

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on December 17, 2019 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and KIMLEY-HORN AND ASSOCIATES, INC., ("Consultant"), whose address is 100 W. San Fernando Street, Suite 250, 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 engineering design services for the Winchester Boulevard Complete Streets Improvements between Blossom Hill Road and Knowles Drive in Los Gatos.
- 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 December 11, 2019, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from December 20, 2019 to December 31, 2021. Consultant shall perform the services described in this agreement as follows: engineering design services for the Winchester Boulevard Complete Streets Improvements between Blossom Hill Road and Knowles Drive.
- 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 not exceed \$200,000**, 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 and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

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

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: one million dollars (\$1,000,000) 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 officers, officials, employees and volunteers 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 officers, officials, employees and volunteers. 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.
- 3.4 Indemnification. The Consultant shall indemnify and defend the Town its officers, agent, 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 to the extent arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant. In no event shall the cost to defend charged to the Consultant exceed the Consultant's proportionate percentage of fault.

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.
100 W. San Fernando Street, Suite 250
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:



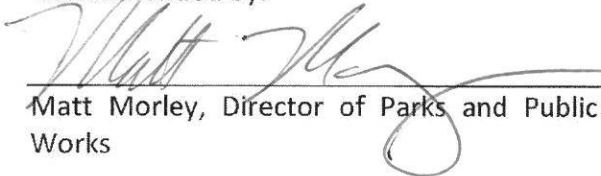
Laurel Prevetti, Town Manager

Consultant, by:

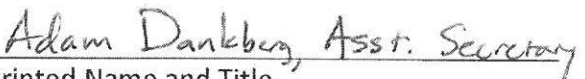


Adam Dankeberg, P.E. CA 70598

Recommended by:




Matt Morley, Director of Parks and Public Works



Adam Dankeberg, Asst. Secretary
Printed Name and Title KHACA
03

Approved as to Form:



Robert Schultz, Town Attorney

Attest:



Shelley Neis, CMC, Town Clerk

Winchester Boulevard Complete Streets Plan

Scope of Services

Task 1: Project Management

Kimley-Horn will participate in a kick-off meeting with the Town to finalize project procedures and expectations and refine the project schedule. Kimley-Horn will prepare the meeting agenda and distribute meeting minutes within one (1) week of the meeting. Kimley-Horn will attend up to two (2) additional project meetings at Town offices throughout the project to discuss project progress and findings. One meeting is assumed occur in each of Tasks 4 and 6 for workshops with the Town to discuss the conceptual designs.

Kimley-Horn will hold approximately bi-weekly conference calls with the Town project manager to coordinate on project progress, data collection needs, upcoming meetings, and deliverables. It is anticipated that the project will last up to 8 months, and the fee corresponds with up to 15 coordination calls. The Kimley-Horn team will maintain an online sharing document that will be used to document action items from coordination meetings, to track deliverable progress, and to document key decisions or needed input.

Task 1 Deliverables:

- *Project Schedule and updates (PDF Format)*
- *Meeting agendas and minutes (PDF Format)*
- *Monthly Status Reports and Invoices (PDF Format)*
- *Online sharing document (Electronic Format)*

Task 2: Preliminary Evaluation

Task 2.1: Existing Conditions Documentation

Kimley-Horn will assemble and summarize information on existing conditions and opportunities and constraints along the study corridor. The study corridor is defined as Winchester Boulevard between Knowles Drive and Blossom Hill Road, including up to 100 feet on the streets that intersect Winchester Boulevard. Kimley-Horn will assemble the following data assuming to be readily available from the Town and other agencies:

- Collision data for a recent 5-year period (assumed to be pulled from SWITRS and supplemented by any additional collision history provided by the Town within that period)
- Roadway geometry and lane configurations
- Existing traffic signal timing sheets
- Historical traffic volumes (including auto, bicycle, and pedestrian)
- GIS shapefiles (if available: roadway network, sidewalks, parcel/ROW info, utilities)
- Existing transit service levels, ridership, and travel time from VTA (assumes access to the Swiftly platform)
- Aerial photograph and topography

Kimley-Horn will also perform field observations of the corridor during typical weekday AM and PM peak period conditions. We will collect roadway widths using aerial photography and public mapping, and review with field observations. Uncontrolled modal conflicts, congestion points, and undesirable activity (speeding, jaywalking, illegal parking, etc.) will be observed and noted.

No traffic analysis is assumed in this task. This task will be documented in a Draft Existing Conditions Memo. Upon receipt of one round of consolidated comments from the Town, Kimley-Horn will prepare and submit a Final Existing Conditions Memo.

