

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is dated for identification this 3rd day of May 2022 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and Kimley-Horn Associates, Inc., (“Consultant”), whose address is 10 Almaden Boulevard, Suite 1250, San Jose, CA 95113. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town has a need for On-Call Traffic Engineering consulting services (Pass-Through Account) for development projects in the Town of Los Gatos.
- 1.2 Town desires to engage a licensed professional traffic engineering firm to review, analyze, and comment on development project plans; prepare traffic impact analyses and reports per Town policies and guidelines; conduct peer review of developer traffic reports; and attend public meetings as needed.
- 1.3 Consultant represents and affirms that the firm is qualified and willing to perform the desired work pursuant to this Agreement.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide traffic engineering consulting services in compliance with the Town’s Transportation Impact Policy and Guideline including, but not limited, to Vehicles Miles Traveled (VMT) analysis, trip generation studies, site circulation and access review, intersection and roadway Level of Service (LOS) analysis, and other services as needed.
- 2.2 Time of Performance. Consultant shall perform the services described in this agreement as follows: The services of Consultant are for a five year period that will commence upon the execution of the contract. Should Town not renew a contract, the award and authorization of the contract shall automatically expire. Town shall give Consultant at least 30 days’ notice, prior to the cancellation or expiration of the contract.
- 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 the established hourly rates, as set forth in the Fee Schedule (Exhibit A), which is attached hereto and incorporated herein by reference. 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. It is understood that Consultant currently has no employees. If employees are hired in the future, Consultant shall obtain and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town. 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 save, keep, hold harmless and 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 may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

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

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

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

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

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

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

To Town:

WooJae Kim
Town Engineer
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030
Phone: (408) 399-5773
E-mail: wkim@losgatosca.gov

To Consultant:

Adam Dankberg
Kimley-Horn
10 Almaden Boulevard, Suite 1250
San Jose, CA 95113
Phone: (669) 800-4139
E-mail: adam.dankberg@kimley-horn.com

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 to 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 Exhibit A, 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

Consultant:

Laurel R. Prevetti, Town Manager
Town of Los Gatos

Adam Dankberg
Kimley-Horn

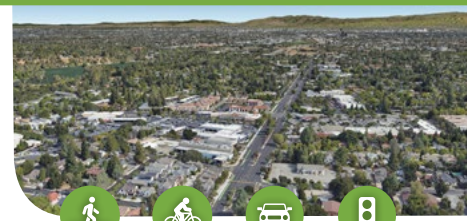
Department Approval:

Timm Borden
Interim Parks and Public Works Director

Approved as to Form:

Robert W. Schultz
Town Attorney

On-Call Traffic Engineering Consultant Services



8 Preliminary Fee Schedule

As requested by the Town, we have provided our fee schedule below. This fee schedule includes all work and labor including, but not limited to, our costs for site visits and travel expenses. In addition, we have also provided the Preliminary Fee Schedule of sub-consultants.



Rate Schedule

Effective June 1, 2021 to July 1, 2022

<u>Position Title</u>	<u>Rates</u>
Analyst	\$120 - \$170
Professional	\$185 - \$230
Sr. Professional	\$240 - \$310
Principal/Sr. Technical Advisor	\$315 - \$345
Project Support	\$100 - \$160

Rates are subject to annual 5% increases effective each July 1st.

Direct expenses, including mileage, postage, printing, and other expenses will be billed at actual cost incurred or consistent with IRS regulations.

