



June 17, 2022

Dustin Christensen, P.E. – Principal Engineer
City of Beaumont - Department of Public Works
550 E. 6th Street,
Beaumont, CA 92223

RE: *Pennsylvania Avenue Widening from 1st Street to 6th Street – Amendment No. 3 for Pennsylvania Ave – Caltrans Approvals, Bid Phase Support, and Construction Phase Support*

Dear Mr. Christensen:

Kimley-Horn and Associates, Inc. (Kimley-Horn) is pleased to submit this request to the City of Beaumont (City) to provide construction phase services for the Pennsylvania Avenue Widening Improvements Project. Our understanding, scope of services, and fee to perform these services are below.

Understanding

Kimley-Horn completed the final engineering design that is being advertised for construction bidding. This scope of work encompasses support for the bidding and construction phases for items related to the design that Kimley-Horn has previously provided. Support for bidding and construction are not included in our current scope of work.

In addition, Caltrans has requested items that were not approved in our original scope of work. These will be provided during the subsequent phases along with design addendums, if necessary.

Scope of Services

Task A28 – Design Standard Decision Document (DSDD)

Provide documentation of non-standard features within Caltrans right-of-way. This entails preparation of one Caltrans standard format DSDD for underlined and bold design exceptions. We anticipate documenting up to four non-standard features encompassing access control, lane widths, shoulder widths, and corner sight distance. Documenting existing nonstandard features that are not impacted by the Project are excluded from this scope of services, including but not limited to, side slopes, minimum vertical curve length, and interchange spacing.

Deliverables: Draft DSDD, Final DSDD

Task A29 – Permit Engineering Evaluation Report (PEER)

We will provide the PEER (Form TS-0112), which encompasses providing a project description, purpose and need, descriptions of impacts to the State Highway System, and descriptions of signalization. Other items that Caltrans may require as part of the PEER approval, such as Right-of-Way Data Sheets and a Storm Water Data Report, are excluded from this scope of work.

Deliverables: Draft PEER, Final PEER

Task A30 – Incorporate Caltrans PS&E Comments

Incorporate Caltrans comments on the Plans, Specifications and Opinion of Probable Construction Cost (OPCC). We assume up to two rounds of comments with one consolidated list of comments for each round of reviews.

Deliverables: Updated Plans, Specifications and OPCC

Task A31 – Bidding Services

At the conclusion of the bidding phase, provide one conformed set of plans and specifications for use in constructing the project. The Issue for Construction (IFC) conformed plans and specifications will reflect changes made during bidding and will be noted as a revision to the final design plans. The revisions implemented into the conformed set will be based on information provided by the City as a result of their responses and coordination of RFI's, addendums, and clarifications during bidding. Redesign of project elements is not included. Since the magnitude of updates is unknown, we have allocated up to 46 hours for support of this task.

Deliverables: IFC plans and specifications in PDF format

Task A32 – Engineering Construction Services

Provide engineering support during the construction phase as follows:

- Respond to Requests for Information (RFIs) from the contractor. We have assumed up to 10 RFI responses will be provided.
- Prepare supplementary sketches and details to resolve field construction issues that may be encountered. These may be incorporated into the design documents as addendums. We have assumed up to a total of five sketches and details.
- Review shop drawing and materials submittals. We have assumed up to a total of five shop drawings/materials submittals will be reviewed.
- Review and provide recommendations regarding proposed change orders. Up to four change order reviews will be provided.
- Attend one pre-construction meeting and additional office or construction site meetings during construction. We will attend up to five meetings total.

Deliverables: Response to RFIs, Supplementary Sketches/Details, Shop Drawings and Submittal Reviews, and Change Order Reviews

Task A33 – Preparation of Record Documents (Record Drawings):

The construction contract will require the contractor to provide to the City for review and approval one set of record drawings showing the design changes and field modifications made during construction. Kimley-Horn will prepare Record Drawings by electronically incorporating the contractor markups. Since the effort associated with the extent of contractor markups is unknown at this time, we have provided up to 50 hours total to incorporate.

