	$19,500	$20,000	$20,500	$21,000
B. Kadence	$5,000	$5,150	$5,300	$5,450	$5,600	$5,750	$5,900	$6,050
C. Traction Metrics	$5,000	$5,150	$5,300	$5,450	$5,600	$5,750	$5,900	$6,050

Software	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
D. Traction Priority	$12,500	$12,875	$13,250	$13,625	$14,000	$14,375	$14,750	$15,125
Total	**$40,000**	**$41,175**	**$42,350**	**$43,525**	**$44,700**	**$45,875**	**$47,050**	**$48,225**

4. ADDITIONAL PRODUCTS AND SERVICES

4.1. Additional professional services shall be in accordance with the labor rate schedule shown in Table B4. All hourly rates for services are fixed through 06/30/2024 and are subject to an annual cost-of-living increase not to exceed 3% beginning 07/01/2024.

Table B4: Hourly Rates

Labor Category	Hourly Rate
Support Staff 1	$100
Support Staff 2	$110
Sr. Support Staff 1	$120
Sr. Support Staff 2	$140
Analyst 1	$150
Analyst 2	$170
Analyst 3	$190
Professional 1	$210
Professional 2	$240
Sr. Professional 1	$260
Sr. Professional 2	$295
Sr. Professional 3	$330
Sr. Professional 4/Principal	$360

4.2. During the term of this Agreement, the City may from time to time request that Contractor provide additional software products. The prices listed below are valid up to the completion of System Acceptance. Contactor reserves the right to adjust pricing after that date.

Table B5: Additional Products

Description	Cost
Traction Travel (Cloud)	$12,000 per year
Traction Workflow (Cloud)	$15,000 per year
Traction Connect (Cloud)	$25,000 per year
KITS CCTV	$15,000 one-time license fee
KITS DMS	$15,000 one-time license fee

4.3. Contractor shall not provide any additional products or services until receipt of City's written approval.

5. INVOICING

City will make payments to Contractor within thirty (30) days after the date of approval of each invoice.

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A.   COMMERCIAL GENERAL LIABILITY INSURANCE

1.   Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

$2,000,000 Each occurrence
$2,000,000 General aggregate
$2,000,000 Products/Completed Operations aggregate
$2,000,000 Personal Injury

2.   Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3.   The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a.   Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b.   There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c.   Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B.   BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office

endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C.   WORKERS' COMPENSATION

1.   Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2.   The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3.   This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D.   PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per claim or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E.   COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1.   Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2.   Primary and non-contributing. Each insurance policy provided by Contractor, except professional liability and worker's compensation, shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);

4. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to require that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees that it will not issue any contract used by any party involved in any way with the project that reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be e-mailed to ctsantaclara@ebix.com.

> Or by mail to:
>
> EBIX Inc.
> City of Santa Clara – Public Works Department
> P.O. Box 100085 – S2
> Duluth, GA 30096
> Telephone number: 951-766-2280
> Fax number: 770-325-0409

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT D
SOFTWARE LICENSE AGREEMENT

*This Software License Agreement (this "**Software License Agreement**") governs Licensee's access to and use of Kimley-Horn Technology Solutions, Inc. ("**KHTS**") software, which is provided or otherwise made available by KHTS or by an authorized KHTS reseller ("**Reseller**").*

*This Software License Agreement is an Exhibit to the Agreement for Services Between the City of Santa Clara and Kimley-Horn and Associates, Inc. ("**Agreement**") and is incorporated into the Agreement by this reference.*

1. Definitions

The following defined terms have the meanings indicated below. Other capitalized terms have the meaning assigned to them elsewhere in this Software License Agreement.

(a) "**Authorized User**" means any current Licensee employee or contractor who is provided access to the Software in accordance with this Agreement and the Documentation.

(b) "**Documentation**" means the user manuals, operating manuals, and/or other documentation delivered or otherwise made available by KHTS for use with the Software and the Services.

(c) "**Hosted Services**" means delivery of the Software to Licensee on a hosted, software-as-a-service basis.

(d) "**KHTS Content**" means content and data owned by KHTS, a KHTS affiliate, or their suppliers, and that is provided to Licensee through the use of the Software.

(e) "**Licensee Data**" means all data uploaded or otherwise provided to KHTS by Licensee and its Authorized Users by or through use of the Software.

