

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.  
FOR  
INTELLIGENT TRANSPORTATION SYSTEMS REHABILITATION PHASE 2  
PROJECT**

**PREAMBLE**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Kimley-Horn and Associates, Inc., a North Carolina Corporation, (Consultant). City and Consultant 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 design professional services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. “Design professional” includes licensed architects, licensed landscape architects, registered professional engineers and licensed professional land surveyors;
- C. Consultant represents that it, and its subconsultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; 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 Consultant 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

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

Exhibit D – Labor Compliance Addendum (if applicable)

Exhibit E – Milestone Schedule

Exhibit F - Project Management Document Software

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

## **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 the February 28, 2022 and terminate on at the completion of work described in Exhibit A – Scope of Services.

## **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Consultant shall perform those Services specified in Exhibit A within the time stated in Exhibit B. Time is of the essence. 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.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by an appropriate qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the design professional responsible for their preparation.

## **4. WARRANTY**

Consultant expressly warrants that all services covered by this Agreement shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Consultant 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 Consultant. If Consultant fails to promptly correct or replace materials or services, City may

make corrections or replace materials or services and charge Consultant for the cost incurred by City.

## **5. QUALIFICATIONS OF CONSULTANT - STANDARD OF CARE**

Consultant 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 Consultant's representations regarding its skills and knowledge. Consultant shall perform such Services and duties in conformance to and consistent with the professional standards of firms in the same discipline in the State of California.

All documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

## **6. COMPENSATION AND PAYMENT**

In consideration for Consultant's complete performance of Services, City shall pay Consultant for all materials provided and Services rendered by Consultant in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is one hundred forty-eight thousand dollars (\$148,000) 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 Consultant's expense. Consultant 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 Consultant.
- B. Termination for Default. If Consultant 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 Consultant.
- 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, Consultant will deliver to City all City information or material that Consultant has in its possession.

D. The Contractor shall have the right to terminate this agreement upon ten days written notice to the City upon breach by City of any of its obligations under this Agreement. In the event of termination, the Contractor shall be paid for all services performed up to the effective date of the termination and all damages, if any, resulting from the City's breach of this Agreement.

## **8. ASSIGNMENT AND SUBCONTRACTING**

City and Consultant 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. Consultant shall not hire subconsultants without express written permission from City.

Consultant shall be as fully responsible to City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as Consultant 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 CONSULTANT**

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent consultants and do not act as agent(s) or employee(s) of City. Consultant 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 Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant 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 Consultant which is otherwise known to Consultant 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 Consultant 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, Consultant 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 CONSULTANT**

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 Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant 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. Consultant 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.

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

**14. HOLD HARMLESS/INDEMNIFICATION**

To the extent permitted by law, Consultant 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 related to the negligence, recklessness, or willful misconduct of the Consultant, its employees, subconsultants, or agents in the performance, or non-performance, of Services under this Agreement.

**15. INSURANCE REQUIREMENTS**

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

**16. WAIVER**

Consultant 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: Department of Public Works – Design Division  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [engineering@santaclaraca.gov](mailto:engineering@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Consultant addressed as follows:

KIMLEY-HORN AND ASSOCIATES, INC.  
Attention: Kevin Aguigui  
1300 Clay Street, Suite 325  
Oakland, CA 94612  
and by e-mail at [kevin.aguigui@kimley-horn.com](mailto:kevin.aguigui@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

Consultant 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, Consultant'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 Consultant has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

## 19. CONFLICTS OF INTEREST

Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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. Consultant will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Consultant 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**

Consultant 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. AMENDMENTS**

This Agreement may only be modified 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.

**26. STATEMENT OF ECONOMIC INTERESTS**

Due to the nature of the Services to be performed, Consultant shall promptly file a Statement of Economic Interests (Form 700) upon commencement of the

Agreement in accordance with California Government Code section 87200, et seq.

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: \_\_\_\_\_

\_\_\_\_\_  
City of Santa Clara  
Office of the City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**KIMLEY-HORN AND ASSOCIATES, INC.**  
a North Carolina Corporation

Dated: 2/8/2022

By (Signature): Randy Durrenberger

Name: Randy Durrenberger

Title: Principal/Sr. Vice President

Principal Place of 1300 Clay Street, Suite 325

Business Address: Oakland, CA 94612

Email Address: randy.durrenberger@kimley-horn.com

Telephone: (510) 625-0712

Fax: N/A

"CONSULTANT"





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**EXHIBIT A  
SCOPE OF SERVICES**

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

**I. GENERAL**

This Scope of Services is anticipated as necessary to meet City's objectives as described under Section II, BACKGROUND AND PROJECT, and Section III, DESCRIPTION OF SERVICES of this document. Consultant and City agree that this Scope of Services incorporates Consultant's professional qualifications and experience and will meet the City's objectives.

Consultant will be expected to provide complete, professional Services and products; to consult City personnel, and others who are involved with the project; and to provide the expertise, guidance, advice, and assistance in accomplishing the work.

**II. BACKGROUND AND PROJECT**

The CONSULTANT is required to prepare complete project plans, specifications, and engineer's estimates for the Intelligent Transportation Systems Rehabilitation Phase 2 Project CE # 21-22-03 ("ITS Phase 2"). The ITS Phase 2 received grant monies from the Santa Clara Valley Transportation Authority (VTA) and is required under the funding agreement to expend all grant monies by June 30, 2023.

This project will provide several ITS related improvements along the following significant roadways in Santa Clara: Scott Blvd. between Harrison St. and Homestead Road; Winchester Blvd. between Benton St. and Newhall Rd.; and Bellomy St. between Lafayette St. and The Alameda. These improvements include, but are not limited to replacement of traffic signal controller cabinets and equipment, installation of traffic cameras, installation of Bluetooth/Wi-Fi travel time modules, and installation of fiber optic communications. All these improvements have the purpose of providing real-time information to the City to

better manage traffic signal timing and overall traffic progression on these major roadways.