Task 2.1 Deliverables:

- *Draft and Revised Existing Conditions Memo (PDF Format)*

Task 2.2 Topographic Survey

LCC Engineering and Surveying will be performing the topographic survey as a subconsultant to Kimley-Horn. They will perform

the following tasks:

Arterial Topographic Survey:

Collect topographic survey for the signing and striping improvements along Winchester Blvd. between Blossom Hill Road and Albright Way. The topographic survey will be collected from face-of-curb to face-of-curb and will not include any roadway surface features other than a crown line (if apparent) and raised medians. The survey will also not include any points within the sidewalk areas (e.g. back of curb, back of walk, etc.) adjacent to the roadway. The survey will include:

- Gutter Flowline at face of curb (including transitions/tapers and at beginning and end of curves, points of compound curvature, etc.), noting curb height & gutter width
- Roadway Crownline
- Raised medians (shots at pavement, noting curb height)

At intersections, the survey will capture the following points along the face of curb at all four corners:

- Beginning of curb return
- Mid Point of curb return
- End of curb return

Cross sections will be taken in 100-ft increments along curb (or shorter increments as appropriate per the existing alignment). GPS data may be utilized for this Task, understanding that elevations will be accurate within +/- 0.15 feet.

Utilities and striping features may not be collected.

Detailed Topographic Survey at Two Intersections:

Collect topographic survey at up to two intersections, to be selected by Kimley-Horn and the Town. The survey will include:

- Cross sections at 25-ft intervals
- Curb, gutter, and sidewalk, including curb ramps
- Driveways
- Landscape areas, vegetation, and trees
- Walls and Fences (height and type) within 5 feet of the back of sidewalk
- Signs, Poles, Lights, etc.
- Striping, pavement markings
- Above ground utilities (boxes, valves, irrigation facilities, street lights, manholes, etc.)
- Grade breaks
- Invert elevations of all accessible storm drain manholes, sanitary sewer manholes, and curb inlets within survey limits.

It is assumed that a Traffic Control Vehicle will not be required by the Town for field work; however, LCC will continuously use standard safety precautions (cones and "Survey Party" warning signs) for all work in and adjacent to the roadway.

Survey control shall tie into Town of Los Gatos listed survey monuments and Horizontal and Vertical System. Surveyor will provide a location and description of existing survey monument(s) used.

Electronic survey points to be delivered in AutoCAD Civil 3D release 2013 format with separate point file (.csv, .txt, .ASC, etc.). Electronic files shall include survey control information including basis of bearings.

Surfaces will be created with break lines to generate smooth contours and accurate triangulation.

This scope does not include: Setting of boundary corners; performing and preparing a Record of Survey or Corner Record; preparation of plat and/or legal descriptions; obtaining Title Reports; contracting with a subconsultant to locate existing underground utilities; construction staking or services; or Civil Engineering services. Services not included may be provided by request at our then-current rates.

Task 2.2 Deliverables:

- *Topographic Survey File w/ Surface (AutoCAD 2018)*

Task 2.3 Utility Base Mapping

Kimley-Horn will obtain readily available utility facility maps from the Town and utility providers operating within the project area and create an existing utility base map to be used as a basis of design. Kimley-Horn will work with the Town to obtain appropriate contact information utility providers within the area and will send utility request letters as needed throughout the project site.

It is assumed the Town will provide available as-built records related to the project. Subsurface utility investigation is not included as part of this task.

Kimley-Horn will create a master base file of the survey and utilities. Two Kimley-Horn staff will field verify the base map and utility locations based on field conditions. Field notes and pictures will be taken to supplement design and document discrepancies.

Task 2.3 Deliverables:

- *Utility Base Map (AutoCAD 2018)*
- *Facility Maps obtained from Utility Providers available upon request*
- *Utility notification letters (and responses) available upon request*
- *Site photos and field notes available upon request*

(OPTIONAL) – Right-of-way Surveys and Research

Within the Detailed Topographic Survey Area only, LCC will research County and Town record maps (subdivision, parcel maps, records of survey, corner records, and right-of-way maps) for information about the right-of-way (ROW) and property lines within the limits of survey. LCC will locate and tie in existing property corners and monuments found in the field, and we will determine the existing ROW and property lines from title, record map, and field information. If this effort is selected, this ROW data will then be incorporated into the project base map.

Task 3: Draft Conceptual Design Alternatives

Utilizing the feedback received in the initial round of public outreach and the existing conditions analysis performed in Task 2, Kimley-Horn will develop conceptual design alternatives. The study corridor may be broken into two segments: (1) Knowles Drive to Albright Way and (2) Albright Way to Blossom Hill Road. The improvements in each alternative may include signing and striping changes, geometric changes, different types of vertical separation for the Class IV bike lanes, changes in intersection control, closure of sidewalk gaps, enhancing existing pedestrian facilities, stormwater treatment elements, and landscaping treatment elements.

Kimley-Horn will first develop the improvements as annotated Adobe Illustrator graphics supported by illustrative cross-sections to receive one round of input from the Town on the proposed alternatives. Up to three (3) alternatives will be developed for each segment.

