

**AGREEMENT BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND
KIMLEY-HORN AND ASSOCIATES, INC.
FOR
SMART CORRIDOR SIGNAL SYSTEM MAINTENANCE AND SUPPORT**

This Agreement entered this ____ of _____, 2022, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and Kimley-Horn and Associates, Inc., hereinafter called “Consultant.”

WHEREAS, C/CAG, is the Congestion Management Agency for San Mateo County;
and

WHEREAS, C/CAG has determined that consultant services are needed to assist C/CAG with the Smart Corridor Signal System Maintenance Services; and

WHEREAS, the purpose of the project is to provide maintenance support for the KITS (Kimley-Horn Integrated Transportation System) traffic signal system and on-call support services for cities utilizing KITS; and

WHEREAS, C/CAG has determined that Consultant has the requisite qualifications to perform this work.

WHEREAS, the total amount available to Consultant under this Agreement is not to exceed \$198,000.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **Services to be provided by Consultant.** In consideration of the payments hereinafter set forth, Contractor agrees to perform the services described in Exhibit B, attached hereto (the “Services”).
2. **Payments.** In consideration of the services rendered with all terms, conditions, and specifications set forth herein, in Exhibit A and Exhibit B, and in any subsequent task orders executed under the governance of this agreement, C/CAG shall reimburse Consultant on a time and materials basis based on the cost proposal set forth in Exhibit A. The aggregate total amount of payment by C/CAG to Consultant for services shall not exceed one hundred ninety-eight thousand dollars (\$198,000) for Services provided during the Contract Term set forth below. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through task orders. Payments shall be made to Consultant monthly based on an invoice submitted by Consultant that has been reviewed and approved by the project

sponsor and identifies expenditures and describes services performed. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

3. **Contract Materials.** At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Consultant under this Agreement shall become the property of C/CAG and shall be promptly delivered to C/CAG. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law.
4. **Relationship of the Parties.** It is understood that Consultant is an Independent Consultant and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Consultant.
5. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party, without the prior written consent of the C/CAG Executive Director. Any such assignment or subcontract without the C/CAG Executive Director’s prior written consent shall give C/CAG the right to automatically and immediately terminate this Agreement without penalty or advance notice.
6. **Contract Term/Termination.** This Agreement shall be in effect as of July 1, 2022 and shall terminate on June 30, 2025; provided, however, the C/CAG Chairperson may terminate this Agreement at any time for any reason by providing 30 days’ notice to Consultant. Termination will be effective on the date specified in the notice. In the event of termination under this paragraph, Consultant shall be paid for all services provided to the date of termination, subject to availability of funding. Such payment shall be that prorated portion of the full payment determined by comparing the work completed to the work required by the Agreement.
7. **Hold Harmless/Indemnity.**
 - a. *General.* Consultant shall indemnify and save harmless C/CAG and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Consultant or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Consultant’s failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of C/CAG and/or its officers, agents, employees, or servants. However, Consultant’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG has been found in

a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The duty to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- b. *Intellectual Property.* Consultant hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”) except as otherwise noted by this Agreement.

Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless C/CAG from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party’s IP Rights provided any such right is enforceable in the United States. Consultant’s duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) C/CAG notifies Consultant promptly in writing of any notice of any such third-party claim; (b) C/CAG cooperates with Consultant, at Consultant’s expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without C/CAG’s prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG’s prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant’s opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes C/CAG’s reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant’s option and expense, either: (i) procure for C/CAG the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no

obligation or liability to C/CAG under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for C/CAG (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by C/CAG in a manner prohibited by this Agreement.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Insurance.

- a. *General Requirements.* Consultant or its subconsultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall use diligence to obtain such insurance. Consultant shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.
- b. *Workers' Compensation and Employer Liability Insurance.* Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California 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 the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.
- c. *Liability Insurance.* Consultant shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Consultant, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by any sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.

d. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

	Required Amount	Approval by C/CAG Staff if under \$ 1,000,000
1. Comprehensive General Liability	\$ 1,000,000	_____
2. Workers' Compensation	\$ Statutory	_____
3. Professional Liability	\$1,000,000	_____
4. Motor Vehicle Liability	\$1,000,000	_____

C/CAG and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to C/CAG, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers, agents, employees, and servants have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the C/CAG Chairperson, at his/her option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

9. **Compliance with All Laws.** Consultant shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Consultant will timely and accurately complete, sign, and submit all necessary documentation of compliance.
10. **Non-discrimination.** Consultant and any subconsultants performing the services on behalf of Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
11. **Substitutions.** If particular persons or classifications are identified in Exhibit A as working on this Agreement, Consultant will not assign others to work in their place

without the prior written consent of the C/CAG Executive Director. Any substitution shall be with a person or classification of commensurate experience and knowledge unless otherwise authorized by the C/CAG Executive Director.

12. **Sole Property of C/CAG.** Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of C/CAG. Consultant shall not be liable for C/CAG's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
13. **Record Retention; Right to Monitor and Audit.**
 - a. Consultant shall maintain all required records relating to services provided under this Agreement for three (3) years after C/CAG makes final payment and all other pending matters are closed, and Consultant shall be subject to the examination and/or audit by C/CAG, a Federal grantor agency, and the State of California.
 - b. Consultant shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by C/CAG.
 - c. Consultant agrees upon reasonable notice to provide to C/CAG, to any Federal or State department having monitoring or review authority, to C/CAG's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.
14. **Permits/Licenses.** If any license, permit, or approval is required to perform the work or services required by this Agreement, Consultant bears the responsibility to obtain said license, permit, or approval from the relevant agency at Consultant's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.
15. **Merger Clause; Amendments.** This Agreement, including Exhibits A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto regarding the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Chair. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A or B attached hereto, the terms, conditions or specifications set forth herein shall prevail.
16. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.