### **III. DESCRIPTION OF SERVICES**

All design work shall be done in accordance with the Department of Transportation Standard Specifications and Details, City Standard Plans and Specifications, ADA Design Guidelines, latest building and fire codes, and other applicable codes and standards recommended by the Consultant. Below is an outline of required services; however, it is the responsibility of the consultant to independently assess the PROJECT and provide improvement recommendations to meet the goals for this PROJECT. It is assumed that project improvements may include the following items:

- A. 1,000 feet of new conduit and 3 pull boxes on Bellomy Street between Lafayette Street and The Alameda
- B. New APS buttons and unit at Bellomy Street/The Alameda
- C. Removal of 13,000 feet of existing copper signal interconnect and replace with new fiber optic cable
- D. Fiber optic splices between new fiber optic cable and existing backbone cable
- E. 9 new fiber distribution units
- F. 12 new ethernet switches
- G. 7 new utility service connections/risers/pullboxes and 350 feet of new service conduit
- H. 7 new Type III service cabinets
- I. Remove 7 TS1 Type P cabinets and replace with TS2 Type P cabinets complete with new 2070 controllers and cabinet equipment.

Plans for fiber optic work are anticipated to use 1"=40' scale. Plans for the 7 locations with new utility service connections and TS2 Type P cabinets will be incorporated into the fiber optic sheets with the inclusion of details at a 1"=10' scale. The minimum requirements for the plans include:

- A. Field work collecting, confirming, and documenting all existing conditions that may impact project design
- B. Plans showing all existing traffic signal poles, pull boxes, conduits, and cabinets
- C. Plans showing all existing utility cabinets, covers, manholes, poles, and structures
- D. Plans showing all existing utility overhead wires, conduits, and pipes
- E. Plans showing all landscaping, trees, and irrigation pipes and valve covers

Consultant shall provide the Services described herein through a project team, comprised of Consultant and sub-consultants identified as follows:

1. Consultant: KIMLEY-HORN AND ASSOCIATES, INC.
2. Sub-consultants to KIMLEY-HORN AND ASSOCIATES, INC.:

1) PLS Surveys, Inc. – Surveying

Any changes to the project team through the course of the Services shall be approved in writing by City.

**IV. RESPONSIBILITIES OF CITY**

CITY will provide the following information and support for the project as-available and applicable:

- A. Record drawings (as-available)
- B. CITY’s Standard Details, Specifications, Benchmark, and Design Criteria.
- C. Storm Drain (SD), Sanitary Sewer (SS), Electric, Fiber, Water and Recycled Water Block Book Maps (as-available).
- D. Geographic Information System (GIS) data including land parcels, street centerlines, City sanitary sewers, City storm drains, and aerial photographic tiles
- E. Payment of permit application fees with other internal departments, if required.
- F. Filing exemption under the California Environmental Quality Act, if applicable.

Besides the above, the City will work closely with the consultant to provide any other data or records, as available and necessary for the work involved.

**V. BASIC SCOPE OF SERVICES**

**PROJECT MANAGEMENT**

CONSULTANT shall:

- 1.1 Manage its team and overall project activities consistent with the direction from CITY in order to meet the project schedule and budget. Manage sub-consultants, maintain schedule and budget, anticipate and mitigate potential design issues and delays and coordinate and update the City on the overall progress of the Project.
- 1.2 Organize and attend project meetings with the City to discuss project progress, decisions, and direction and to coordinate activities. Meetings shall be held at key project milestones and shall include, but are not limited to:
  - 1.2.1 Kick-off Meeting
  - 1.2.2 Preliminary Design Review Meeting
  - 1.2.3 65% Design Review Meeting
  - 1.2.4 95% Design Review Meeting
  - 1.2.5 Punch list/Project acceptance Meeting
- 1.3 Coordinate with CITY, design team members, consultants, utility companies, other

government agencies, and other affected parties as required throughout the duration of the project as well as the Quality Assurance/Quality Control (QA/QC) activities for project deliverables.

- 1.4** Prepare, monitor, and update progress schedule in MS Project format beginning at the kickoff meeting and ending at contract award for the last submittal package. Schedule shall show significant milestones for the project. CONSULTANT shall notify CITY if there are delays or potential delays in any phase of the project. In such cases, CONSULTANT shall make up the schedule in subsequent phases of the project or provide information to CITY substantiating a request for time extension (which may not be approved). The schedule shall be maintained at all times and shall be updated each time progress and milestones are achieved and/or changed.
- 1.5** Meetings: Meetings shall be budgeted for and invoiced under each respective Task or activity requiring a meeting and not as project management. Preparation for meetings shall be considered as included in the Task or activity for which the meeting is involved. A kick-off meeting shall be conducted with designated CITY staff prior to beginning work to review anticipated Tasks and schedule, review available information and needs, and address any outstanding questions regarding the project moving forward raised by CITY or CONSULTANT. During the course of Services while there is active work on the PROJECT, CONSULTANT shall schedule and attend brief bi-weekly (every other week) conference calls with CITY. The purpose of the bi-weekly conference calls will be to keep CITY apprised on the PROJECT's progress and address any issues that may arise during the course of Services.
- 1.6** Provide monthly progress reports.
- 1.7** Stakeholder Coordination: CONSULTANT shall coordinate with project stakeholders as needed to inform each stakeholder of the project work and incorporate any necessary accommodations into the final submittal documents.
- 1.8** Provide Review/Plan Check Log (Response Matrix) summarizing comments received from various City Departments/Divisions and agencies. Response Matrix shall include, but not be limited to, commenting department/division or agency, comments, response to comments, action items, and person responsible for follow up. Consultant shall be responsible for resolving comments from each commenter and shall identify to City any comments that cannot be resolved to have final discussion and resolution. Submit Response Matrix in electronic format with each route of plan check submittal.
- 1.9** Conduct QC reviews in accordance with its QA Program guidelines. CONSULTANT shall provide a copy of its QA Program guidelines and shall provide a QC report at the end of each Task. Time spent for QA-QC reviews for specific deliverables shall be budgeted and billed under each respective task requiring QA-QC review and not as Project Management.