(f) "**Licensee-Supplied Components**" mean the data sources, third-party software, hardware, connectivity, minimum internet speeds, and other items that Licensee provides or is required to provide for use of the Software. The Licensee-Supplied Components are specified in the Documentation, and/or the Agreement.

(g) "**License Term**" means the term for the license as specified in the Agreement.

(h) "**On-Premise License**" means a license for Licensee to use the Software on Licensee premises or in a secure cloud infrastructure controlled by Licensee, or at a location(s) mutually agreed by the parties in the Agreement.

(i) "**Technical Services**" mean the setup, training, implementation, custom integration, custom report building, and other technical services provided by KHTS or Reseller, as agreed by the parties in the Agreement.

(j) "**Services**" mean, collectively and as applicable, the Hosted Service, the Technical Services, and the Support and Maintenance Services.

(k) "**Software**" means the proprietary KHTS software products that are agreed in the Agreement to be licensed under this Software License Agreement, as well as all new releases, enhancements, updates and error corrections thereto, and all Custom

Developments, provided to Licensee under this Software License Agreement and including all associated KHTS Content and Documentation. For clarity, Licensee will have no rights to any new Software modules or enhancements that are separately priced by KHTS or its Reseller unless Licensee has paid for and acquired for licenses to such new Software modules/enhancements.

(l) "**Statistical Data**" means statistical, meta, usage and other operational data and information related to Licensee's use of the Software and Services, including statistical and performance information related to the provision, operation or improvement of the Software and Services. Statistical Data will not include any personally identifiable information.

(m)"**Support and Maintenance Services**" mean the support and maintenance services provided under the Exhibit A, Scope of Services.

2. License and Related Terms

(a) <u>License</u>. Subject to the terms of this Software License Agreement including the payment of all applicable fees, KHTS hereby grants Licensee the non-exclusive, non-transferable, and non-sublicensable right and license to use and access the Software (in executable code form only) and the Services during the License Term solely for the internal purposes of Licensee.   The Agreement may contain limitations on the number of Authorized Users, locations of the Software, number of licensed instances of the Software, the projects with which the Software may be used, and/or other limitations on Licensee's use of the Software. Licensee agrees to use the Software and Services in compliance with all applicable laws, the Documentation, the Agreement, and this Software License Agreement. Licensee has no right to use test or "sandbox" instances of the Software unless expressly specified in the Agreement. Licensee may use and access Hosted Services solely through the website(s) specified by KHTS.

(b) <u>Authorized Users and Access Controls</u>. Licensee may authorize its employees and contractors to be Authorized Users, per the procedures in this Software License Agreement and the Documentation. Licensee shall use commercially reasonable efforts to prevent unauthorized access to the Software, and is responsible for identifying and authenticating all Authorized Users, for approving access by Authorized Users to the Software, for controlling against unauthorized access by Authorized Users, and for maintaining the confidentiality of usernames, passwords and account information for Authorized Users. Licensee shall be fully responsible for use of the Software by Authorized Users and their compliance with all applicable laws, the Documentation, and the terms of this Software License Agreement. Licensee is responsible for authorizing Authorized Users and for revoking authorization if Authorized Users no longer work for Licensee.

(c) <u>Restrictions</u>. The Software and Services may be used solely by Authorized Users for lawful purposes. Licensee shall not (and will not permit any Authorized User or third party to): (a) use the Software or Services to store or transmit infringing, libelous, malicious, or unlawful materials, including any malicious code, viruses, worms, trojan horses, attacker tools or programs that are intended to compromise the confidentiality,

integrity, or availability of the data, applications, or operating system of any computer system; (b) use the Software or Services for any unlawful purpose; (c) interfere with or disrupt the integrity or performance of the Software or Services or related data; (d) attempt to gain unauthorized access to the Software or Services or related data, systems or networks; (e) modify, adapt, reverse engineer, decompile, translate or disassemble the Software or Services in whole or in part; (f) create or develop any products or services that compete with the Software or Services; (g) use the Software or Services or any output thereof for the benefit of or for performing work for any third party; or (h) access, use, copy, modify or distribute any KHTS Content other than through the interfaces supplied by the Software. For On-Premise Licenses only, Licensee may make a reasonable number of backup copies of the Software, but otherwise Licensee may not make any copies of the Software.