Deliverables: Record drawing files saved in AutoCAD .dwg and .pdf formats

Assumptions & Exclusions

- Bidding schedule is two months. Construction schedule is nine months. Construction will be complete by July 2023.
- The City will coordinate with Caltrans regarding submittals, status, resolution of comments and other related coordination as part of the PEER and encroachment permit process. The City will also compile all the PEER attachments that are completed by others (i.e. environmental studies, etc.) and submit to Caltrans.
- If Caltrans ultimately requires the Design Engineering Evaluation Report (DEER), we will need to revise our effort.
- Geotechnical support is excluded.
- Field surveys and staking is excluded.
- Additional project features and improvements to existing freeway ramps outside of the limits shown on the IFB plans are not included (addition of CHP turnouts, maintenance turnouts, drainage, signing and striping, etc.).
- We assume no impact to the existing freeway undercrossing structure from Caltrans comments. Structural design or analysis of this bridge is not included.
- We anticipate no major changes to the design as a result of Caltrans comments.
- The preparation of a Storm Water Data Report, Water Pollution Control Plan, Traffic Management Plan, Traffic Impact Report, and Intersection Control Evaluation is excluded from this scope of services.
- Visits to Site and Observation of Construction. Consultant will make visits as directed by Client in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the work.
- Consultant will not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Consultant does not guarantee the performance

of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

- Recommendations with Respect to Defective Work. Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
- Clarifications and Interpretations. Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by Client.
- Change Orders. Consultant may recommend Change Orders to the Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- Shop Drawings and Samples. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.
- Substitutes and "or-equal." Consultant will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- Inspections and Tests. Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate, and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws or the Contract Documents. Consultant's review of certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests.
- Limitations of Responsibility. Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the work. Consultant shall not have responsibility to stop or direct the work of any Contractor or resolve disagreements between Client and Contractor.
- Consultant will, if requested by Client, render written decision on claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith.

Fee & Schedule

We are requesting a not-to-exceed fee of \$131,615 to accomplish the above stated scope of services. We will provide these services according to a mutually agreed upon schedule.

Closure

If you concur in all the foregoing and wish to direct us to proceed with the services, please forward the appropriate contract document for our review and execution. This proposal is valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Adrian', is written over a horizontal line.

Darren Adrian, P.E. (No. 53031)
Project Manager

Attachments:

Not-to-Exceed Fee Estimate

**City of Beaumont
 Pennsylvania Avenue Widening
 1st Street to 6th Street
 Amendment 03 Not-to-Exceed Fee**

		Kimley-Horn Staff							Schedule = 11 Months			
		PIC	Project Manager	QA/QC Sr. Prof	Prof II	Prof I	Analyst II	Analyst I	Support Staff	Total Hours	Labor Cost	Total Cost
Hourly Billing Rate		\$360.00	\$360.00	\$305.00	\$190.00	\$170.00	\$155.00	\$135.00	\$115.00			
Task A28	Design Standard Decision Document (DSDD)		17		42	84	42		5	190	\$ 35,465.00	\$ 35,465.00
Task A29	Permit Engineering Evaluation Report (PEER)		6		20	10			5	41	\$ 8,235.00	\$ 8,235.00
Task A30	Incorporate Caltrans PS&E Comments		12		55	38	10	30		145	\$ 26,830.00	\$ 26,830.00
Task A31	Bidding Services		6		18		18		4	46	\$ 8,830.00	\$ 8,830.00
Task A32	Engineering Construction Services		33	8	88	6	20		12	167	\$ 36,540.00	\$ 36,540.00
Task A33	Preparation of Record Documents (Record Drawings)		4		16			30		50	\$ 8,530.00	\$ 8,530.00
TOTAL HOURS			78	8	239	138	90	60	26	639		
Subtotals		\$ -	\$ 28,080	\$ 2,440	\$ 45,410	\$ 23,460	\$ 13,950	\$ 8,100	\$ 2,990		\$ 124,430	\$ 124,430
Expenses (as a percentage of labor fees)											3.50%	\$ 4,355
Labor Escalation												\$ 2,830
TOTAL COST												\$ 131,615

Note: Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. Individual task amounts and hours for stated classifications are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

EXHIBIT "A"

