

DUPLICATE ORIGINAL

**TEMPORARY PERSONNEL SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE  
AND KIMLEY-HORN AND ASSOCIATES, INC.**

THIS AGREEMENT dated March 31, 2017 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and KIMLEY-HORN AND ASSOCIATES, INC. ("AGENCY").

WHEREAS, CITY is in need of specialized services in relation to temporary staffing to support City staff in review and design of traffic signal design and modification plans, signing and striping plans, and off-site improvement plans, and provide general assistance with other various traffic engineering and design projects as assigned.; and

WHEREAS, AGENCY possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AGENCY

AGENCY shall provide qualified individuals for technical and professional services, in accordance with the Scope of Service outlined in Exhibit "A". Each individual performing the required services under this Agreement shall be approved by CITY in advance.

2. Time for Performance

The term of this Agreement shall for a one year period beginning on the date of Agreement execution, unless otherwise terminated. Agreement may be extended for additional periods of time, subject to available funding.

3. Duties of CITY

CITY shall supply any documents or information available to City required by AGENCY for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

CITY shall also provide a work space; access to standard office equipment, including telephones; and materials and supplies, as required, while working at a CITY facility.

4. Compensation

CITY agrees to pay AGENCY at the rates set forth in the compensation schedule (Exhibit "B"), attached and incorporated by reference. Total compensation shall not exceed Ninety-Five Thousand and no/100 Dollars (\$95,000.00)

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AGENCY shall submit invoices to CITY no more frequently than monthly for services provided to date. AGENCY shall submit bi-weekly time cards to City Staff for approval. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to AGENCY's working papers, drawings and other documents during progress of the work. All documents of any description prepared by AGENCY shall become the property of the CITY at the completion of the project and upon payment in full to the AGENCY. AGENCY may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AGENCY shall not accept employment or an obligation which is inconsistent or incompatible with AGENCY's obligations under this Agreement.

Pursuant to CITY's Standard Conflict of Interest Code CITY has determined that any individual performing services under this Agreement is required to file a Statement of Economic Interest (Form 700) which can be found at [www.fppc.ca.gov](http://www.fppc.ca.gov).

7. Confidential Information

AGENCY shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which AGENCY may become aware in the performance of its services.

8. Compliance with Laws

- (a) AGENCY shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of AGENCY or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of AGENCY's employment practices and to all of AGENCY's activities as a provider of services to the City.
- (b) AGENCY shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

- (c) AGENCY acknowledges that it is responsible for compliance with all requirements of the Patient Protection and Affordable Care Act. Further, AGENCY acknowledges that it will offer compliant health insurance coverage to any of its employees assigned to the CITY who meet the eligibility criteria of the Patient Protection and Affordable Care Act.
- (d) AGENCY understands that City is a public agency member of the California Public Employees Retirement System ("CalPERS") and is required to comply with CalPERS rules and state law related to membership and administration, and that CalPERS maintains and implements, from time to time, certain rules related to CalPERS members or annuitants. Such rules may be applicable to CalPERS members and annuitants hired by Agency and performing work through Agency for the City of Sunnyvale. Agency agrees to cooperate with City in complying with any requirements established by the CalPERS and/or assist the City in complying with CalPERS requirements to the fullest extent possible with respect to Agency's employees. Such requirements may include, but are not limited to requiring employees to complete the CalPERS notice of exclusion form, complying with CalPERS rules requiring payment of members and annuitants consistent with rates in published City salary schedules for City positions performing similar work, disclosing their employees' actual pay rates, and assisting the City in collecting employee contributions.

9. Independent AGENCY

AGENCY is acting as an independent AGENCY in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and AGENCY. AGENCY is responsible for paying all required state and federal taxes.

10. Indemnity

AGENCY shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services, caused to the extent caused by any negligent act or omission of AGENCY, any subagency, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

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AGENCY shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C" Insurance Requirements.

12. City Representative

Mr. Shahid Abbas, Transportation and Traffic Manager Mr. Shahid Abbas, Transportation and Traffic Manager as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. AGENCY Representative

Michael C. Mowery, P.E., Vice President, shall represent AGENCY in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of AGENCY pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AGENCY representative.