(d) <u>Updates</u>. Licensee acknowledges and agrees that KHTS may, from time to time, modify and update the Software and Services. No update to the Software or Services will materially reduce the functionality in the Software or Services as of the Effective Date. In some cases, Technical Services and associated fees will be required in order to deploy updates for On-Premise Licenses. For Hosted Services, KHTS will perform updates outside of normal business hours (9:00 am – 5:00 pm on non-holiday weekdays, pacific time). Licensee agrees to install updates for On-Premise Licenses within a reasonable time after receipt of the updates (not to exceed 60 days).

(e) <u>Licensee Obligations</u>. Licensee shall: (i) be responsible for the Licensee-Supplied Components, whether operated directly by Licensee or through third-party service providers, including all systems and databases that connect with or interface to the Software or Services; (ii) be responsible for the accuracy and completeness of all Licensee Data; (iii) employ physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to prevent unauthorized access to or use of the Software or Services; (iv) notify KHTS immediately of any unauthorized access to or use of the Software or Services, or any other known or suspected breach of security, and (v) use reasonable efforts to immediately stop unauthorized access to the Software or Services that is known or suspected by Licensee.

(f) <u>Feedback</u>. Licensee grants to KHTS the irrevocable, perpetual, royalty-free, transferable, and sublicensable right to use feedback regarding any suggested improvements to the Services and/or Software provided by Licensee for any purpose, including without limitation to modify, supplement, or improve the Services and/or Software, without payment or compensation to Licensee.

(g) <u>Access</u>. As reasonably necessary for KHTS to provide Services and/or to confirm Licensee's compliance with the terms of this Agreement, Licensee will provide KHTS with access to Software deployed per an On-Premise License, using a VPN (virtual private network) or other agreed means of access.

(h) <u>Third-Party Software and Data Sources</u>. The Documentation contains information on certain open source and other third-party software that is included with or incorporated

into the Software ("**Third-Party Software**"). For On-Premise Licenses, certain open source Third-Party Software is licensed directly by Licensee pursuant to the public licenses associated with such software. KHTS PROVIDES THIRD-PARTY SOFTWARE TO LICENSEE "AS IS." The Software may also interface with or receive data from third-party software and services (the "**Data Sources**"). Notwithstanding anything to the contrary herein, KHTS makes no warranties or commitments regarding the operation of any Data Source or the availability, reliability or accuracy of any data supplied by Data Sources.

(i) <u>Software Communications and License Keys</u>. The Software for On-Premise Licenses may include product activation and other technology designed to prevent unauthorized use and copying. This technology may cause the Software and associated hardware to automatically connect to an KHTS-hosted license server on a continual basis, may rely on license keys, and may prevent uses of the Software that are not permitted. Licensee consents to the transmission of Software usage information to KHTS and to KHTS' use of license keys and other technology designed to prevent unauthorized use and copying, and Licensee agrees not to circumvent or attempt to circumvent any such anti-copying mechanisms.

(j) <u>Evaluation and Trial Licenses</u>. If Licensee validly obtained a limited evaluation or trial or other no-fee license for the Software ("**Evaluation Software**") in the Order, KHTS grants Licensee a personal, non-exclusive and non-transferable license to use, for the term of the evaluation/trial license and up to the quantity of licenses specified in the Order for the evaluation/trial, the executable code of the Evaluation Software solely for internal testing and evaluation and/or trial use. **Section 9(b) below does not apply to Evaluation Software. Evaluation Software is provided "AS-IS", without warranty of any kind.**

3. Services

(a) <u>Services Provider</u>. The provider of Services may be either KHTS or Reseller, as specified in the Order. The term "KHTS" in this Section 3 shall mean either KHTS or Reseller, as applicable.

(b) <u>Technical Services</u>. As set forth in an agreed Order, KHTS will provide Technical Services for Licensee. All Technical Services will be subject to the terms of this Software License Agreement. If Licensee requests additional Technical Services, and KHTS agrees to provide such Technical Services, then KHTS will provide such Technical Services at KHTS' then-current rate, unless other fee arrangements have been agreed upon.