Based on discussions with Town staff, up to two (2) alternatives will be selected for each segment for which Kimley-Horn will develop CAD layouts on scaled colored aerial photographs. The concepts will be configured in accordance with Town and Caltrans roadway design standards, as well as other industry best practices. The concepts will be developed to an approximately ten percent level of design, which will consist strictly of a plan view on an aerial.

Through the development of concepts, Kimley-Horn may identify locations where changes to lane geometry and signal operations may be particularly beneficial to providing the desired project outcome. For those locations, Kimley-Horn will perform traffic operations analyses to determine the effects of the desired modification on auto, bicycle, and pedestrian movements. It is anticipated that some new traffic data collection may be necessary to properly assess the effects on these locations. For the purposes of this scope, the following data collection is assumed:

- Weekday AM (7 – 9 AM) and afternoon/PM (2 – 6 PM) peak period traffic, bicycle, and pedestrian turning movement counts at up to five (5) study intersections
- Weekend (8 AM – 2 PM) peak period bicycle volume counts at up to two (2) study intersections or segments

- Three-day average daily traffic (ADT) counts at up to two (2) locations

Traffic analysis at up to five study intersection will be performed using Synchro software (version 10). The traffic analysis may be performed on both the existing condition and for up to two (2) build alternatives for the AM and afternoon/PM peak periods. No future volumes scenario is assumed.

The concepts will be provided to the Town for review and comment. Kimley-Horn will address one round of consolidated comments from the Town.

Following revision of the concepts based on Town comments, Kimley-Horn will prepare extruded cross-sections, photo-simulations, and/or 3D renderings of each of the concepts. Up to two (2) total images are assumed for each of up to two (2) build alternatives.

Task 3 Deliverables:

- *Illustrator-based Improvement Concepts, up to three (3) alternatives (PDF Format)*
- *Draft and Revised Conceptual Improvement Plans, up to two (2) alternatives (PDF Format)*
- *Up to two (2) visualizations, for each of up to two (2) alternatives (JPEG Format or Similar)*

Task 4: Public Outreach Round #1

Kimley-Horn will support Town staff for Public Outreach Round #1. Up to 55 hours of effort are included for support to the Town in Public Outreach Round #1. This may include a project factsheet, meeting boards, and meeting attendance, to be agreed upon by the Town and Kimley-Horn.

Public Outreach Round #1 is anticipated to include feedback on the conceptual alternatives.

Task 5: Refinement of Preferred Conceptual Design Concept & Opinion of Probable Construction Cost (OPCC)

Utilizing feedback from Public Outreach Round #1 and input from Town staff, a preferred alternative will be derived from the two alternatives developed in Task 3. It is assumed that the preferred alternative will represent refinement of one of the alternatives developed in Task 3 and does not represent an entirely new concept.

Kimley-Horn will address one (1) round of non-conflicting comments from the Town on the preferred alternative.

Following revision of the preferred concept based on Town comments, Kimley-Horn will update the visualizations created in Task 3 to reflect the preferred concept.

Kimley-Horn will prepare a conceptual opinion of probable construction cost (OPCC) and identify significant implementation steps and phasing for the proposed concept. This information will be summarized in the Complete Streets Plan in Task 7.

Task 6 Deliverables:

- *Draft and Revised Refined Conceptual Improvement Concept (PDF Format)*
- *Up to two (2) visualizations for the refined conceptual improvement concept (JPEG Format or Similar)*

Task 6: Public Outreach Round #2

Kimley-Horn will support Town staff for Public Outreach Round #2. Up to 55 hours of effort are included for support to the Town in Outreach Round #2. This may include a project factsheet, meeting boards, and meeting attendance, to be agreed upon by the Town and Kimley-Horn.

Public Outreach Round #2 is anticipated to include feedback on the preferred alternative and phasing of the near-term project.

Task 7: Complete Streets Plan

The efforts performed as part of Tasks 1 through 6 will be summarized in a Winchester Complete Streets Plan. It is assumed that the report content will consist of existing conditions, summary of public outreach and engagement, the preferred conceptual improvement concept, associated planning level costs, and implementation strategy. Additional project material may be included in appendices. A Draft Complete Streets Plan will be submitted to the Town for one round of review and comment. Kimley-Horn will address one (1) of consolidated comments from the Town and provide a Final Complete Streets Plan.

Task 7 Deliverables:

- *Draft and Revised Complete Streets Plan (PDF Format)*

Task 8: Public Outreach Round #3

Kimley-Horn will support Town staff for Public Outreach Round #3. Up to 40 hours of effort are included for support to the Town in Outreach Round #3. This may include a project factsheet, meeting boards, and meeting attendance, to be agreed upon by the Town and Kimley-Horn.

Public Outreach Round #3 is anticipated to include distribution of the Plan.

Optional Supplemental Tasks

(OPTIONAL) Task 9: Supplemental Public Outreach

Upon written notice to proceed, Kimley-Horn will assist the Town with the preparation of outreach materials or attendance at outreach events beyond the scope above. As an optional task, we have identified \$8,551 in additional outreach support to lead or support the Town on additional outreach activities.