

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF HAWTHORNE AND KIMLEY-HORN

This PROFESSIONAL SERVICES AGREEMENT (“AGREEMENT”) is made and entered into this 25th day of September, 2024, by and between the City of Hawthorne, a California municipal corporation and general law city (“CITY”) and Kimley-Horn and Associates, Inc., a North Carolina Corporation (“CONSULTANT”) (Collectively, the “Parties”). This agreement is made with reference to the following:

RECITALS

A. CITY requested a proposal for professional services with respect to providing Environmental Consulting Services related to the Three Regional Shopping Center Signs Project (the “Project”) and any required documentation in compliance with the California Environmental Quality Act (CEQA).

B. CONSULTANT submitted a proposal for the performance of such services, a true and correct copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof.

C. CITY desires for CONSULTANT to provide professional services as described in Exhibit “A”.

D. CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent, and professional manner. CONSULTANT shall at all times faithfully, competently, and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing Recitals, the Agreement of the parties as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

The following definitions shall apply to the following terms, except where the context of this AGREEMENT otherwise requires:

(a) Project: Provide consultation and any CEQA documents related to the Project.

(b) Services: CONSULTANT shall provide professional services for the project as described in Exhibit "A", attached herein.

(c) Duration: Said AGREEMENT shall be effective from the date of execution of this AGREEMENT until acceptance and approval of all final documents.

(d) Completion of Project: CONSULTANT shall complete all tasks as noted in Exhibit "A" for a period as noted in the agreement with a period not to exceed twelve (12) months.

(e) Consultant: Kimley-Horn, 1100 W. Town and Country Road, Suite 700, Orange, CA 92868.

(f) City: 4455 w 126th St., Hawthorne, CA 90250

2. SCOPE OF SERVICES

(a) CONSULTANT shall forthwith undertake and complete the project in accordance with Exhibit "A" hereto and all in accordance with any Federal, State and City statutes, regulations, ordinances, and guidelines, all to the reasonable satisfaction of CITY.

(b) CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT, except upon the prior written approval of CITY.

3. COMPENSATION, METHOD OF PAYMENT, AND ADDITIONAL SERVICES

(a) CITY shall pay CONSULTANT no more than the total project cost (\$59,900.00), as set forth in the proposal, Exhibit "A."

(b) Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, and such invoices shall be paid within thirty (30) days after said invoices are received by CITY. Each invoice shall detail work performed and charges. All charges shall be in accordance with CONSULTANT's proposal with respect to project expenses as set forth in Exhibit "A".

(c) Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

4. CITY ASSISTANCE AND AVAILABILITY OF CITY RECORDS

(a) The CITY shall provide the following assistance to CONSULTANT as needed so CONSULTANT can perform the services described above:

(i.) Information and assistance as set forth in Exhibit "A".

(ii.) Photographically reproducible copies of forms, documents, codes and other information, if available, which CONSULTANT considers necessary in order to complete the project.

(iii.) Such information as is generally available from CITY files applicable to the Project.

(iv.) Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT's responsibility to make all initial contact with respect to the gathering of such information.

5. CONSULTANT'S BOOK OF RECORDS

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for five (5) years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying at any time during regular business hours, upon written request by the CITY or CITY's designated representative. Copies of such documents or records shall be provided directly to the requesting party for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon. Such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY or CONSULTANT has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, the CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to all parties to this AGREEMENT, as well as to their successors-in-interest and authorized representatives.

6. TERMINATION OF AGREEMENT

This AGREEMENT may be terminated without cause by CITY upon the giving of a written "Notice of Termination" to CONSULTANT upon thirty (30) days prior written notice or the CONSULTANT may terminate this contract upon thirty (30) days prior written notice. In the

event this Agreement is so terminated, CONSULTANT shall be compensated on a pro-rata basis with respect to the percentage of the project completed as of the date of termination. In no event, however, shall CONSULTANT receive more than the maximum specified in paragraph 3(a), above. CONSULTANT shall provide to CITY any and all documents, data, studies, surveys, drawings, maps, models, photographs, and reports, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

7. NOTICES AND DESIGNATED REPRESENTATIVES

(a) Any and all notices, demands, invoices, and written communications between the parties hereto shall be addressed as set forth in this paragraph. The below named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this AGREEMENT:

To CITY
4455 West 126th Street,
Hawthorne, CA 90250
Attn: Director of Planning

To CONSULTANT
1100 W. Town and Country Road, Suite 700
Orange, CA 92868

(b) Any such notices, demands, invoices, and written communications, shall be delivered by United States mail, and shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof, postage prepaid and properly addressed as set forth above.