**Executed Second Amendment Professional Services Agreement
with Kimley-Horn and Associates, Inc.**

**SECOND AMENDMENT
TO
AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR
(Kimley-Horn and Associates, Inc.)**

THIS SECOND AMENDMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR is made and effective as of the 2nd day of January, 2019, by and between the CITY OF BEAUMONT (“CITY”) whose address is 550 E. 6th Street, Beaumont, California 92223 and Kimley-Horn and Associates, Inc., a North Carolina corporation qualified to do business in the state of California, whose address is 3880 Lemon Street, Suite 420, Riverside, CA 92501 (“CONTRACTOR”) in consideration of the mutual promises and purpose contained herein, the parties agree as follow:

RECITALS

A. WHEREAS, CITY and CONTRACTOR executed that certain AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR (“Agreement”) for design services for the Pennsylvania Avenue Widening Project, dated September 19, 2017, a copy of which is attached hereto as **Exhibit C**; and

B. WHEREAS, the City amended the Agreement under the First Amendment dated January 16th, 2018 increasing the not-to-exceed amount under the Agreement to \$363,314 as provided therein, a copy of which is attached as **Exhibit B**.

C. WHEREAS, the Parties wish to further amend the Agreement to authorize additional Services and corresponding payment to CONTRACTOR as outlined in their additional scope and fee proposal (“Proposal”) dated May 24, 2018, which is attached hereto as **Exhibit A** and made a part hereof.

AMENDMENT TO ORIGINAL AGREEMENT

NOW THEREFORE, the Parties hereby amend the Agreement as follows:

1. **Additional Services and Compensation.** The parties agree to increase the scope of the Services, as provided in Section 2 of the Agreement, and accordingly increase the limit on fees authorized to be paid by the CITY set forth in Section 4.01 of the Agreement by an additional \$41,927 for a total not-to-exceed amount of \$405,241 as provided in the Proposal. Such compensation for Services, when earned by CONTRACTOR under the Agreement, shall be paid at the rates and on the terms and conditions set forth in the Agreement.
2. **Term.** The term of the Agreement is extended to encompass the period of time during which the Services are to be provided hereunder, but not to exceed the term of three years from the date of the Agreement or September 19th, 2020.

3. **No Other Changes.** All other terms and conditions contained in the Agreement shall remain in full force and effect. To the extent of a conflict between this Amendment and the Agreement, as amended, this Amendment shall control. Provisions in the Proposal other than the price and the Services are of no force or effect. Except as stated in this Amendment, all capitalized terms herein shall have the meaning ascribed in the Agreement.

IN WITNESS WHEREOF, the parties hereby have made and executed this Agreement to be effective as of the day and year first above-written.

CITY:

CITY OF BEAUMONT

By: _____


Julio Martinez, Mayor

CONTRACTOR:

By: _____


PE 53031

Print Name: _____

Darren Adrien

Title: _____

Vice President

EXHIBIT "B"

**Executed First Amendment Professional Services Agreement with
Kimley-Horn and Associates, Inc.**

**FIRST AMENDMENT
TO
AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR
(Kimley-Horn and Associates, Inc.)**

THIS FIRST AMENDMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR is made and effective as of the 16th day of January, 2018, by and between the CITY OF BEAUMONT (“CITY”) whose address is 550 E. 6th Street, Beaumont, California 92223 and Kimley-Horn and Associates, Inc. whose address is 3880 Lemon Street, Suite 420, Riverside, CA 92501 (“CONTRACTOR”) in consideration of the mutual promises and purpose contained herein, the parties agree as follow:

RECITALS

A. WHEREAS, CITY and CONTRACTOR executed that certain AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR (“Agreement”) for design services for the Pennsylvania Avenue Widening Project, dated September 19, 2017, a copy of which is attached hereto as **Exhibit A**; and

B. WHEREAS, the Parties wish to amend the Agreement to authorize additional payment to CONTRACTOR in exchange for additional Services to CITY as outlined in their additional scope and fee proposal dated December 18, 2017, which is attached hereto as **Exhibit B**.