- 1.10 Contract Administration: CONSULTANT administrative staff time spent preparing additional Services requests or budget modifications, shall be considered as included in the overhead of the CONSULTANT's basic hourly rates and shall not be billed.
- 1.11 Payment for all responsibilities related to Project Management shall be included in the various tasks identified in Exhibit B, Schedule of Fees.

Deliverables:

1. Progress schedules in MS Project format (submitted electronically as an 11" x 17" pdf file and in native MS Project format).
2. QA Program guidelines and QC reports for each Task (in pdf file).
3. Meeting agendas, preparation materials, and meeting minutes for each project meeting (in pdf file).
4. Monthly progress reports and invoices (in pdf file).

**Task 1.0: Preliminary Engineering/Evaluation**

- 1.1 Attend Project Kick-Off Meeting and provide meeting minutes for the City to review and approve.
- 1.2 Perform necessary assessment and investigations to determine the existing conditions and propose recommendations to City for the improvements. Contact regulatory agencies that will affect the proposed works to determine applicable codes and ordinances.
- 1.3 Review necessary as-builts to understanding existing condition in order to prevent utility conflicts and changes during construction.
- 1.4 Meet with City staff to obtain additional information and input as needed. Provide design services for landscape, civil, and electrical design.
- 1.5 Perform needed topographic survey for existing site, plans layout, and final approved improvements (from the evaluation/recommendation) for use as base layout for the design plans.
- 1.6 CITY maintains a list of known utility operators in CITY. CONSULTANT shall prepare a Notice of Intent to Construct (NOI) on CITY's standard NOI form and submit it to the known utility operators in order to gather records for existing utilities. Location map exhibits will be required to be submitted as part of the NOI. CONSULTANT shall provide CITY a draft of the NOI prior to sending it to the utility, maintain log of all NOI sent and received, and provide CITY all information received from the NOI. The purpose of the collection of utility information is to identify ownership of surface features that will be impacted by the work, and also to identify if there are any high-risk utilities within the project limits that may be

impacted by the work.

All data collected from the field shall be provided to the City for records. Prior to performing data collection, CONSULTANT shall provide a work plan to the City for review and approval. No work shall be performed unless authorized by the City.

Task 1 Deliverables – Electronic copy format:

1. Project Work Plan
2. Field notes and photographs
3. Notice of Intent form(s)

### **Task 2.0: 65% Construction Documents**

Plans shall be drawn to scale, on D-size (24" X 36") sheets, at an engineering scale up to 1" = 40' maximum, conforming to City's Design Criteria. Plans are to be drawn by AutoCAD 2021 or earlier versions, using City-provided standard AutoCAD template with background layout from Consultant's topographic survey.

- 2.1** Prepare 65% construction documents and supporting information for the City's review. Consultants shall follow City's Design Criteria and plan format to prepare 65% Plans and supporting information for the City's review. Plans with details of major design components as necessary such as: Site Plan, Existing Condition, Proposed Improvement, Traffic Control Plan, Details, and other pertinent information for the City to review and provide comments.

65% Plans shall include all existing utilities on-site and immediate surrounding off-site areas. Pertinent background information as relating to proposed improvements which will include layouts, fence, gate, pedestrian pathway, property lines, site entrance/exist driveway, adjacent streets shall be shown.

- 2.2** Prepare project estimate that includes an itemized list of bid items. The project estimate shall be accurate and prepared based upon current construction pricing and escalated to mid construction. CONSULTANT shall review recent bids, and contact vendors, suppliers, and contractors as necessary to develop an accurate cost estimate. The CONSULTANT shall provide the assumptions and supporting documents used to prepare the estimate. The project estimate shall consider the following factors:

1. Recent similar Projects bided in the Bay Area, especially in the South Bay.
2. Current economic trend.
3. When the Project will be bided.
4. When construction will occur.
5. The risks that contractors need to consider for the Project.

- 2.3** Develop project schedule. Schedule shall include all needed times to complete all tasks, including City's review times, permitting process, and construction period.

- 2.4 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 2.5 Conduct a quality control (QC) review of design documents (Plans, Specifications, and Engineer's Cost Estimates).
- 2.6 CITY will circulate the submittal package to internal CITY departments for review and comments. CONSULTANT shall be responsible for submitting the package to external stakeholders if required. CONSULTANT shall prepare written responses to all written comments received. All redlined drawings shall be returned with CONSULTANT's response on the redlined drawings.
- 2.7 CONSULTANT shall be responsible for resolving comments from each commenter and shall identify to CITY any comments that cannot be resolved. CONSULTANT shall conduct a 65% comments review meeting with CITY to discuss comments on the submittal package, to identify any significant design issues, and gain concurrence as to how the submittal shall be revised as appropriate to incorporate CITY's comments.

Task 2 Deliverables – Electronic and hard copy format:

1. 65% Plans – One (1) PDF and one (1) AutoCAD file.
2. 65% Engineering cost estimate – One (1) PDF and one (1) Microsoft Excel file.
3. Project schedule – One (1) PDF and one (1) Microsoft Project file.
4. Quality control checklist for 65% PS&E submittal – One (1) PDF and one (1) Microsoft Word or Excel file. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.