8. CONTINUITY OF PERSONNEL

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance. CITY shall not be responsible for time and costs associated with CONSULTANT's turnover or reassignment of staff.

9. STATUS OF CONSULTANT

(a) The parties hereto agree that CONSULTANT and its employers, officers and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.

CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or

otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) The CONSULTANT or any of CONSULTANT's officers, employees or agents, shall not obtain any rights to retirement, health care or any other benefits that may otherwise accrue to CITY employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

10. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of applicable State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations pursuant to sound professional practices including, but not limited to, possessing and maintaining all necessary licensing. CITY, and its officers and employees, shall not be liable at law or in equity occasioned by negligent failure of the CONSULTANT to comply with this Section.

11. NON-DISCRIMINATION

CONSULTANT shall not discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), sexual orientation, marital status, and denial of family care leave. CONSULTANT shall ensure that the evaluation and treatment of their employees and applicants for employment are free from discrimination and harassment. CONSULTANT shall comply with the provisions of the California Fair Employment and Housing Act (Government Code Section 12900, et seq.), and the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285, et seq.). If applicable, CONSULTANT shall give written notice of their obligation under this clause to labor organizations with which they have a collective bargaining AGREEMENT or other AGREEMENT.

12. INDEMNIFICATION

To the fullest extent provided by law, CONSULTANT shall indemnify, hold harmless, and defend CITY, its officers, employees, elected and appointed officials, and volunteers from and against any and all claims and losses, costs or expenses for any damage resulting in death or injury to any person and/or injury or damage to any property resulting from any negligent act or omission

of CONSULTANT or any of its officers, employees, agents, or subcontractors in the performance of this AGREEMENT. Such cost and expense shall include reasonable attorney fees.

13. CONFLICT OF INTEREST

(a) No CITY employee whose position with CITY enables such employee to influence the award of this AGREEMENT or any competing AGREEMENT, and no spouse or economic dependent of such employee, shall be employed in any capacity by the CONSULTANT or have any other direct or indirect financial interest in this AGREEMENT. No officer or employee of this CONSULTANT who may financially benefit from the performance of work hereunder shall in any way participate in the CITY's approval, or ongoing evaluation of such work, or in any way attempt to unlawfully influence CITY's approval or ongoing evaluation of such work.

(b) The CONSULTANT shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this AGREEMENT. The CONSULTANT warrants that it is not now aware of any facts that create a conflict of interest. If the CONSULTANT hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the CITY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this section shall be a material breach of this contract.

14. CONFIDENTIAL INFORMATION

All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the CITY, except as may be required by law.

15. INSURANCE

(a) During the course of the term of this AGREEMENT, CONSULTANT shall maintain Professional Liability Insurance in a combined single limit of not less than \$2 million per claim and aggregate. CONSULTANT shall also maintain General Liability Insurance in a combined single limit of not less than \$2 million per claim and aggregate.

(b) CONSULTANT shall provide a certificate naming CITY as additional insured. CONSULTANT shall procure and maintain, for the duration of the AGREEMENT, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance or the work hereunder, and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors.

16. AUTHORITY TO EXECUTE

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

17. MODIFICATION OF AGREEMENT

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the CITY. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

18. WAIVER

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

19. LAW TO GOVERN; VENUE

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

20. ATTORNEY'S FEES, COSTS, AND EXPENSES

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

21. ENTIRE AGREEMENT

This AGREEMENT, including the attached Exhibit "A", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party that are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

22. **SEVERABILITY**

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, this Professional Services Agreement has been executed by their duly authorized representatives.

CITY OF HAWTHORNE

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Vontray Norris
City Manager

By: Jason Melchor PE. No 65218
[Name] Jason Melchor
[Title] Associate



APPROVED AS TO FORM:

ATTEST:

By: _____
Robert M. Kim
City Attorney

By: _____
Dayna Williams-Hunter
City Clerk

EXHIBIT A
Proposal for Environmental Consulting
Services for the Three Regional Shopping
Center Signs Project, City of Hawthorne,
California



August 29, 2024

Mr. Gregg McClain
Planning Director
City of Hawthorne
4455 West 126th Street
Hawthorne, CA 90250

Re: Proposal to Provide Environmental Consulting Services for the Three Regional Shopping Center Signs Project, City of Hawthorne, California

Dear Mr. McClain:

Kimley-Horn ("Kimley-Horn" or "Consultant") is pleased to submit this Proposal to the City of Hawthorne ("City" or "Client") to provide Environmental Consulting Services for the Three Regional Shopping Center Signs Project (the "Project").

