

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: ON-CALL TRANSPORTATION ENGINEERING SERVICES

THIS AGREEMENT, dated _____, 2025 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Kimley Horn and Associates, Inc., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK. The project is more particularly described as follows:

A. Transportation and Planning Review

- Assist staff with grant applications and review.
- Provide technical assistance for the design and operation of traffic signals (including plan check and timing information).
- Provide civil design for traffic related projects including new traffic signals and traffic signal modifications.
- Assist staff with plan reviews (new development; improvement, grading, and building plans) that pertain to Traffic Engineering items such as, but not limited to: signing and striping; driveway layout and grade brakes; ADA pathways including ADA ramps, street lights, traffic signals, and parking lot layout (aisle and parking stall dimensions, etc.).
 - Conduct a meeting with City Staff if there are significant second review comments, or there are unaddressed comments from the first review.
 - Review improvement plans submitted for conformance to Conditions of Approval, for compliance with the Tentative Maps filed and approved, and for compliance with the city engineering standards.
 - Review minor/precise grading plans for conformance to Conditions of Approval, for compliance with the Tentative Maps filed and approved, and for compliance with the city engineering standards
- Provide third-party traffic [impact] study reviews, as required.

B. Traffic Signal Operations and Staff Support

- Provide signal system evaluation, modeling, and optimization.
- Review signal operations for future upgrades and technologies.

ON-CALL TRANSPORTATION ENGINEERING SERVICES

- Provide support for technical signal operations for signal modifications or software upgrades.
- C. Provide assistance in addressing traffic requests such as conducting various traffic studies, preparing work orders, making traffic observations and discussing findings with staff to further determine next steps, and preparing staff reports.
- D. Assisting with federal, state, and regional issues
- The consultant is expected to demonstrate full up-to-date knowledge of all federal, state, and regional issues, along with legislation and emerging trends affecting the City's traffic and transportation system and operations.
 - The consultant is expected to proactively, without direction from the City, monitor the aforementioned issues, advising and informing the City Traffic Engineer with updates, as appropriate. These proactive notifications shall be focused on federal, state, and regional policies, and projects that affect the City of Oceanside; and more importantly on grant funding opportunities at federal, state, and regional levels that the City can benefit from.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents, and subcontractors under this Agreement, including the training of each employee regarding the rights and responsibilities of an employer and employee for any potential discrimination or harassment claim under state or federal law. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
- 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain

ON-CALL TRANSPORTATION ENGINEERING SERVICES

comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

- 4.2** CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 2,000,000
General limit project specific aggregate	\$ 4,000,000

<u>Automobile Liability Insurance</u>	\$ 2,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.4** All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONSULTANT pursuant to

ON-CALL TRANSPORTATION ENGINEERING SERVICES

this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

- 4.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of Two Million Dollars (\$2,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

- 6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law (including, without limitation, California Civil Code Section 2782.8), CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT's work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents,

ON-CALL TRANSPORTATION ENGINEERING SERVICES

or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$250,000 per year with two, one-year renewable options. The actual annual allocations will be decided by the City Traffic Engineer's sole discretion depending on needs. The contract will be subject for annual renewal at the discretion of City staff. All work shall be invoiced monthly, with each project identified individually (showing balance of contract).

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the CITY. CONSULTANT shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within 30 working days per project (this timing can be modified dependent upon the project size and agreement between the CITY and CONSULTANT). This agreement shall take effect when all signatures have been executed, and shall be valid for a period of one year starting July 1, 2025 - June 30, 2026. Notwithstanding any other provisions of this Agreement, Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, pandemics, adverse weather, or acts of the City, third parties or governmental agencies.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

ON-CALL TRANSPORTATION ENGINEERING SERVICES

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days' written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.
13. **ADVANCED CLEAN FLEET REGULATION.** CONSULTANT shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the California Air Resources Board ("CARB") regulations including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation).

Throughout the Agreement, and for three (3) years thereafter, Consultant shall make available for inspection and copying any and all documents or information associated with CONSULTANT's and any subcontractor's fleet including, without limitation, Certificates of Reported Compliance ("CRC"), fuel/refueling records, maintenance records, permissions records, and any other information the Consultant is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the CITY.

CONSULTANT shall be solely liable for any and all costs associated with complying with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation.

ON-CALL TRANSPORTATION ENGINEERING SERVICES

CONSULTANT shall defend, indemnify and hold harmless the CITY from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation.

- 14. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

KIMLEY HORN AND ASSOCIATES, INC

CITY OF OCEANSIDE

By:  Aaron M. Hewless
Name/Title Associate

By: _____
City Manager

By:  MEGAN KLERKY
Name/Title VICE PRESIDENT

APPROVED AS TO FORM:


City Attorney

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On April 29, 2025 before me, Christine E. Constran, Notary Public
(insert name and title of the officer)

personally appeared Aaron Houstess,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

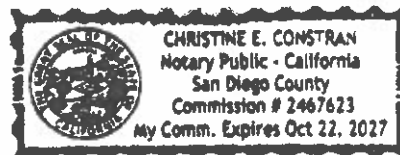
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On May 1st, 2025 before me, Christine E. Constran, Notary Public
(insert name and title of the officer)

personally appeared Megan Ufery,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

