

AGREEMENT FOR CONSULTANT SERVICES

PREAMBLE

THIS AGREEMENT is dated for identification on September 17, 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") Kimley-Horn and Associates, Inc., ("Consultant"), identified as a C Corporation and whose address is 10 S. Almaden Blvd, Suite 1250, San Jose CA 95113. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide Evaluation of artificial turf versus natural grass at Creekside Sports Pak.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Proposal sent to the Town on August 14, 2024, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect upon execution to September 17, 2024 through June 30, 2025. Consultant shall perform the services described in this agreement as described in Exhibit A.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared

or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

2.6 Compensation. Compensation for Consultant's professional services **shall be \$37,135**, inclusive of all costs. Payment shall be based upon Town approval of each task.

2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service. Invoices shall be based on percentage of work complete for each task. Invoices shall include the total fee for the task, the percentage of work complete, the charge for the current invoice and the overall charges to date for the project. A summary of tasks completed shall be provided.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

Email (preferred): AP@losgatosca.gov

2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.

2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.

2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

i. The Town, its elected and appointed officials, employees, and, agents are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.

ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.

iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide

evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its elected and appointed officials, agents, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.

4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Kimley-Horn and Associates, Inc.
Attn: Matthew Morgan
10 S. Almaden Blvd, Suite 1250
San Jose CA 95113

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Kimley-Horn and Associates, Inc. by:

Katy Nomura, Interim Town Manager

DocuSigned by:

Adam Dankberg, P.E.

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Name and Title
Adam Dankberg, P.E.
Vice President

Recommended by:

Nicolle Burnham,
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

August 14, 2024

Ms. Nicolle Burnham, Director
Parks and Public Works
41 Miles Avenue
Los Gatos, CA 95030

»» 10 S. Almaden Blvd.
Suite 1250
San Jose, CA 95113
TEL 669.800.4130

**RE: Task Order Proposal for the Artificial Turf Replacement Assessment at Creekside Sports Park
(CIP 831-4404)**

Dear Ms. Burnham and Members of the Selection Committee:

The Town of Los Gatos (Town) has used artificial turf from AstroTurf at Creekside Sports Park since 2013. However, since this turf is nearing the end of its life and new concerns regarding the environmental and health impacts of artificial turf fields have been raised by community members, the Town seeks to evaluate the advantages and risks of using synthetic versus natural turf. In order to achieve this goal, the Town requires the support of a qualified partner to assist in this evaluation. Kimley-Horn is excited about the opportunity this project presents for the community and is confident our approach, experience, and expertise will make this project a success.

Kimley-Horn's landscape architects have extensive experience assessing and designing playing fields using both synthetic and natural materials. For example, we assisted with the design of the **Home Depot Backyard**, located in the existing Georgia Dome footprint north of the Mercedes-Benz Stadium in Atlanta, Georgia. As part of this project, our landscape architects designed a natural turf field to accommodate youth soccer, multi-use recreation, 800 tailgate parking spaces for game days, flex spaces for picnics, and pedestrian circulation to the stadium. To provide the best recommendations for a drivable grass lot, a test site was constructed and evaluated for six months. Three different base treatment solutions paired with the same turf were tested, which evaluated the sod layer infiltration rate, rootzone layer infiltration rate, and rootzone uniformity coefficient. We also assisted Albemarle County, Virginia with a **Synthetic Turf Study at Darden Towe Park** in which we presented findings and observations from research and case studies relating to the pros and cons associated with the installation and maintenance of synthetic turf fields for their athletic facilities.

As a supplement to our in-house capabilities, we have partnered with Berry, Dunn, McNeil, & Parker, LLC (**BerryDunn**), a leading consulting firm with a specialization in parks and recreation master plans, strategic plans, needs analyses, financial analyses, cost recovery, and quality assessments. BerryDunn's team members have worked for multiple agencies in California and around the country, managed organizations (specifically facilities operations and maintenance), and are familiar with what it takes to manage and maintain sports fields. Most recently, BerryDunn worked on the **Indoor Sports Facility Feasibility Study and Operational Costs** project for the Grand Forks Park District in Grand Forks, North Dakota. For this project, BerryDunn conducted a feasibility study assessing a new 300,000 square foot indoor sports complex that would host indoor lacrosse, football, and soccer practices and tournaments. The BerryDunn team conducted nine stakeholder focus groups with 75 stakeholders and an open public webinar that had 77 participants, for a total of 152 community members included in the public engagement meetings. Additionally, their team conducted a complete feasibility study including site analysis, indoor sports facility and aquatic facility development, operations and maintenance costs, funding mechanisms, financing opportunities and other funding alternatives, most cost-effective operating model, and the most productive mixture of

programs/facilities/amenities. Coupling our nationwide expertise with BerryDunn's, we will provide an accurate assessment and recommendation for the best path forward for the Town to consider.