**Task 3.0: 95% Construction Documents**

Based on City's comments and direction on the 65% PS&E, Consultant shall revise the 65% PS&E to produce the 95% PS&E. Consultant shall:

- 3.1 Prepare 95% construction documents and supporting information for the City's review and approval.
  - 3.1.1 Construction details of proposed improvements shall be included in the 95% Plans.
  - 3.1.2 Provide technical specifications.
  - 3.1.3 Provide modified sections to City standard specifications to suit Project. Modified sections include, but not be limited to, general information, summary of work, measurement and payment for bid items, permitting and agency regulatory requirements, etc.

- 3.1.4 Provide required information to the City's Project Specific Specification Book (Division 0, 1, and 2). Required information from Consultant for City's frontend specifications shall include, but not be limited to, the followings:
1. Description of work
  2. Type of Contractor's License required
  3. Construction Schedule
  4. Bid Schedule
  5. Requirements for Contractor's Statement of Qualifications (e.g. experience requirements for similar work and contract values)
  6. Identification of any changes to the City's standard specifications that are required.

**3.2** Prepare an updated engineering cost estimate.

**3.3** Prepare an updated project schedule.

**3.4** Meet with City staff, as needed, to review City comments on 95% submittal and gain concurrence as to how the documents will be revised as appropriate to incorporate City comments.

**3.5** Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.

**3.6** Provide written response matrix to City's comments on 65% PS&E.

**3.7** Conduct a quality control (QC) review of design documents (Plans, Specifications, and Engineer's Cost Estimates).

Task 3 Deliverables – Electronic and hard copy format:

1. 95% Plans – One (1) PDF and one (1) AutoCAD file.
2. 95% Specifications – One (1) PDF and one (1) Microsoft Word file.
3. 95% Engineering cost estimate – One (1) PDF and one (1) Microsoft Excel file.
4. Updated project schedule – One (1) PDF and one (1) Microsoft Project file.
5. Meeting minutes – One (1) PDF and one (1) Microsoft Word file.
6. Quality control checklist for 95% design submittal.
7. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.

#### **Task 4.0: 100% Construction Documents**

Based on City's comments and direction on the 95% PS&E, Consultant shall revise the 95% PS&E to produce the 100% PS&E. Consultant shall:

**4.1** Prepare 100% construction documents and supporting documents.

- 4.1.1 Phase percentage statement such as "100% Plans. Not for Construction" shall be removed from the 100% Plans and each sheet of the plans set shall



be stamped and signed by the Consultant's Engineer of appropriate discipline.

- 4.1.2 Specifications shall be stamped and signed (on Document 00030 – Seal) by Consultant's Project Engineer.
- 4.2 Prepare an updated Engineering Cost Estimate with backups and justifications for unit pricing.
- 4.3 Prepare an updated Project Schedule.
- 4.4 Provide Documents for City's PS&E approval process. Required documents shall include: engineer's estimate using the schedule of quantities format, recent similar project bid summaries to validate engineer's estimate, consultant Peer Review Certification, consultant Lessons Learned from other similar projects that were applied to this Project.
- 4.5 100% PS&E shall be Peer reviewed and Certification of Peer Review shall be submitted with the 100% Submittal.

A statement to indicate Peer Review has been performed and signature of the Engineer who performed it shall be added to the Plans Cover Sheet.

Certification of Peer Review: The following paragraph shall be put on the company letter head, dated, and signed by the Peer Review Engineer.  
"The undersigned hereby certifies that a professional peer review of these plans and the required designs was conducted by me, a professional landscape architect with expertise and experience in the appropriate fields of landscaping equal to or greater than the Architect of Record, and that appropriate corrections have been made."

- 4.6 Prepare and submit Special Inspection Form for the Project.
- 4.7 Meet with City staffs as needed to review City comments on 100% submittal and gain concurrence as to how the documents will be revised as appropriate to incorporate City comments.
- 4.8 Plan, coordinate, schedule, attend meetings, and produce meeting minutes with action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.
- 4.9 Provide written response matrix to City's comments on 95% PS&E.
- 4.10 Provide list of potential bidders including company name, email address, contact number, and address of business.
- 4.11 The City shall review the 100% Design Submittal Package (Plans, Specifications,

Engineer's cost estimate, and Project bid and construction schedule) to ensure that all comments and issues have been rectified. After the 100% Design Submittal Package has been deemed acceptable, City staff will then submit the 100% Design Submittal Package to the Building Division and Fire Department for review and approval.

Task 4 Deliverables – Electronic and hard copy format:

1. 100% Plans – One (1) PDF and one (1) AutoCAD file.
2. 100% Specifications – one (1) PDF and one (1) Microsoft Word file.
3. Certification of Peer Review – One (1) PDF.
4. 100% Engineering Cost Estimate – One (1) PDF and one (1) Microsoft Excel file.
5. Updated Project Schedule – One (1) PDF and one (1) Microsoft Project file.
6. Special Inspection Form – One (1) PDF.
7. Quality control checklist for 100% design submittal.
8. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file

### **Task 5: Bid Documents (P&S)**

The Bid Documents shall incorporate all comments from the City including comments from the Building Division (for building permit), Fire Department (for Fire Permit, if applicable) Public Works, Sewer and Water, SVP, and any other stakeholders that are involved in the Project. Based on City's comments and direction on the 100% PS&E, Consultant shall revise the 100% PS&E to produce the Bid Documents. Consultant shall:

- 5.1** Incorporate City review comments of 100% PS&E into Bid Documents.
- 5.2** Incorporate permit issuers' comments (from Building Division and Fire Department) into P&S and coordinate with permitting departments and agencies to obtain acceptance of permit application package.
- 5.3** Prepare Bid Documents (P&S).
  - 5.3.1 Bid Plans shall be wet stamped and signed by the Consultant's Engineer of appropriate discipline. Plans shall be drawn to scale and plotted onto D-size sheets.
  - 5.3.2 Bid Specifications shall be wet stamped and signed (on Document 00030 – Seal) by Consultant's Project Engineer.
  - 5.3.3 Final Engineer's Estimate
  - 5.3.4 Special Inspection Form required by the Building Division
  - 5.3.5 Any other forms that are required by the Building Division and Fire Department in order to obtain applicable permits from those teams.
- 5.4** Plan, coordinate, schedule, attend meetings, and produce meeting minutes with

action items for all meetings with the City as deemed necessary to efficiently complete this phase of the design in a timely manner.