PROJECT UNDERSTANDING

The City has received an application to allow construction and operation of three digital LED signs for existing adjacent regional shopping centers. The proposed locations of each of the signs are described in **Table 1: Locations of Proposed Signs**. Each sign would be 41 feet by 73 feet and would be equipped with automatic dimming capability that allows the signs to automatically adjust as ambient light levels change.

Caltrans regulates the placement of outdoor advertising (ODA) displays visible from California highways (California Outdoor Advertising Act). However, ODAs within 1,000 feet of the entrance to the site at which the business is conducted, services are rendered, or goods are produced or sold are exempt from these regulations (Outdoor Advertising Act Section 5272(a)(4)). Because the proposed signs would only advertise for businesses conducted, services rendered, and goods produced/sold in the adjacent regional shopping centers, and would be located within 1,000 feet of the centers' entrances, the signs would not be subject to California Outdoor Advertising Act requirements.

Moreover, the Project is anticipated to be exempt from the California Environmental Quality Act (CEQA) given its approval is deemed to be ministerial (State CEQA Guidelines Section 15268). Notwithstanding, the City seeks a consultant to prepare an Environmental Effects Memorandum that explains why the electric signs would not have a significant effect on the environment.

TABLE 1: LOCATIONS OF PROPOSED SIGNS			
Sign #	Location	Current Use	Zoning
1	105 Freeway and Crenshaw Boulevard, Hawthorne CA	Crenshaw Boulevard ROW (immediately adjacent to the Park & Ride at Crenshaw Boulevard)	Project Site: Unzoned
			Surrounding Zoning: <ul style="list-style-type: none"> • N: 405 Freeway ROW • S: General Industrial • E: Regional Commercial • W: 405 Freeway ROW
2	405 Freeway and West Rosecrans Avenue, Hawthorne, CA (east of 405 Freeway overpass)	12-foot median in West Rosecrans Avenue	Project Site: Unzoned
			Surrounding Zoning: <ul style="list-style-type: none"> • N: Regional Commercial • S: Regional Commercial • E: West Rosecrans Avenue ROW • W: 405 Freeway ROW
3	405 Freeway and West Rosecrans Avenue, Hawthorne, CA (west of 405 Freeway overpass)	12-foot median in West Rosecrans Avenue	Project Site: Unzoned
			Surrounding Zoning: <ul style="list-style-type: none"> • N: Regional Commercial • S: Regional Commercial • E: 405 Freeway ROW • W: West Rosecrans Avenue ROW

SCOPE OF SERVICES

Kimley-Horn will provide the Scope of Services specifically set forth below. The Scope assumes:

- Baseline conditions, Project [sign] description, and approach will not change once Client issues the Notice to Proceed (NTP).
- The electronic signs are exempt from Outdoor Advertising Act requirements (Outdoor Advertising Act Section 5272(a)(4)), thus, no permitting or coordination with CalTrans is required.
- No permitting or coordination with agencies other than the City is required.
- City will provide two reconciled set of comments for each deliverable, and comments will not raise new substantive issues requiring re-analysis. Additional review cycles are excluded.
- No design plans will be prepared.
- One Light and Glare Study will be prepared to address all three signs.
- One Environmental Effects Memorandum will be prepared to address all three signs.

TASK 1.0 LIGHT AND GLARE STUDY

Kimley-Horn will perform a lighting analysis of three digital LED signs, as described above.

Task 1.1: Field Review/Analysis

Kimley-Horn will perform a nighttime field visit to review the existing site conditions and collect illumination values using a light meter. If necessary, luminance values will be collected using a luminance meter. Values will be collected at up to four (4) receptor sites with available access adjacent to the proposed sign locations. If additional sites are required as part of the analysis, additional budget will be required.

In addition to light measurements, Kimley-Horn will perform a visual evaluation of the existing surrounding light sources near the sign sites, reviewing glare, lighting uses, color temperature, and other relevant lighting characteristics. Kimley-Horn will take photos of the existing site conditions to be used as a visual reference during the analysis and to be included in the Study.

Task 1.2: Proposed Sign Lighting Analysis

Kimley-Horn will prepare photometric analysis and exhibits for the existing lighting and the proposed LED signs. The photometric analysis will be calculated using AGI32 lighting software. We will create the AGI32 model using the lighting measurements taken in the field as a basis. To perform the proposed sign lighting analysis, Kimley-Horn will utilize manufacturer-provided lighting studies for each of the three signs.