When Kimley-Horn is involved in a project, we become the client's advocate. We don't just look at what it takes to "check the boxes" on a project—we look at what it takes to help our clients surpass their initial goals while remaining on schedule and within budget. We appreciate your consideration of the Kimley-Horn team, and we are excited about the opportunity to bring our experience and expertise to assist the Town with this important project.

If you have any questions about our experience or scope of services and fee proposal provided on the following pages, please do not hesitate to contract project manager **Matthew Morgan, PLA, ASLA, CLARB** directly at 408.785.3518 or matthew.morgan@kimley-horn.com.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Matthew Morgan, PLA, ASLA, CLARB
Project Manager

SCOPE OF SERVICES

Task 1. Assessment of Capital Costs & Environmental Impacts

1.1: Concept Level Cost Estimate for Artificial Turf Replacement

Kimley-Horn will prepare one (1) concept-level cost estimate for the replacement of the existing artificial turf with new artificial turf. At present there are no known issues or concerns with the underdrainage.

1.2: Concept Level Cost Estimate for Artificial Turf Removal

Kimley-Horn will prepare one (1) concept-level cost estimate to remove the artificial turf field and construct a new natural grass field. The cost estimate will include design costs and appropriate contingencies.

Kimley-Horn will coordinate with the Town to confirm typical contingencies used by the Town for costing exercises. This task assumes up to one (1) round of revisions in response to consolidated and reasonable Town comments. Additional rounds of revisions shall be accommodated as an additional service at our then-current hourly rates.

1.3: Environmental and Planning Constraints and Benefits Assessment

Kimley-Horn will assess planning and environmental considerations associated with the use and construction of artificial turf fields versus natural grass fields. This information will be based on a literature search on the subject and CEQA analyses conducted by Kimley-Horn staff for similar projects (such as a proposed artificial turf facility in Portola Valley). Issues and concerns raised by decision makers and the public on similar projects have included:

- Project visibility, appearance and color as seen from public viewpoints
- Toxicity of materials used in turf and crumb rubber fill materials
- VOCs and off gassing
- Water quality and drainage controls
- Heat generation
- Greenhouse gasses
- General Plan policy consistency
- Material renewability and lifespan/lifecycle
- Pathogens and allergies

In our experience many of these issues are likely to be insignificant based on the results of available studies and continuous improvements to turf products. This information will be compiled for planning-level consideration. Detailed studies and/or CEQA review of the project will be scoped and budgeted separately upon request.

Task 2. Assessment of Operating Costs

2.1: Discovery

2.1.1: Virtual Kick-Off Meeting

The Kimley-Horn team will facilitate one (1) virtual initial kick-off meeting with the full project team to identify stakeholders, project team members, project milestones, and expectations. We will discuss our proposed project schedule, project work plan, and roles and responsibilities.

2.1.2: Data Review

The Kimley-Horn team will submit an information request to the Town's project team to gather applicable documents and data related to scheduling, maintenance, field use, and other pertinent information. All information gathered will be reviewed by our team to inform our understanding of the current environment, glean insights from work completed to date, and minimize impacts to Town staff during the work effort.

2.2: Assessment of Operating Costs

2.2.1: Operations Assessment

The Kimley-Horn team will assess the operational and maintenance costs of the sports field for a 20-year lifecycle for artificial turf versus grass. For each option, we will assess staffing cost versus contractor costs, maintenance, field striping, and routine and periodic maintenance costs.

Task 3. Letter Report

Kimley-Horn will prepare the following deliverables as part of this task:

3.1: Letter Report

Kimley-Horn will prepare a letter report that documents the result of Tasks 1 and 2. The report will include a comparison table of the advantages and disadvantages of the two field types, including hours of available play per year, maintenance requirements, and potential revenue generation (provided by Town staff), etc.