Rate Schedule (2021)

Item Description	Unit	Unit Price
Field Support		
Field Survey Crew & Equipment (Prevailing Wage)*	Hour	\$360.00
Round Trip Travel Time & Costs	Hour	\$145.00
Office Support		
Principal	Hour	\$255.00
Director Surveying/Professional Land Surveyor	Hour	\$215.00
Senior Project Manager	Hour	\$180.00
Project Surveyor	Hour	\$165.00
GPS Post Processing	Hour	\$155.00
Survey Technician	Hour	\$150.00
Drafting/ AutoCAD Technician	Hour	\$115.00
Accounting / Clerical	Hour	\$80.00
Reimbursable Costs		
In-House Reproductions		Cost + 15%
Printing and Materials		Cost + 15%
Parking and Tolls		Cost + 15%
Express Mail, Courier, Next Day Service		Cost + 15%
Special Sub-Consultant Services (GPR, etc.)		Cost + 10%
Miscellaneous Services		
Per Diem (when required)	Day	Per GSA Schedule
Consultation in Connection with Litigation	Hour	\$450.00
Transportation (per 2018 IRS Mileage Rate)	Mile	\$0.575
Overtime and Saturday Rates		
	Hour	1.5 times Hourly Rate

The hourly rate increase 3% per year to cover cost of living. Also a 10% mark-up will be added to any sub-consultants utilized to cover project management and administration costs. Hourly rates good for 2020.

*4 or 8 Hour Minimum

Armando D. DuPont, PLS 7780



National Data & Surveying Services

Northern California Pricing 2021

Intersection Turning Movements

Region	2 Hour 1 Person	2 Hour 2 Person	4 Hour 1 Person	4 Hour 2 Person	6 Hour 1 Person	6 Hour 2 Person
Bay Area	\$145	\$220	\$250	\$375	\$360	\$550
Sacramento	\$145	\$220	\$240	\$360	\$340	\$500
Outer Area	\$175	\$275	\$280	\$425	\$380	\$575
Far-Outer Area	\$200	\$300	\$300	\$450	\$400	\$600

Machine / Hose Counts

Region	Volume		Speed and/or Class	
	1st Day	Additional Days	1st Day	Additional Days
Bay Area	\$85	\$35	\$135	\$45
Sacramento	\$85	\$35	\$135	\$45
Outer Area	\$100	\$45	\$135	\$55
Far-Outer Area	\$115	\$55	\$135	\$65

24 Hour Cameras

Region	1st Day	Additional Days	Review of Video
Bay Area	\$150	\$50	\$25 / Hour
Sacramento	\$150	\$50	\$25 / Hour
Outer Area	\$200	\$75	\$25 / Hour
Far-Outer Area	\$250	\$100	\$25 / Hour

Drone Surveys

Region	Drone Operator*	Drone Flight Time	Review of Video
Bay Area	\$75 / Hour	\$75 / 20 Minutes	\$25 / Hour
Sacramento	\$75 / Hour	\$75 / 20 Minutes	\$25 / Hour

*1 hour of operator setup time is required for all drone counts

Wavetronix

Region	Wavetronix Only*		With Backup Camera**	
	1st Day	Additional Days	1st Day	Additional Days
Bay Area	\$350	\$150	\$600	\$300
Sacramento	\$350	\$150	\$600	\$300
Outer Area	\$400	\$175	\$700	\$350
Far-Outer Area	\$450	\$200	\$800	\$400

*Price reflects a 1 unit installation. Most project sites require 2 units for installation



National Data & Surveying Services

**Camera installation is for any 4 hours of review to correct Wavetronix detection during heavy periods of



Northern California Pricing

Additional Services

Region	Bike / Ped Counts	Parking Survey	Travel Time	Radar (high vol)	Radar (average vol)	Radar (low vol)
Bay Area	\$60 / Hour	\$60 / Hour	\$120 / Hour	\$50	\$90	\$120
Sacramento	\$60 / Hour	\$60 / Hour	\$120 / Hour	\$50	\$90	\$120
Outer Area	\$75 / Hour	\$75 / Hour	\$120 / Hour	\$75	\$115	\$150