Task 5 Deliverables – Electronic and hard copy format:

1. Bid Plans – One (1) PDF of wet-signed/stamped, D-size and one (1) AutoCAD file.
2. Bid Specifications – One (1) PDF of wet-signed/stamped, A-size and one (1) Word file.
3. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.
4. Quality control checklist for bit set submittal.
5. Written response matrix – One (1) PDF and one (1) Microsoft Word or Excel file.
6. Special Inspection Form

### **Task 6: Bid and Award Phase Assistance**

Consultant shall provide assistance to the City during the bidding and award phase, answer questions from bidders, help and prepare exhibits for addenda when necessary, assist the City in evaluation of bids received, and provide a written recommendation for the award of contract, when requested. A total of 20 hours has been included for this task; any additional effort will be considered as additional services to be completed for an additional fee upon receipt of written authorization from the City.

Consultant shall:

- 6.1** Attend and conduct one Pre-Bid Conference/Site Visit.
- 6.2** Assist the City with responses to bidder's inquiries through the City's Project Manager.
- 6.3** Assist the City with addenda to the construction documents as needed to respond to bidder's inquiries and clarify the intent of bid documents.
- 6.4** Assist the City in evaluating bids (if required by the City).
- 6.5** Within fourteen (14) days from the bid opening date, prepare and submit a conformed set of contract documents (Plans and Specifications) incorporating any and all addenda (if needed).

Task 6 Deliverables – Electronic and hard copy format:

1. Written response to bidder's inquiries – Signed PDF.
2. Support information for addenda – Signed PDF.
3. Written recommendation letter to award of contract for the Project – Signed PDF.
4. Conformed Set (if needed) – One (1) PDF of Plans and Specifications, one (1) AutoCAD file of Plans, and one (1) Microsoft Word file of Specifications.

### **Task 7: Construction Phase Assistance**

Consultant's responsibility to provide basic services for the construction phase under this Agreement commences with the "Notice to Proceed" (NTP) of the contract for construction and terminates on the date the City approves the certificate of completion of the Project. A total of 60 hours has been included for this task; any additional effort will be considered as additional services to be completed for an additional fee upon receipt of written authorization from the City. Services may include:

- 7.1** Consultant will assist the City in providing administration of the contract for construction. Duties, responsibilities and limitation of authority of Consultant shall not be restricted, modified, or extended without written agreement of the City.
- 7.2** Consultant shall attend the Pre-construction meeting.
- 7.3** Consultant shall visit the site three times during construction for meetings. The meetings may include: job progress meetings, pre-submittal meetings, pre-installation meeting, and other meetings as required by the City.
- 7.4** Consultant shall visit the site three additional times during construction to make construction observation visits throughout the construction phase. Consultant shall issue an observation report after each visit.
- 7.5** In addition to the construction observation visits, Consultant shall review technical submittals, shop drawings, product data, product samples, and product warranties from the contractor for conformance with the specifications and drawings. The Consultant's action shall be taken with such reasonable promptness so as to cause no delay in the work, while allowing sufficient time in Consultant's judgment to permit adequate review. The Consultant will be allowed a maximum of seven (7) calendar days for review of submittals. Consultant's review shall not constitute review of safety precautions or construction means, methods, techniques, sequences or procedures. Consultant's review of specific items shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents, Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the contract document.
- 7.6** Consultant shall respond to Contractor's Request for Information (RFI) and Request for Substitution (RFS). Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Consultant shall be allowed a maximum of seven (7) calendar days to respond to RFIs and RFSs that impact the Project schedule or a maximum of fourteen (14) calendar days to respond to RFIs and RFSs that do not impact the Project schedule.
- 7.7** The Consultant shall prepare the Scope of Work, including sketches, for Field Instructions issued to the Contractor. When requested by the City, Consultant shall review Change Order (CO) pricing and provide written responses for the City's

review and finalizing said COs

Task 7 Deliverables – Electronic and hard copy format:

1. Signed PDFs of Reviewed Contractor Submittals, Shop Drawings, RFIs, RFSs, and Field Instructions.
2. Signed PDFs of COs' recommendations.
3. Signed PDFs of Field reports by Consultant and sub-consultants.

**Task 8: Post-Construction Phase**

A total of 40 hours has been included for this task; any additional effort will be considered as additional services to be completed for an additional fee upon receipt of written authorization from the City.

- 8.1 When requested by the City, Consultant shall conduct reviews to assist the City to determine the date or dates of Substantial Completion and the date of Final Completion. Consultant's decisions with City approval on matters relating to aesthetic effect may be final if consistent with the intent expressed in the Contract Documents.
- 8.2 Upon request by Contractor, in accordance with contract Specifications, for Substantial Completion and later Final Completion, Consultant shall assist City in determining if the Project is ready for the stage of completion requested by the Contractor. Consultant shall provide City with a written recommendation.
- 8.3 Consultant shall perform a walk-through of the Project site, review Contractor Punch List, and provide written response with status and action of items on the Punch List. Consultant shall attend final walk-through of the Project site with the City, verify Punch List completion, and provide written response with recommendation regarding Project acceptance and close-out.
- 8.4 Consultant shall review Contractor-supplied Operation and Maintenance manuals and Warranties to determine their completeness and compliance with Construction Contract and provide written recommendation for acceptance.
- 8.5 Consultant shall at completion of the Project provide City with one set of reproducible Record Drawings (RDs) on good quality bond paper that reflect the changes to the work during construction based upon marked up prints, drawings and other data furnished by the Contractor and City. Consultant shall use the original Title sheet for the RDs set. If Consultant adds additional sheets to the Plans, these shall be properly numbered, properly referenced on other affected drawings and included in the drawing index. Consultant may, at its own expense, prepare and retain a copy of each drawing for its permanent file.
- 8.6 Provide a complete set of the Record Drawings and all X-ref files "bound," including other associated fonts, plot style files on AutoCAD, including electronic copies in PDF format. CONSULTANT may, at its own expense, prepare and retain a copy of each drawing for its permanent file.