AMENDMENT TO ORIGINAL AGREEMENT

NOW THEREFORE, the Parties hereby amend the Agreement as follows:

1. **Additional Compensation**. The parties agree to increase the limit on fees authorized to be paid by the CITY set forth in Section 4.01 of the Agreement by an additional \$83,425 for a total not-to-exceed amount of \$363,314. Such compensation, when earned by CONTRACTOR, shall be paid at the rates and on the terms and conditions set forth in the Agreement.
2. **No Other Changes**. All other terms and conditions contained in the Agreement shall remain in full force and effect. Except as stated in this Amendment, all capitalized terms herein shall have the meaning ascribed in the Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereby have made and executed this Agreement to be effective as of the day and year first above-written.

CITY:

CITY OF BEAUMONT

By: 
Nancy Carroll, Mayor

CONTRACTOR:



Print Name: Darren Adrien

Title: Vice President

EXHIBIT "C"

**Executed Original Professional Services Agreement with
Kimley-Horn and Associates, Inc.**

AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR

THIS AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR is made and effective as of the 19th day of September, 2017, by and between the CITY OF BEAUMONT ("CITY") whose address is 550 E. 6th Street, Beaumont, California 92223 and KIMLEY-HORN AND ASSOCIATES, INC. whose address is 3880 Lemon Street, Suite 420, Riverside, CA 92501 ("CONTRACTOR").

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties to this Agreement:

A. CITY desires to engage CONTRACTOR to provide Design Services for the Pennsylvania Avenue Widening Project; and

B. CONTRACTOR has made a proposal ("Proposal") to the CITY to provide such professional services, which Proposal is attached hereto as Exhibit "A"; and

C. CONTRACTOR agrees to provide such services pursuant to, and in accordance with, the terms and conditions of this Agreement, and represents and warrants to CITY that CONTRACTOR possesses the necessary skills, licenses, certifications, qualifications, personnel and equipment to provide such services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants contained herein, CITY and CONTRACTOR agree as follows:

1. Term of Agreement. This Agreement is effective as of the date first above written and shall continue until terminated as provided for herein. Not with standing anything in this Agreement, this Agreement shall automatically terminate after one (1) year unless extended by the parties with the approval of the City Council of the CITY.

2. Services to be Performed. CONTRACTOR agrees to provide the services ("Services") as follows: Design Services for the Pennsylvania Avenue Widening Project and any other services which the City may request in writing from time to time. All Services shall be performed in the manner and according to the timeframe set forth in the Proposal. CONTRACTOR designates Darren Adrian as CONTRACTOR'S professional responsible for overseeing the Services provided by CONTRACTOR.

3. Associates and Subcontractors. CONTRACTOR may, at CONTRACTOR's sole cost and expense, employ such competent and qualified independent associates, subcontractors and consultants as CONTRACTOR deems necessary to perform the Services; provided, however, that CONTRACTOR shall not subcontract any of the Services without the written consent of CITY.

4. Compensation.

4.01 CITY agrees to pay CONTRACTOR the amount as set forth in the Proposal. CONTRACTOR shall be paid at the rates set forth in the Proposal and shall not increase any rate without the prior written consent of the CITY. Not with standing anything in this Section 4, total fees and charges paid by CITY under this Agreement shall not exceed two hundred seventy nine thousand eight hundred eighty nine dollars, (\$279,889) without approval by the City Council of CITY.

4.02 CONTRACTOR shall not be compensated for any Services rendered nor reimbursed for any expenses incurred in excess of those authorized unless approved in advance by the CITY, in writing.

4.03 CONTRACTOR shall submit to CITY, on or before the fifteenth (15th) of each month, itemized invoices for the Services rendered in the previous month. The CITY shall not be obligated to pay any invoice that is submitted more than sixty (60) days after the due date of such invoice. CITY shall have the right to review and audit all invoices prior to or after payment to CONTRACTOR. This review and audit may include, but not be limited to CITY's:

- a. Determination that any hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
- b. Determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;
- c. Determination that each item charged is the usual, customary, and reasonable charge for the particular item. If CITY determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, CITY shall either return the bill to CONTRACTOR with a request for explanation or adjust the payment accordingly, and give notice to CONTRACTOR of the adjustment.