(c) <u>Expenses.</u> Licensee shall reimburse KHTS for all reasonable, pre-approved expenses incurred by KHTS in connection with this Agreement, including but not limited to mileage, airfare, lodging, and meals.

(d) <u>Intentionally Omitted.</u>

(e) Licensee Cooperation. Licensee shall reasonably cooperate with KHTS and its suppliers in the delivery of Services hereunder, including by providing KHTS and its suppliers with timely approvals and access to Licensee's technical personnel, information, systems, and other items as reasonably requested by KHTS in connection with the delivery of Services.

(e) Subcontractors. KHTS may use subcontractors to provide the Services. KHTS will be fully responsible for any breach of this Software License Agreement by any KHTS subcontractors.

4. Term and Termination

(a) License and Services Term. This Agreement and the Order will remain in effect until terminated as set forth herein. The Order shall specify the License Term and/or the term for any Services. A License Term may be either perpetual or for a limited period (e.g., three years). If a limited term is specified for the license or for Services, then such term shall automatically renew after the initial term for successive annual renewal terms, unless either party provides written notice of termination to the other party at least three (3) months prior to the end of the then-current term. License/Services fees and other costs may be increased, or renegotiated by the parties, for any renewal term.

(b) Breach. Either party may terminate this Software License Agreement if the other party materially breaches this Software License Agreement and such breach is not cured after thirty (30) days written notice.

(c) Bankruptcy. Either party may terminate this Software License Agreement if: (i) the other party has a receiver or administrative receiver appointed over its assets; (ii) the other party's governing body passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation, reconstruction, or merger), or a court of competent jurisdiction enters an order to that effect; (iii) the other party makes a general assignment for the benefit of creditors (iv) the other party ceases or threatens to cease to carry on business; (v) the other party is generally not paying its debts as they become due; or (vi) the other party is the subject of any petition under any bankruptcy or other law for the protection of debtors, except an involuntary petition that is dismissed within sixty (60) days after filing.

(d) Suspension. KHTS may suspend the Services, in whole or in part, or suspend Licensee's access to the Software, without liability, if: (a) Licensee is interfering with or disrupting the integrity or performance of the Software or Services or related data or is otherwise in material breach of this Software License Agreement in a manner causing problems with the delivery of the Software or Services to Licensee or any other licensee; (b) KHTS reasonably believes Licensee's use of the Software or Services violates applicable law or KHTS is otherwise required to suspend Licensee's access to the Software or Services by a law enforcement agency or court order; (d) there is an attack or a security incident affecting the Software or Services or an event occurs that KHTS

reasonably believes poses a threat to the integrity or security of the Services; (e) an Authorized User fails to comply with this Software License Agreement or attempts to use the Software or Services beyond the scope of the rights granted or for a purpose not authorized, including access that is reasonably suspected to be fraudulent, misleading or unlawful, or (f) KHTS or its Reseller does not receive fees relating to the delivery of the Software or Services not disputed in good faith when due and does not cure such failure within ten (10) business days after written notice thereof. During any suspension, the Services and/or Software may not be available in whole or in part and Licensee may not have access to Licensee Data. KHTS or its Reseller may include in any invoice Licensee's or Reseller's continuing fees during a suspension. KHTS will use commercially reasonable efforts to restore Licensee's rights to use and access those portions of the Services or accounts that gave rise to the suspension promptly after City has resolved the problem giving rise to the suspension. KHTS shall have no liability for any damage or other consequences that may result from a suspension.

(e) Surviving Terms. Termination of this Agreement will not affect any accrued rights or liabilities of either party. The following sections of this Agreement shall survive termination or expiration of this Software License Agreement: 1 (Definitions); 5(e) (Surviving Terms), 5(f) (Return and Deletion of Licensee Data), 5(g) (Payment Obligations on Termination), 6 (Fees and Payment), 7 (Intellectual Property); 8 (Confidentiality); 10(c) (Warranty Disclaimer); 11 (Limitation of Liability); 12 (Assignment); 13 (Entire Agreement), and 16 (Additional Terms). Within five (5) business days after termination of this Agreement, Licensee shall return or erase all copies of all Software and Documentation provided by KHTS to Licensee hereunder that are in Licensee's possession or control.