This task assumes up to one (1) round of revisions in response to consolidated and reasonable Town comments. Additional rounds of revisions shall be accommodated as an additional service at our then-current hourly rates.

Task 4. Meetings

Kimley-Horn will attend the following meetings:

4.1: Data Collection/Kick-off Meeting

One (1) data collection/kick-off meeting with Town staff, attended by one (1) Kimley-Horn staff member. Kimley-Horn has assumed a duration of up to two (2) hours, with limited supplemental preparation effort performed by junior staff.

4.2: Analysis Review with Town Staff Meeting

One (1) meeting with Town staff to review the results of the analysis, attended by one (1) Kimley-Horn staff member. Kimley-Horn has assumed a duration of up to two (2) hours, with limited supplemental preparation effort performed by junior staff.

4.3: Parks and Sustainability Commission and Town Council Meetings

One (1) meeting each of the Parks and Sustainability Commission and Town Council (two (2) meetings total) to discuss the results of the analysis. Each meeting will be attended by one (1) Kimley-Horn staff member. Kimley-Horn has assumed a duration of up to two (2) hours for each meeting for a total of four (4) hours of effort, with limited supplemental preparation effort performed by junior staff.

This task assumes up to one (1) round of revisions in response to consolidated and reasonable City comments. Additional rounds of revisions shall be accommodated as an additional service at our then-current hourly rates.

Additional Assumptions

- Construction of either option would occur in 2025
- The underdrain system of existing artificial turf is in good condition and no repairs are needed
- Town staff will provide hourly rates for staffing time

Additional Services

- Schematic Design and Design Development Drawings
- Construction Documents
- CEQA and Environmental Studies other than the limited assessment scope noted in this agreement
- Survey
- Geotechnical Studies
- Additional meetings beyond those noted in the scope above
- Illustrative Graphics and 3D Visual Simulations
- Any services not specifically noted in the scope above

FEE PROPOSAL

The Kimley-Horn team’s proposed cost to complete the Artificial Turf Replacement Assessment at Creekside Sports Park is **\$37,135**. The table below provides further detail. We welcome the opportunity to discuss our proposed fee with the Town and are flexible to scope adjustments and refinements as necessary to better accommodate your needs on this project.

Category/Title		Kimley-Horn and Associates, Inc.				Kimley-Horn Total Hours	Kimley-Horn Total Cost	BerryDunn Total Cost	Total Project Cost
		Sr. Professional II	Sr. Professional I	Analyst II	Analyst II				
Billing Rate		\$350	\$325	\$205	\$180				
Task 1	Assessment of Capital Costs	8	4	6	16	34	\$ 8,210	\$ -	\$ 8,210
1.1	Concept Level Cost Estimate for Artificial Turf Replacement		2	3		5	\$ 1,265		\$ 1,265
1.2	Concept Level Cost Estimate for Artificial Turf Removal		2	3		5	\$ 1,265		\$ 1,265
1.3	Environmental and Planning Constraints and Benefits Assessment	8			16	24	\$ 5,680		\$ 5,680
Task 2	Assessment of Operating Costs		2			2	\$ 650	\$ 15,556	\$ 16,206
2.1	Discovery						\$ -	\$ 3,500	\$ 3,500
2.2	Assessment of Operating Costs		2			2	\$ 650	\$ 12,056	\$ 12,706
Task 3	Letter Report		17	5	10	32	\$ 8,350	\$ -	\$ 8,350
3.1	Letter Report		17	5	10	32	\$ 8,350		\$ 8,350
Task 4	Meetings		8	4		12	\$ 3,420	\$ -	\$ 3,420
4.1	Data Collection/Kick-off Meeting with Town Staff		2	2		4	\$ 1,060		\$ 1,060
4.2	Meeting with Town Staff to Review Results of Analysis		2	1		3	\$ 855		\$ 855
4.3	Parks and Sustainability Commission and Town Council Meetings (2)		4	1		5	\$ 1,505		\$ 1,505
	TOTAL HOURS	8	31	15	26	80			
	Subtotal Labor:	\$2,800	\$10,075	\$3,075	\$4,680		\$ 20,630	\$ 15,556	\$ 36,186
	Other Direct Costs						\$ 949	\$ -	\$ 949
	Internal Reimbursable Expenses						\$ 949		\$ 949
	TOTAL COST:						\$ 21,579	\$ 15,556	\$ 37,135