4.04 If the work is satisfactorily completed, CITY shall pay such invoice within thirty (30) days of its receipt. Should CITY dispute any portion of any invoice, CITY shall pay the undisputed portion within the time stated above, and at the same time advice CONTRACTOR in writing of the disputed portion.

5. Obligations of CONTRACTOR.

5.01 CONTRACTOR agrees to perform all Services in accordance with the terms and conditions of this Agreement and the Proposal. In the event that the terms of the Proposal shall conflict with the terms of this Agreement, or contain additional terms other than the Services to be rendered and the price for the Services, the terms of this Agreement shall govern and said additional or conflicting terms shall be of no force or effect.

5.02 Except as otherwise agreed by the parties, CONTRACTOR will supply all personnel, materials and equipment required to perform the Services. CONTRACTOR shall provide its own offices, telephones, vehicles and computers and set its own work hours. CONTRACTOR will determine the method, details, and means of performing the Services under this Agreement.

5.03 CONTRACTOR shall keep CITY informed as to the progress of the Services by means of regular and frequent consultations. Additionally, when requested by CITY, CONTRACTOR shall prepare written status reports.

5.04 CONTRACTOR is responsible for paying, when due, all income and other taxes, fees and withholding, including withholding state and federal taxes, social security, unemployment and worker's compensation, incurred as a result of the compensation paid under this Agreement. CONTRACTOR agrees to indemnify, defend and hold harmless CITY for any claims, costs, losses, fees, penalties, interest, or damages suffered by CITY resulting from CONTRACTOR's failure to comply with this provision.

5.05 In the event CONTRACTOR is required to prepare plans, drawings, specifications and/or estimates, the same shall be furnished in conformance with local, state and federal laws, rules and regulations.

5.06 CONTRACTOR represents that it possesses all required licenses necessary or applicable to the performance of Services under this Agreement and the Proposal and shall obtain and keep in full force and effect all permits and approvals required to perform the Services herein. In the event CITY is required to obtain an approval or permit from another governmental entity, CONTRACTOR shall provide all necessary supporting documents to be filed with such entity.

5.07 CONTRACTOR shall be solely responsible for obtaining Employment Eligibility Verification information from CONTRACTOR's employees, in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a), and shall ensure that CONTRACTOR's employees are eligible to work in the United States.

5.08 In the event that CONTRACTOR employs, contracts with, or otherwise utilizes any CalPers retirees in completing any of the Services performed hereunder, such instances shall be disclosed in advance to the CITY and shall be subject to the CITY's advance written approval.

5.09 Drug-free Workplace Certification. By signing this Agreement, the CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that the CONTRACTOR will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and will provide a drug-free workplace.

5.10 CONTRACTOR shall comply with all applicable local, state and federal laws, rules, regulations, entitlements and/or permits applicable to, or governing the Services authorized hereunder.

6. Insurance. CONTRACTOR hereby agrees to be solely responsible for the health and safety of its employees and agents in performing the Services under this Agreement and shall comply with all laws applicable to worker safety including but not limited to Cal-OSHA. Therefore, throughout the duration of this Agreement, CONTRACTOR hereby covenants and agrees to maintain insurance in conformance with the requirements set forth below. If existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. CONTRACTOR shall provide the following types and amounts of insurance:

6.01 Commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; CONTRACTOR agrees to have its insurer endorse the general liability coverage required herein to include as additional insured's CITY, its officials, employees and agents. CONTRACTOR also agrees to require all contractors and subcontractors to provide the same coverage required under this Section 6.

6.02 Business Auto Coverage in an amount no less than \$1 million per accident. If CONTRACTOR or CONTRACTOR's employees will use personal autos in performance, of the Services hereunder, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person.

6.03 Workers' Compensation coverage for any of CONTRACTOR's employees that will be providing any Services hereunder. CONTRACTOR will have a state-approved policy form providing statutory benefits as required by California law. The provisions of any workers' compensation will not limit the obligations of CONTRACTOR under this Agreement. CONTRACTOR expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials and agents.

6.04 Optional Insurance Coverage. Choose and check one: Required /Not Required ; Errors and omissions insurance in a minimum amount of \$2 million per occurrence to cover any negligent acts or omissions committed by CONTRACTOR, its employees and/or agents in the performance of any Services for CITY.