(f) Return and Deletion of Licensee Data. Upon Licensee's request made within thirty (30) days after termination of this Software License Agreement, at no additional cost, KHTS will deliver to Licensee or its designees a copy of Licensee Data held by KHTS in a Hosted Service, in a mutually agreed format. Unless otherwise agreed in writing by the parties or required by applicable law, KHTS will delete and erase all Licensee Data in KHTS' possession or control after thirty (30) days after termination of this Software License Agreement. Notwithstanding the foregoing, Licensee acknowledges that KHTS' backup systems may automatically retain backup copies of Licensee Data. To the extent that KHTS' backup systems create backup copies of Licensee Data, KHTS may retain such backup copies for the period that KHTS normally retains such backup copies. These backup copies are subject to the provisions of this Agreement until they are destroyed or erased.

(g) Payment Obligations on Termination. Upon termination, Licensee shall promptly pay all outstanding amounts due under this Software License Agreement up to the effective date of termination. In addition, if this Software License Agreement is terminated by KHTS per Section 4(b) or 4(c), or if Licensee terminates this Software License Agreement without cause, then all subscription and/or license fees due for the remainder of the License Term or Services term shall become immediately due and payable by Licensee as liquidated damages, without any further demand by KHTS or Reseller. The

parties acknowledge that KHTS' actual damages arising from such termination would be difficult to determine with accuracy and, accordingly, have agreed to the foregoing liquidated damages, which the parties acknowledge is a reasonable estimate of KHTS' potential losses.

5.   Fees and Payment.

Except to the extent otherwise set forth in the Agreement, the following fee and payment terms shall apply:

(a)   <u>Fees and Payment Terms</u>. Licensee shall pay KHTS or Reseller the amounts set forth in the Exhibit B of the Agreement. All payments under this Software License Agreement shall be: (i) due within thirty (30) calendar days of receipt of invoice, (ii) made in United States dollars and (iii) non-refundable. If Licensee disputes any invoice amounts, it must do so in good faith, provide KHTS or Reseller with reasons for such dispute within thirty (30) calendar days of receipt of the invoice, pay any undisputed portion of such invoice, and negotiate with KHTS or Reseller in good faith a resolution of such dispute.

(b)   <u>Taxes</u>. Licensee shall pay all federal, state, local and other taxes based on this Software License Agreement or the Services, excluding taxes based on KHTS' and Reseller's net income. If Licensee claims tax-exempt status for any purpose in connection with this Software License Agreement, Licensee represents and warrants that it is a tax-exempt entity and will provide KHTS or Reseller upon request with a correct copy of Licensee's tax-exempt certification.

6.   Intellectual Property

(a)   <u>Ownership</u>. Licensee agrees that KHTS and its third-party licensors and suppliers own all right, title and interest, including copyright, patent, trademark, trade secret, and all other intellectual property rights, in the Software, Services, and Statistical Data (including the look and feel, algorithms, database structures, methodologies, and know-how associated with the Services and Software) and any and all copies. All Services and Software updates made available to Licensee under this Software License Agreement shall be deemed part of the Services and Software and shall be subject to the terms of this Agreement.

(b)   <u>Developments</u>. If KHTS or its Reseller creates any modified or new Software, Documentation, or other software-related items, improvements or enhancements ("**Developments**") for Licensee ("**Custom Developments**"), Licensee agrees that KHTS shall own and retain all right, title and interest in such Custom Developments. Custom Developments will be subject to the same license grant provided to Licensee in this Software License Agreement for use of the Software and same License Term. If Licensee creates any Developments that are based on or otherwise interface with the Software ("**Licensee-Created Developments**"), Licensee shall own and retain all right, title and

interest in such Licensee-Created Developments, and Licensee grants KHTS a worldwide, nonexclusive, royalty-free right and license to use and copy the Licensee-Created Developments as necessary to provide Services for Licensee. In addition, Licensee acknowledges and agrees that KHTS may create and make available to its other licensees Software updates and Developments that contain the same or similar functionality as Licensee-Created Developments, and Licensee agrees not to assert any rights against KHTS to prevent or restrict the foregoing. Licensee further acknowledges and agrees that Licensee-Created Developments may require an ongoing active license to KHTS Software in order to be functional.