FEE SCHEDULE

EFFECTIVE THROUGH DECEMBER 2023

STAFF CATEGORY	2021	2022	2023
Project Manager	\$ 275 - \$ 325	\$ 283 - \$ 335	\$ 292 - \$ 345
Sr. Project Engineer/QA QC Manager	\$ 200 - \$ 250	\$ 206 - \$ 258	\$ 212 - \$ 265
Senior Geologist	\$ 200 - \$ 235	\$ 206 - \$ 242	\$ 212 - \$ 249
Sr. Project Engineer/Geologist	\$ 145 - \$ 220	\$ 149 - \$ 227	\$ 154 - \$ 233
Project Engineer	\$ 145 - \$ 175	\$ 149 - \$ 180	\$ 154 - \$ 186
Project Geologist	\$ 115 - \$ 165	\$ 118 - \$ 170	\$ 122 - \$ 175
Sr. Staff Engineer/PE	\$ 100 - \$ 150	\$ 103 - \$ 155	\$ 106 - \$ 159
Staff Engineer	\$ 85 - \$ 135	\$ 88 - \$ 139	\$ 90 - \$ 143
Field Engineer/Geologist	\$ 70 - \$ 175	\$ 72 - \$ 180	\$ 74 - \$ 186
Senior Technician	\$ 85 - \$ 135	\$ 88 - \$ 139	\$ 90 - \$ 143
Lab Technician	\$ 70 - \$ 105	\$ 72 - \$ 108	\$ 74 - \$ 111
Drafting/Cadd Tech	\$ 70 - \$ 150	\$ 72 - \$ 155	\$ 74 - \$ 159
Contract Administration	\$ 200 - \$ 250	\$ 206 - \$ 258	\$ 212 - \$ 265
Field Engineer/Prevailing Wage		TBD *	

CONSTRUCTION PHASE:

All time spent over 8 hours per day and Saturdays for field personnel will be charged at 1.5 times the hourly rate. Sunday work will be charged at twice the hourly rate. All charges are portal-to-portal and mileage will be charged at 53.5 cents per mile. Field time, including travel time, will be charged in a two-hour increment. Any chargeable time that falls in between these increments will be charged at the rate of the next two-hour increment. Prevailing wages will dictate the field rates wherever applicable.

OUTSIDE SERVICES:

Drilling rental of special equipment and other outside charges will be invoiced at cost plus 10%. Direct contracting/billing and payment will not incur these costs. Outside services, beyond those included in the proposal, will not be performed without prior authorization from the Client.

Miscellaneous outside reimbursable expenses encountered during the performance of our work, such as printing and other incidentals, will be billed at cost plus 10%. Outside services, beyond those included in the proposal, will not be performed without prior authorization from the Client.

The hourly rates indicated above shall remain in effect through December 2023.

These escalations are on an average of 3% per year.

* Prevailing wage will apply to field personnel performing Materials Testing work with the project-specific determination per the Department of Industrial Relations (DIR) requirements.



BILLING RATE SCHEDULE

Hourly Rate of FY 2021
(01/01/2021 - 12/31/2021)

TITLE	MINIMUM	MAXIMUM
Principal Professional	\$260.00	\$310.00
Supervising Professional II	\$220.00	\$260.00
Supervising Professional I	\$180.00	\$220.00
Senior Professional III	\$170.00	\$210.00
Senior Professional II	\$145.00	\$170.00
Senior Professional I	\$120.00	\$145.00
Associate Professional II	\$110.00	\$130.00
Associate Professional I	\$90.00	\$110.00
Staff Professional II	\$85.00	\$105.00
Staff Professional I	\$65.00	\$85.00
Senior Technician II	\$105.00	\$130.00
Senior Technician I	\$80.00	\$105.00
Technician II	\$65.00	\$80.00
Technician I	\$50.00	\$65.00
Project Coordinator / Tech Editor II	\$85.00	\$130.00
Project Coordinator / Tech Editor I	\$55.00	\$85.00

- Professional staff includes Civil Engineers, Hydraulic Engineers, Geotechnical Engineers, Geologists, Biologists, and Environmental Scientists.
- Expenses are invoiced at 110% of cost.
- Unless expressed within the contract agreement, rates on all contracts are subject to an annual adjustment of a 3% escalation rate on January 1 of each calendar year.
- Rates for deposition and trial time are 1.5 times those shown above.
- Regular Mileage is per IRS rate (currently at \$0.56 per mile) or as otherwise specified in contract.