7. General Conditions pertaining to Insurance Coverage

7.01 No liability insurance coverage provided shall prohibit CONTRACTOR from waiving the right of subrogation prior to a loss. CONTRACTOR waives all rights of subrogation against CITY regardless of the applicability of insurance proceeds and shall require all contractors and subcontractors to do likewise.

7.02. Prior to beginning the Services under this Agreement, CONTRACTOR shall furnish CITY with certificates of insurance, endorsements, and upon request,

complete copies of all policies, including complete copies of all endorsements. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

7.03. All required policies shall be issued by a highly rated insurer with a minimum A.M. Best rating of "A:VII". The insurer(s) shall be admitted and licensed to do business in California. The certificates of insurance hereunder shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to CITY.

7.04 Self-insurance does not comply with these insurance specifications. CONTRACTOR acknowledges and agrees that that all insurance coverage required to be provided by CONTRACTOR or any subcontractor (with the exception of Professional Liability Insurance), shall apply first and on a primary, non-contributing basis in relation to any other insurance, indemnity or self-insurance available to CITY.

7.05 All coverage types and limits required are subject to approval, modification and additional requirements by CITY, as the need arises. CONTRACTOR shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY's protection without CITY's prior written consent.

7.06 CONTRACTOR agrees to provide immediate notice to CITY of any claim or loss against CONTRACTOR or arising out of the Services performed under this Agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

8. Indemnification.

8.01 CONTRACTOR and CITY agree that CITY, its employees, agents and officials should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, defense costs, court costs or any other costs arising out of or in any way related to the performance of this Agreement by CONTRACTOR or any subcontractor or agent of either. Accordingly, the provisions of this indemnity are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to CITY. CONTRACTOR acknowledges that CITY would not enter into this Agreement in the absence of the commitment of CONTRACTOR to indemnify and protect CITY as set forth herein.

a. To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless CITY, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, damages or costs of any kind, reasonable attorneys' fees incurred by CITY, court costs, and defense costs, including expert witness fees to the extent arising out of, pertaining to, or

related to the negligence, recklessness or willful misconduct of the CONTRACTOR in the performance of this Agreement..

b. Without affecting the rights of CITY under any provision of this Agreement or this Section, CONTRACTOR shall not be required to indemnify and hold harmless CITY as set forth above for liability to the extent attributable to the negligence or fault of CITY.

9. Additional Services, Changes and Deletions.

9.01 In the event CONTRACTOR performs additional or different services than those described herein without the prior written approval of the City Manager and/or City Council of CITY, CONTRACTOR shall not be compensated for such services. CONTRACTOR expressly waives any right to be compensated for services and materials not covered by the scope of this Agreement or authorized by the CITY in writing.

9.02 CONTRACTOR shall promptly advise the City Manager and Finance Director of CITY as soon as reasonably practicable upon gaining knowledge of a condition, event or accumulation of events which may affect the scope and/or cost of Services. All proposed changes, modifications, deletions and/or requests for additional services shall be reduced to writing for review and approval by the CITY and/or City Council.

10. Termination of Agreement.

10.01 Notwithstanding any other provision of this Agreement, CITY, at its sole option, may terminate this Agreement with or without cause, or for no cause, at any time by giving twenty (20) days' written notice to CONTRACTOR.

10.02 In the event of termination, the payment of monies due CONTRACTOR for undisputed Services performed prior to the effective date of such termination shall be paid within thirty (30) business days after receipt of an invoice as provided in this Agreement. Immediately upon termination, CONTRACTOR agrees to promptly provide and deliver to CITY all original documents, reports, studies, plans, specifications and the like which are in the possession or control of CONTRACTOR and pertain to CITY.

11. Status of CONTRACTOR.

11.01 CONTRACTOR shall perform the Services in CONTRACTOR's own way as an independent contractor, and in pursuit of CONTRACTOR's independent calling, and not as an employee of CITY. However, CONTRACTOR shall regularly confer with CITY's City Manager as provided for in this Agreement.