(c) <u>Licensee Data</u>. Licensee shall own and retain all intellectual property rights in and to Licensee Data. Licensee hereby grants to KHTS and as applicable Reseller a nonexclusive, royalty-free license during the Term to use, process and transmit Licensee Data for the purpose of providing the Services to Licensee. Licensee represents and warrants that it has obtained all consents and licenses required for KHTS use, collect, store and transmit Licensee Data in connection with the Services.

(d) <u>Notices</u>. Licensee agrees to reproduce all copyright and other notices in each copy of the Documentation and Software made by Licensee, and further agrees not to modify or delete any such notices in the Documentation and Software.

(e) <u>Certification and Inspection</u>. Licensee agrees that within thirty (30) days of a written request from KHTS or KHTS' authorized representative, Licensee will certify that Licensee's use of the Software and Services conforms to this Software License Agreement and will provide supporting documentation.

7.   Confidentiality

(a) <u>Definition</u>. "**Confidential Information**" means any information or data (including any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Software License Agreement. Confidential Information of KHTS includes, but is not limited to, the Software, as well as the structure, organization, design, algorithms, templates, data models, data structures, flow charts, logic flow, and screen displays associated with the Software; and KHTS' non-public information or material. Confidential Information does not include information that: (i) is or becomes publicly known or available without breach of this Software License Agreement; (ii) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (iii) was previously known by the receiving party as shown by its written records. The terms of this Software License Agreement (including information relating to the negotiation of this Software License Agreement) is the Confidential Information of KHTS.

(b) <u>Confidentiality Obligations</u>. A receiving party agrees: (i) to hold the disclosing party's Confidential Information in strict confidence; and (ii) except as expressly authorized by this Agreement, not to use, disclose, or copy the Confidential Information. Without limiting the foregoing, Licensee shall disclose and allow access to the Software

and Services only for the purpose of supporting Licensee's license to use the Software and Services. Licensee acknowledges that KHTS may use Licensee's Confidential Information for the proper management and administration of KHTS, including use for quality improvement, enhancement of products, support, and system maintenance purposes. A receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall inform the other party as soon as practicable, prior to any such required disclosure. Without limiting any of the foregoing, Licensee expressly acknowledges and agrees that it shall not permit any third party, nor any employee, representative or agent thereof, that develops, markets or licenses software or services with functionality similar to the functionality of the Services or Software to have access to the Services or Software or to any trade secrets and confidential information therein.

(c) <u>Remedies</u>. Each party acknowledges and agrees that any violation of this Section may cause such party irreparable injury for which such party would have no adequate remedy at law and that such party shall be entitled to preliminary and other injunctive relief against the other party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that such party may have at law or in equity.

(d) <u>Termination</u>. Upon the termination or expiration of this Software License Agreement, the receiving party will either return to the disclosing party or destroy all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party.

8. Warranty

(a) <u>Authority</u>. Each party warrants that it has full authority to enter into this Software License Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder.

(b) <u>KHTS Warranties</u>. KHTS warrants: (i) that the Software will substantially conform to the specifications contained in the applicable Documentation and the Agreement for a period of one year after Final System Acceptance, and (ii) that the Services will be provided in a professional and workmanlike manner. Any allegation of breach of a warranty in this Section 9(b) must be made within one year after Final System Acceptance and Licensee's sole remedy shall be as applicable correction of the Software and/or re-performance of such Services.

(c) <u>Licensee Warranty</u>. Licensee warrants that Licensee has all necessary rights to provide KHTS with access and use of the Licensee Data and the Licensee-Supplied Components, as necessary for KHTS to provide Services to Licensee.

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10. Indemnification

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11. **Assignment.** This Software License Agreement may not be assigned by either party without the prior written consent of the other party; provided that either party may assign its rights and obligations under this Agreement without consent to (a) any affiliate of such party, or (b) any party acquiring all or substantially all of the assets or stock, by merger or otherwise, of such party or the relevant division of such party. Any permitted assignee must agree in writing to be bound by the terms of this Agreement.

12. **Entire Agreement.** The parties agree that this Software License Agreement, including the Agreement and all terms incorporated herein by reference, is the complete and exclusive statement of the agreement between KHTS and Licensee, and supersedes any proposal, prior agreement, or license, oral or written, and any other communications relating to the subject matter of this Software License Agreement. KHTS may from time to time update terms and other documents incorporated by reference herein, so long as those updates do not materially reduce any KHTS commitments therein. KHTS will use reasonable efforts to provide Licensee with notice of material changes to such terms or documents, which notice may be email or through a notice in the Hosted Service or Licensee support portal.