Task 8 Deliverables – Electronic and hard copy format:

1. Substantial Completion/Final Completion recommendations and Reviewed Punch List – One (1) signed PDF.
2. Record Drawings – One (1) PDFs and one (1) AutoCAD files on CD/DVD.

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INTELLIGENT TRANSPORTATION SYSTEMS REHABILITATION PHASE 2  
PROJECT**

**EXHIBIT B  
SCHEDULE OF FEES**

**I. GENERAL PAYMENT**

The total payment to the Consultant for Basic Services, as stated in **Exhibit A**, shall not exceed \$128,220. The amount billed to City for pre-approved Additional Services shall not exceed the sum of \$19,780. In no event shall the amount billed to City by Consultant for Services under this Agreement exceed \$148,000, subject to budget appropriations.

Consultant shall bill City on a monthly basis for Services provided by Consultant during the preceding month on an invoice and in a format approved by City and subject to verification and approval by City. Billing shall be proportionate to the Services performed for each task completed. The invoice shall describe the Task completed, and percentage completed by Task, and total during the invoice period. The invoice shall also show the total to be paid for the invoice period. City will pay Consultant within thirty (30) days of City's receipt of an approved invoice.

**II. BASIC SERVICES**

The total payment to Consultant for all work necessary for performing all Tasks, as stated in **Exhibit A**, shall be in proportion to Services rendered and on a Time-and-Material not-to-exceed basis.

The Consultant fee allocated to each Task, as shown below, shall be the Consultant's full compensation for all the Consultant Services required for the Project and by this Agreement, as directed by the City, and no additional compensation shall be allowed. The total amount of all the Tasks is a not-to-exceed amount.

The amount for each Task and the total amount of all the Tasks are as listed below:

<u>Description of work and task</u>	<u>Basic Services Cost</u>
Task No. 1 – Preliminary Engineering	\$34,040
Task No. 2 – 65% Construction Documents	\$28,200
Task No. 3 – 95% Construction Documents Package	\$16,530
Task No. 4 – 100% Construction Documents Package	\$12,960
Task No. 5 – Final Bid Documents	\$6,290
Task No. 6 – Bid Support Assistance	\$7,270
Task No. 7 – Construction Support	\$14,550
Task No. 8 – Record Drawings and Project Close-out	\$8,380
TOTAL COST	\$128,220

In no event shall the amount billed to City by Consultant for BASIC SERVICES under this Agreement exceed one hundred twenty-eight thousand two hundred twenty dollars (\$128,220).

### III. REIMBURSABLE EXPENSES

There are no reimbursable expenses.

### IV. ADDITIONAL SERVICES

Additional Services consists of work not included in the Scope of Services outlined within this Agreement. Pre-approved Additional Services shall be billed to City at the fixed hourly rates shown below in Section V, RATE SCHEDULE, or at an agreed negotiated lump sum price. Monthly billing for Additional Services shall be consistent with the term set forth in this Agreement. Payment for any Additional Services is allowed only if written authorization is given by the City Engineer in advance of the work to be performed. Additional Services shall not exceed \$19,780.

### V. RATE SCHEDULE

#### Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

The pay rates for the project by classification are listed below:



**Primary Consultant – KIMLEY-HORN AND ASSOCIATES, INC.:**

**Kimley-Horn**

<b>Position</b>	<b>Billing Rate per Hour</b>
Support Staff 1	\$100
Support Staff 2	\$105
Senior Support Staff 1	\$115
Senior Support Staff 2	\$125
CADD	\$120
Senior CADD	\$130
Analyst 1	\$140
Analyst 2	\$150
Analyst 3	\$160
Analyst 4	\$170
Professional	\$185
Professional 1	\$195
Professional 2	\$205
Professional 3	\$215
Professional 4	\$225
Senior Professional	\$235
Senior Professional 1	\$245
Senior Professional 2	\$255
Senior Professional 3	\$265
Senior Professional 4	\$280
Senior Professional 5	\$295
Principal	\$325

*\*The following rates are effective up until July 1, 2022. These rates are reviewed yearly and are adjusted as necessary.*

*Other Direct Costs: Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, and Travel Expenses will be billed at cost plus 10%. Mileage will be billed at the Federal Rate.*

**Subconsultant Billing Rates:**

PLS Surveys, Inc.



PLS Surveys, Inc.  
e-mail: plssurv@pacbell.net

2220 Livingston Street, Suite 202  
Oakland, California 94606  
510.261.0900 FAX 510.261.3303

**RATE SCHEDULE**

**Field:**

One-man	\$215.00
Two-man	\$275.00**
Three-man	\$310.00

4 hour minimum applies to above rates

**Office:**

Principal-in-Charge	\$190.00
Land Surveyor	\$150.00
Survey Technician	\$105.00
AutoCAD/Drafter	\$131.00
Clerical/Delivery (In-House)	\$95.00

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**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 during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office (ISO) form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 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 (if any), non-owned and hired autos.

#### 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 ISO Endorsement CG 20 10 11 85, or its equivalent, 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, except professional liability, provided by Contractor 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. 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 non-renewal 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 non-renewal 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.
4. 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 E 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 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 mailed to:

EBIX Inc.