17. **Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Kaki Cheung

Notices required to be given to Consultant shall be addressed as follows:

Kimley-Horn and Associates, Inc.
1300 Clay Street, Ste. 325
Oakland, CA 94612
Attention: Randy Durrenberger

DRAFT

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

Kimley-Horn and Associates, Inc.

By _____
Date

City/County Association of Governments of San Mateo County (C/CAG)

By _____
Davina Hurt
C/CAG Chair
Date

By _____
Melissa Andrikopoulos
C/CAG Legal Counsel
Date

Exhibit A

CONSULTANT BILLING RATES

Hourly billing rates and staff for CONSULTANT and SUBCONSULTANT(S) are included on the following pages.

Hourly Labor Rate Schedule

Classification	Rate
Analyst I	\$125 - \$165
Analyst II	\$165 - \$210
Professional	\$210 - \$240
Senior Professional I	\$250 - \$310
Senior Professional II	\$330 - \$390
Senior Technical Support	\$110 - \$275
Technical Support	\$100 - \$160
Support Staff	\$85 - \$140

- Effective through June 30, 2023, subject to annual 5% adjustment thereafter

Exhibit B

SCOPE OF WORK

C/CAG KITS and KADENCE Maintenance and Support Project

Task 1: System maintenance

Kimley-Horn will provide maintenance via on-site visits, webinar, phone, remote login, and email, (as appropriate) to respond to submittal of potential issues by users at any agency throughout the San Mateo Smart Corridor. During the maintenance period, Kimley-Horn will provide the following services:

1. Updates to software services as necessary to provide continuous operation of the system
2. Remote checkups of City Smart Corridor workstation functionality
3. Remote checkups of each Smart Corridor Server
4. Preventative maintenance on all three Smart Corridor databases, to include:
 - a. Table truncation, as necessary
 - b. Index optimization, as necessary
 - c. Backup archiving, as necessary
 - d. Verification of mirroring operation for Menlo Park and Redwood City databases
5. Conference call with users and corridor representatives to discuss any common issues, training needs, or support requests
6. Report to C/CAG summarizing operational status and issues

During the maintenance period, Kimley-Horn will make available to C/CAG at no additional license fee additional features of the KITS system relevant to C/CAG controllers (ASC/3, D4, and Caltrans TSCP), that do not constitute a separate module or functionality suite. New features will be installed for C/CAG users at current hourly rates as part of Task 3. As part of the project, Kimley-Horn will include travel expenses for one C/CAG staff to attend the annual KITS user group meeting each year.

Remote login capability via secure remote desktop or virtual private network (VPN) is critical for providing rapid response support from our Software and Traffic engineering support team in Pleasanton, CA, Oakland, CA, and Phoenix, AZ. This is currently provided through the Caltrans District 4 system. C/CAG will be responsible for coordinating with District 4 the continual provision of VPN access.

Task 1 Cost: \$32,000 per year, billable on a monthly basis, based on time-and-materials

Task 2: Equipment maintenance services

Kimley-Horn will provide equipment maintenance services via on-site visits, face-to-face meetings, phone, and email, (as appropriate) to coordinate and track the repair of non-functional San Mateo Smart Corridor equipment including, but not limited to, traffic signal controllers, switches, servers, CCTV cameras, wireless access points, and trailblazer signs. Kimley-Horn will provide the following services on an as-needed basis:

1. Track equipment maintenance and repair needs based on Smart Corridor equipment health status report.

2. Determine party responsible for troubleshooting and repair of non-functional equipment and initiate request for action.
3. Schedule and document maintenance activities and record the outcome of these activities.
4. Coordinate the administration of equipment maintenance, repair, or replacement. Assist with requests to responsible agencies and utility companies as necessary.
5. Troubleshoot equipment issues on-site and make repairs or reprogram when feasible.
6. Participate in regular conference calls to coordinate equipment maintenance and provide updates to the project team.
7. Report to C/CAG summarizing operational status and issues

Each month, Kimley-Horn will submit a progress report with each invoice to include description of the support services provided for that month.

Task 2 Cost: not to exceed \$24,000 per year, billable on a monthly basis, based on time-and-materials

Task 3: On-call as needed support services

In this task, Kimley-Horn will provide operational support to any agency throughout the San Mateo Smart Corridor for use of the KITS and Kadence system. As budget allows, these services may include but are not limited to:

1. Support for use of KITS screens, functions, maps, and other features
2. Support for setup of system detection
3. Support to bring new signals online
4. Support for configuration of new users
5. Support for configuration of new workstations
6. Support for compliance of the system on new OS patches
7. Review of Kadence operational performance
8. Support for setup of arterials, sections, and areas
9. Support for setup of congestion management plans
10. Support for operation of specific D4 features
11. Training for new users
12. Installation of new KITS features as identified in Task 1

Task 3 Cost: not to exceed \$10,000 per year, billable on a monthly basis, based on time-and-materials