13. **Independent Contractor.** The parties are independent contractors, and nothing contained herein shall be construed to create any other relationship between the parties. Nothing in this Software License Agreement shall be construed to constitute either party as the agent of the other party for any purpose whatsoever, and neither party shall bind or attempt to bind the other party to any contract or the performance of any other obligation or represent to any third party that it has the right to enter into any binding obligation on the other party's behalf.

14. **Apple iOS Terms.** The terms in this Section apply only to the extent that the Software is an app on an Apple iOS device (e.g., iPhone or iPad).

(a) This Software License Agreement is between Licensee and KHTS only, and not with Apple. In the event that this Software License Agreement provides usage rules that are less restrictive than the Usage Rules set forth for apps in, or otherwise are in conflict with, the Apple App Store Terms and Conditions (which Licensee acknowledges it has had an opportunity to review), then the Apple App Store Terms and Conditions shall take precedence.

(b) KHTS, not Apple, shall be solely responsible for any warranties herein. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the app, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be KHTS' sole responsibility.

(c) To the extent Licensee has any claim relating to the app, (a) KHTS, not Apple, is responsible for addressing any claims by Licensee or any third party relating to the app or Licensee's possession and/or use of the app, including: (i) product liability claims; (ii) any claim that the app fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy or similar legislation, and (b) in the event of any third party claim that the app or your possession and use of the app infringes that third party's intellectual property rights, to the extent that KHTS is required to provide indemnification under applicable law, KHTS, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. Nothing in this Section shall be deemed an admission that Licensee may have any such claims.

(d) The parties acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this Software License Agreement, and that, upon Licensee's acceptance of this Software License Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Software License Agreement against Licensee as a third-party beneficiary thereof.

15. **Additional Terms**

(a) Force Majeure. Except for Licensee's payment obligations, each party shall be excused from performance and shall not be liable for any delay or failure to perform

caused by events outside of its reasonable control, including the occurrence of, war, pandemic, terrorism, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, act of public enemy, failure of the Internet, failure of KHTS' service providers that are not reasonably preventable by KHTS, act of any government affecting the terms hereof, explosion, flood or other act of God.

(b) <u>Choice of Law</u>. This Agreement shall be construed in accordance with the internal laws of State of California without regard to its choice of law provisions, and all disputes shall have exclusive venue in the federal and state courts in County of Santa Clara, California, and both parties consent to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Software License Agreement. If any term of this Software License Agreement shall be found invalid, the term shall be modified or omitted to the extent necessary, and the remainder of this Software License Agreement shall continue in full effect. In any action brought by a party related to this Agreement, the prevailing party shall be entitled to collect from the other party its reasonable litigation costs and attorney's fees and expenses.

(c) <u>Export</u>. Licensee acknowledges that the Software, Services and related technical data are subject to export restrictions under United States law. Licensee agrees to comply with all applicable United States and international export and import control laws, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments.

(d) <u>Waiver; Severability; Counterparts</u>. The waiver by either party of a breach of any provision of this Agreement shall not constitute or be construed as a waiver of any future breach of any provision(s) of this Agreement. The invalidity or unenforceability of any provision of this Software License Agreement shall not affect the validity or enforceability of any other provision. This Software License Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

(e) <u>HIGH RISK APPLICATIONS.</u> THE SOFTWARE AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("**HIGH RISK APPLICATIONS**"). KHTS and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.

(f) <u>Government End-Users</u>. Each of the Services, Software, Documentation, and related items are intended to be "commercial items" to the maximum extent permitted

under the US Code of Federal Regulations and any similar laws. All government end users only have the rights set forth herein.

(g) <u>Including</u>. When the term "including" is used in these Terms, it shall be interpreted to mean "including, without limitation," so that the items after the term "including" are understood to be illustrative only and not a complete list.

Approved as to Form: Dated: _____

_____   _____
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KIMLEY-HORN TECHNOLOGY SOLUTIONS, INC.
a North Carolina corporation

                        Dated: 3/30/2023
                By (Signature): _____
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