City of Santa Clara – Public Works Department

P.O. Box 100085 – S2

or 1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

## 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.

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**EXHIBIT D  
LABOR COMPLIANCE ADDENDUM**

This Agreement is subject to the requirements of California Labor Code section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements. If applicable to the Services, Consultant or its subconsultant(s), as applicable, shall comply with the following requirements.

A. Prevailing Wage Requirements

1. Consultant shall be obligated to pay not less than the General Prevailing Wage Rate, which can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the City Clerk's office, which shall be available to any interested party upon request. Consultant is also required to have a copy of the applicable wage determination posted and/or available at each job site.
2. Specifically, consultants are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime must be paid for work in excess of 8 hours per day or 40 hours per week pursuant to Labor Code Section 1811-1813.
3. Special prevailing wage rates generally apply to work performed on weekends, holidays and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Consultants and subconsultants are on notice that information about such special rates, holidays, premium pay, shift work and travel and subsistence requirements can be found at [www.dir.ca.gov](http://www.dir.ca.gov) .
4. Only bona fide apprentices actively enrolled in a California Division of Apprenticeship Standards approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.



5. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, Consultant agrees to present to City, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subconsultants) for the time period covering such payment request. The term “certified payroll” shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 *et seq*, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
6. In addition to submitting the certified payrolls and related documentation to City, Consultant and all subconsultants shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and/or final payment.
7. No consultant or subconsultant may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
8. No consultant or subconsultant may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Consultants MUST be a registered “public works consultant” with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
9. All consultants/subconsultants and related construction Services subject to prevailing wage, including but not limited to: trucking, surveying and inspection work must be registered with the Department of Industrial Relations as a “public works consultant”. Those you fail to register and maintain their status as a public works consultant shall not be permitted to perform work on the project.
10. Should any consultant or subconsultants not be a registered public works consultant and perform work on the project, Consultant agrees to fully indemnify the City for any fines assessed by the California Department of Industrial Relations against the City for such violation, including all staff costs and attorney’s fee relating to such fine.

11. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

B. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with this Addendum shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

C. Enforcement

1. City shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., City may continue to hold sufficient funds to cover estimated wages and penalties under the Agreement.
2. Based on State funding sources, this project may be subject to special labor compliance requirements of Proposition 84.
3. The City is not obligated to make any payment due to Consultant until Consultant has performed all of its obligations under these provisions. This provision means that City can withhold all or part of a payment to Consultant until all required documentation is submitted. Any payment by the City despite Consultant's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of this Addendum.

City or the California Department of Industrial Relations may impose penalties upon consultants and subconsultants for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violation identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

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**EXHIBIT E  
 MILESTONE SCHEDULE**

<u>Description of work and task</u>	<u>Duration</u>
Task No. 1 – Preliminary Engineering	5 weeks
Task No. 2 – 65% Construction Documents Package	4 weeks
Task No. 3 – 95% Construction Documents Package	4 weeks
Task No. 4 – 100% Construction Documents Package	2 weeks
Task No. 5 – Final Bid Documents	2 weeks
Task No. 6 – Bid Support Assistance	2 days response time for clarifications and questions
Task No. 7 – Construction Support	5 days response time for each submittal review; 3 days response time for all RFI's and clarifications.
Task No. 8 – Record Drawings and Project Close-out	2 weeks to prepare record drawings

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.  
FOR  
INTELLIGENT TRANSPORTATION SYSTEMS REHABILITATION PHASE 2  
PROJECT**

**EXHIBIT F  
PROJECT MANAGEMENT DOCUMENTATION SOFTWARE**

**1.0 GENERAL**

This section is intended to describe the use of e-Builder Enterprise™ (e-Builder) a web-base project management software, as the median for project documentation and reporting. All costs associated with the use of the software is inclusive of the Project Exhibit B – Schedule of Fees.

**2.0 e-BUILDER PROJECT MANAGEMENT SOFTWARE PROGRAM**

The City of Santa Clara is currently using e-Builder Project Management for all related project management tasks. Consultant is required to comply with all requirements specified in this Exhibit F – PROJECT MANAGEMENT DOCUMENTATON SOFTWARE.

**3.0 REQUIREMENTS**

**A. General Requirements:**

1. Consultant and Subconsultants shall provide at a minimum, the following to its staff:
  - a) Computer: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher;
  - b) Computer Operation System: Windows XP or later and OS X v10.8 or later;
  - c) Web Browser: Microsoft Internet Explorer 11.0 or later, Google Chrome v29.0.1 or later, Mozilla Firefox v35.0.1 or later, Safari v6.0.4 or later, Safari for iOS mobile v6.1 or later. Other browsers such as Microsoft Edge, Google Chrome for iOS, and Google Chrome for Android are available on e-Builder; however, but some features might not work as expected;

- d) Work and Spreadsheet Processors: Microsoft Office Word, Excel and Outlook;
  - e) Scheduling Software: Microsoft Project or Primavera;
  - f) Internet Service Provider: A reliable ISP in the area of the Project;
  - g) Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream.
2. Consultant and Subconsultants shall provide its management personnel assigned to this Project with access to personal computers and the Internet on a daily basis