Kimley-Horn will analyze the lighting impact of the proposed LED signs on the surrounding receptor sites using AGI32. We will evaluate illuminance, luminance, glare, and other commonly reviewed lighting metrics. We will review the impacts to the four receptor sites and review the impact to drivers on adjacent roadways, considering standards in the California Vehicle Code and American National Standards Institute (ANSI)/IES RP-8-22 – Recommended Practice: Lighting Roadway and Parking Facilities. Kimley-Horn will prepare photometric exhibits displaying the effects of the proposed signs to be included in the Study.

Task 1.3: Technical Report

Kimley-Horn will prepare a technical report summarizing the results of the site visit, analysis, findings, and conclusions. The report will express standards, review methodology, existing conditions, field data collection, proposed lighting analysis, and conclusions and recommendations. The lighting analysis will evaluate glare and contrast on adjacent roadways and light trespass onto adjacent sites. Standards to be reviewed and described may include City, Title 24, California Vehicle Code, and IESNA standards.

TASK 2.0: ENVIRONMENTAL EFFECTS MEMORANDUM

Kimley-Horn will prepare an Environmental Effects Memorandum documenting why the Project would not have a significant effect on the environment.

The Memorandum will not review all State CEQA Guidelines Appendix G thresholds. Instead, the Memorandum will focus the review on the Project's potential effects concerning key resource areas (i.e., aesthetics, air quality, energy, greenhouse gas emissions, noise/vibration, and land use). The effects analysis concerning aesthetics (i.e., light and glare) will be based on the Light and Glare Study; see Task 1.0. The effects analysis concerning air quality, energy, greenhouse gas emissions, and noise/vibration will be qualitative (modeling is excluded).

TASK 3.0: PROJECT MANAGEMENT AND MEETINGS**Task 3.1: Project Management**

Kimley-Horn will be responsible for Project Management, including overall Project Team coordination and supervision, and ongoing consultation with Client. The Project Manager will coordinate with technical and support staff toward completion of the deliverables outlined above. This task assumes a three-month Project schedule.

Task 3.2: Meetings

The Project Manager and one additional Kimley-Horn Staff will attend virtual meetings and represent the Project Team, as appropriate. This Task assumes up to 10 hours meeting attendance, including preparation, attendance, and follow-up, as appropriate. Should the City determine that additional time beyond the assumed is required, services will be provided on a time and materials (T&M) basis.

INFORMATION PROVIDED BY CLIENT

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn, including but not limited to the following:

- Other relevant studies, if any,
- Physical improvements (if any), and
- Required City permits.

PRELIMINARY SCHEDULE

Kimley-Horn is prepared to begin work immediately, and estimates completion of the Light and Glare Study and Environmental Effects Memorandum within six weeks of Notice to Proceed.

FEE AND EXPENSES

Kimley-Horn will perform the Scope of Services outlined above on a labor fee plus expense basis with the maximum labor fee shown on **Table 1: Fee and Expenses**, except that additional efforts associated with Task 3.2 will be performed on a T&M basis, if required.

TABLE 1: FEE AND EXPENSES		
TASK #	TASK	FEE
1.0	Light and Glare Study	\$2,500
2.0	Environmental Effects Memorandum	\$50,000
3.1	Project Management	\$2,200
3.2	Meetings	\$2,600
Expenses		\$2,600
Total Fee and Expenses		\$59,900

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, Project-related computer time, and local mileage. Administrative time related to the Project will be billed hourly. All permitting, application, and similar Project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such Project fees on the Client's behalf, a separate invoice for such fees, with a ten percent (10%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn Project Number.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Hawthorne.

To expedite invoices and reduce paper waste, Kimley-Horn submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail, if requested. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute the Agreement and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Proposal are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your project so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact Rita Garcia at 714.786.6116 or rita.garcia@kimley-horn.com, if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



By: Rita Garcia
Project Manager

CITY OF HAWTHORNE

By:
(signature) _____

(print name) _____

Title: _____

Date: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachments:

- Request for Information
- Standard Provisions

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Invoices are due and payable upon presentation. Client shall pay Consultant a time price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. If the Client fails to make any payment due under this or any other agreement within 30 days after presentation, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid, and may commence legal proceedings including filing liens to secure payment.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this

Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions, or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of California. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.