14. Payroll Hours Reporting

AGENCY is responsible for submitting a bi-weekly hours report to CITY which identifies temporary personnel and hours worked for each pay period as well as a cumulative total. The report shall be based on the CITY'S fiscal year, which is July 1-June 30. AGENCY is responsible for retaining timecards for temporary personnel and shall provide timecard detail to CITY upon request. The hours report shall be submitted to:

Vienne Choi  
City of Sunnyvale  
Human Resources Manager  
505 W. Olive Avenue, Suite 200  
Sunnyvale, CA 94086  
Phone: (408) 730-2705  
Email: vchoi@sunnyvale.ca.gov

15. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Mr. Shahid Abbas, Transportation and Traffic Manager  
Public Works Traffic Division  
CITY OF SUNNYVALE  
P. O. Box 3707

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Sunnyvale, CA 94088-3707

To AGENCY: Michael C. Mowery, P.E., Vice President  
Kimley-Horn and Associates, Inc.  
4637 Chabot Rd.  
Suite 300  
Pleasanton, CA 94588

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

16. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

17. Termination

- A. If AGENCY defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to AGENCY. In the event of such termination, AGENCY shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AGENCY shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to AGENCY. In the event of such termination, AGENCY shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AGENCY shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay AGENCY, AGENCY at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

18. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by all parties.

19. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

20. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

By

City Clerk

CITY OF SUNNYVALE ("CITY")

By

City Manager

APPROVED AS TO FORM:

By

City Attorney

Michael C. Murray, 3-22-17

Name

VICE PRESIDENT C66353

Title

Name

John William, Assistant Secretary

Title

KHACA  
03

**Exhibit "A"**

**SCOPE OF WORK**

Kimley-Horn and Associates, Inc. will demonstrate a high level of professionalism and will deliver quality work at all times. Duties and Responsibilities include, but are not limited to, the following:

- Prepares specifications, plans, engineering cost estimates and reports pertaining to the construction, maintenance, and operation of traffic signals facilities and street lighting systems for Capital Improvement Projects and other Grant funded projects.
- Prepare and review various signing/striping plans, traffic signal and construction plans, and Temporary Traffic Control plans.
- Assists staff with existing traffic signal operations analysis to optimize traffic signal timing and provides recommendations for field implementation.
- Conducts traffic studies and prepares reports for speed studies, traffic control devices warrants, parking studies, and performs collision analysis.
- Assist staff with Transportation Planning and Land Development related assignments as related to Transportation and Traffic such as neighborhood traffic studies, and review of off-site improvement plans.
- Assist Principal Transportation Engineer with the review of TIAs, EIRs, etc. as needed.
- Conduct studies on specialized and complex planning issues and make recommendations to Principal Transportation Engineer or Transportation & Traffic Manager as needed.
- Assist staff to prepare documentation as required to apply for, securing, and managing outside transportation grant revenue.
- Perform other duties, as assigned.

**Exhibit "B"**

**COMPENSATION SCHEDULE**

**KIMLEY-HORN AND ASSOCIATES, INC. 2017 RATE SHEET**

**Staff Hourly Rate**

Technical Support \$105 - \$125  
Senior Technical Support \$120 - \$180  
Support Staff \$85 - \$105  
Professional \$115 - \$165  
Senior Professional \$180 - \$325

Rates may be adjusted on July 1 of each year, subject to agreement of the parties.

**Expenses**

Direct Expense Mark-Up - Billed at Cost  
Sub-consultant Mark-Up - Up to 5% Mark-Up  
Office Expenses - Billed at Cost

## EXHIBIT "C"

## INSURANCE REQUIREMENTS

Agency shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Agency, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Agency shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The Agency shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Agency; products and completed operations of the Agency; premises owned, occupied or used by the Agency; or automobiles owned, leased, hired or borrowed by the Agency. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Agency's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Agency's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including

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breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

4. The Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, 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 City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Agency shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.