11.02 CONTRACTOR agrees that it is not entitled to the rights and benefits afforded to CITY's employees, including disability or unemployment insurance, workers' compensation, retirement, CalPers, medical insurance, sick leave, or any other employment benefit. CONTRACTOR is responsible for providing, at its own expense,

disability, unemployment, workers' compensation and other insurance, training, permits, and licenses for itself and its employees and subcontractors.

11.03 CONTRACTOR hereby specifically represents and warrants to CITY that it possesses the qualifications and skills necessary to perform the Services under this Agreement in a competent, professional manner, without the advice or direction of CITY and that the Services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily applicable to an experienced and competent professional rendering the same or similar services in the same geographic area where the CITY is located. Further, CONTRACTOR represents and warrants that the individual signing this Agreement on behalf of CONTRACTOR has the full authority to bind CONTRACTOR to this Agreement.

12. Ownership of Documents; Audit.

12.01 All draft and final reports, plans, drawings, studies, maps, photographs, specifications, data, notes, manuals, warranties and all other documents of any kind or nature prepared, developed or obtained by CONTRACTOR in connection with the performance of Services performed for the CITY shall become the sole property of CITY, and CONTRACTOR shall promptly deliver all such materials to CITY upon request. At the CITY's sole discretion, CONTRACTOR may be permitted to retain original documents, and furnish reproductions to CITY upon request, at no cost to CITY.

12.02 Subject to applicable federal and state laws, rules and regulations, CITY shall hold all intellectual property rights to any materials developed pursuant to this Agreement. CONTRACTOR shall not such use data or documents for purposes other than the performance of this Agreement, nor shall CONTRACTOR release, reproduce, distribute, publish, adapt for future use or any other purposes, or otherwise use, any data or other materials first produced in the performance of this Agreement, nor authorize others to do so, without the prior written consent of CITY.

12.03 CONTRACTOR shall retain and maintain, for a period not less than four years following termination of this Agreement, all time records, accounting records and vouchers and all other records with respect to all matters concerning Services performed, compensation paid and expenses reimbursed. At any time during normal business hours and as often as CITY may deem necessary, CONTRACTOR shall make available to CITY's agents for examination all of such records and shall permit CITY's agents to audit, examine and reproduce such records.

13. Miscellaneous Provisions.

13.01 This Agreement, which includes all attached exhibits, supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to the rendering of Services by CONTRACTOR for CITY and contains all of the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

13.02 CONTRACTOR shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of CITY. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

13.03 CONTRACTOR shall timely file FPPC Form 700 Conflict of Interest Statements with CITY if required by California law and/or the CITY's conflict of interest policy.

13.04 If any legal action or proceeding, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that party may be entitled.

13.05 This Agreement is made, entered into and shall be performed in the County of Riverside in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

13.06 CONTRACTOR covenants that neither it nor any officer or principal of its firm has any interest, nor shall they acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of their Services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor.

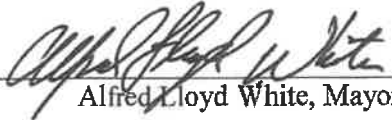
13.07 CONTRACTOR has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflicts of interest of public officers and employees. CONTRACTOR agrees that they are unaware of any financial or economic interest of any public officer or employee of the CITY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the CITY may immediately terminate this Agreement by giving notice thereof. CONTRACTOR shall comply with the requirements of Government Code section 87100 et seq. and section 1090 in the performance of and during the term of this Agreement.

13.08 Improper Consideration. CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the CITY in an attempt to secure favorable treatment regarding this Agreement or any contract awarded by CITY. The CITY, by notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the CITY with respect to the proposal and award process of this Agreement or any CITY contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any CITY contract has been awarded. CONTRACTOR shall immediately report any attempt by any CITY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR.

IN WITNESS WHEREOF, the parties hereby have made and executed this Agreement to be effective as of the day and year first above-written.


CITY:

CITY OF BEAUMONT

By: 
Alfred Lloyd White, Mayor

CONTRACTOR:

KIMLEY HORN AND ASSOCIATES, INC.

By: 

Print Name: Darren Adrian, PE 53031

Title: Vice President