**B. Project Web Requirements:**

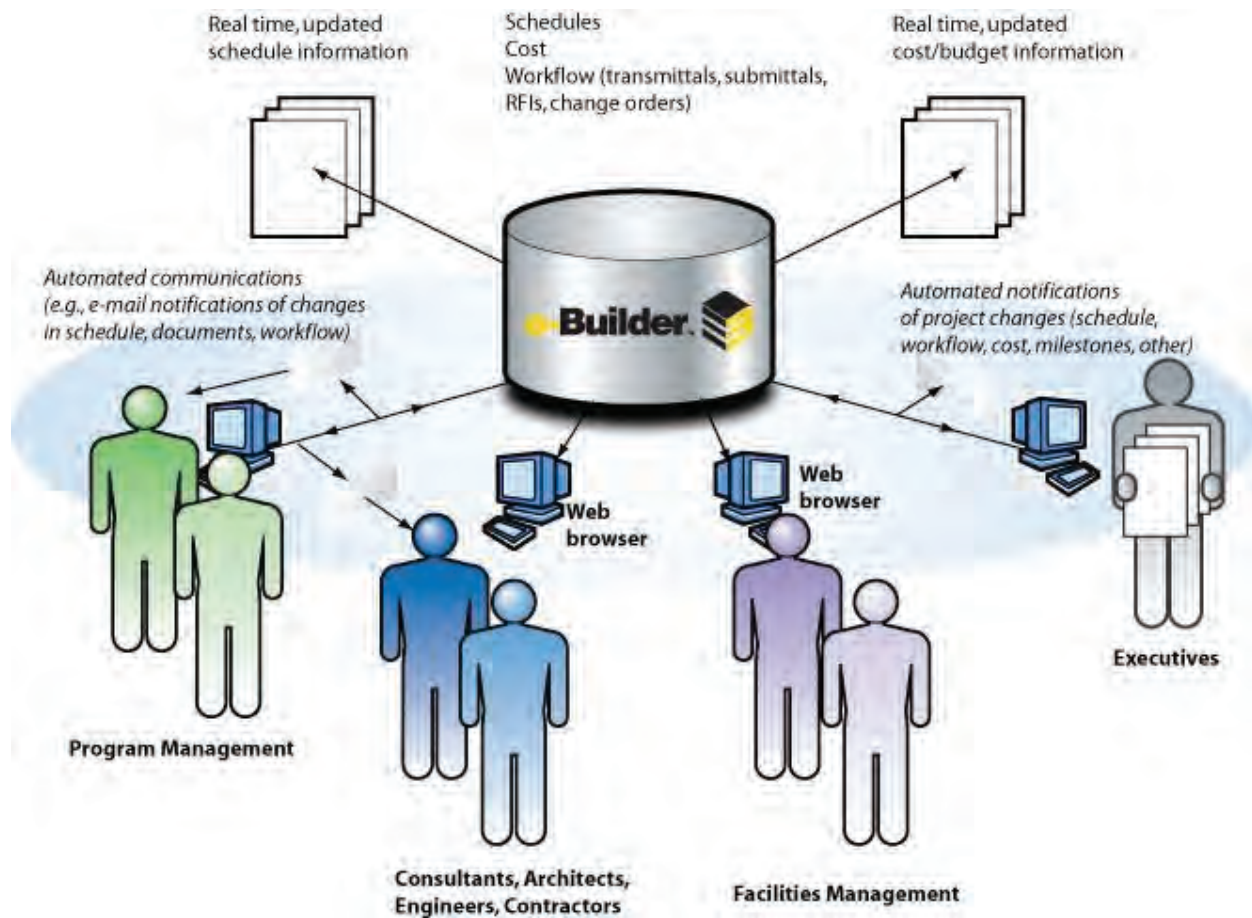
1. This project utilizes a web-based project management tool, e-Builder. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.
2. Consultant and Subconsultants shall conduct Project controls, outlined by the City, utilizing e-Builder. This designated web-based application will be provided by the City at no costs to the Consultant and the Subconsultants. No additional software will be required. Furthermore, the City Project Manager will assist Consultant in providing training of Subconsultant's personnel.
3. Consultant and Subconsultants shall have the responsibility for visiting the Project web site on a daily basis, and as necessary to be kept fully apprised of Project developments, for correspondence, assigned tasks and other matters that transpire on the site. These may include, but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Construction Change Directives, Potential Change Orders, Change Order Requests, Change Orders, etc. All supporting data including, but not limited to, shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests, Submittals, etc. and the like will be submitted in digital format via e-Builder.

**C. Electronic File Requirements:**

1. In addition to the standard closeout submittal requirements detailed elsewhere in the Contract Documents, the Consultant and Subconsultants shall also submit all closeout documents including all “As-Built Drawings”, catalog cuts, and Owner’s Operation and Maintenance manuals in digital format. All documents (including as-built drawings) shall be converted or scanned into the Portable Document Format (PDF) file and uploaded to e-Builder.

#### **4.0 IMPLEMENTATION REQUIREMENTS**

- A. e-Builder is a comprehensive Project and Program Management system that will be implemented for managing documents, communications, and costs between the Contractor, Sub-contractors, Consultant, Sub-consultants, and Owner. e-Builder includes extensive reporting capabilities to facilitate detailed.
- B. Project reporting in a web-based environment that is accessible to all parties and easy to use.
- C. Central Document Vault: e-Builder system includes a central database that maintains all project information and manages project communications amongst team members.
- D. Communication/Correspondence: e-Builder provides electronic routable communication forms that provide historical tracking, documentation, and increased accountability of project members.
- E. Project Calendars: Meetings will be scheduled and maintained centrally on e-Builder by the City.
- F. Reporting: All of the project and program data including documents, communications, and costs are accessible through integrated online reports. These reporting tools are completely configurable by each user. All reports can be exported to Excel for added flexibility.



## 5.0 LICENSING REQUIREMENT

- A. User Licenses: Each user license is for access to the site consisting of unlimited data storage. Users can be direct employees of the Consultant as well as its Subconsultants and/or Suppliers.
- B. Each user license includes full access to e-Builder, including all of the documents and reports mentioned above. Furthermore, each user license provides the e-Builder software as a service (SaS) including:
  1. All hosting, operation, maintenance, and data backup of the e-Builder software and documents which are maintained in state-of-the-art data centers located throughout the United States.
  2. Quarterly e-Builder software enhancements.
  3. Unlimited phone, email, and web-based support 24-hours.

- C. e-Builder user licenses shall be obtained by the City, Owner Manager, and QA/QC Agencies for which the Design Consultant is not responsible.