

## REPORT TO CITY COUNCIL

**DATE:** APRIL 13, 2022

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** NATHAN HAMBURGER, CITY MANAGER

**BY:** DENICE THOMAS, COMMUNITY DEVELOPMENT DIRECTOR  
VALERIE DARBOUZE, ASSOCIATE PLANNER

**SUBJECT:** APPROVAL OF AGREEMENTS FOR CONSULTANT SERVICES WITH KIMLEY HORN AND ASSOCIATES, INC. IN CONNECTION WITH THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION AND PAYMENT OF COST BY LADYFACE VISTA, L.P.

---

The purpose of this item is to seek approval of an Agreement between the City and Ladyface Vista, L.P. to receive payment from Ladyface Vista, L.P. for the costs associated with the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND), pursuant to the California Environmental Quality Act (CEQA), by Kimley Horn and Associates, Inc. The agreement amount totals \$66,720, which includes the consultant's cost of preparing the IS/MND in the amount of \$55,600.00, with an additional \$11,120 to cover City costs to manage the preparation of the IS/MND, including preparing legal notices, and mailings, and consultant coordination. Both Agreements are to be considered by the City Council at the April 13, 2022 meeting and attached to this memorandum.

Ladyface Vista, L.P. has submitted an application for the Ladyface Vista office business park to build a five-building office development project on a vacant lot located at 29541-29555 Canwood Street, adjacent to the Los Angeles County Fire Station. City staff has determined that an IS/MND is necessary for this project. Kimley Horn and Associates, Inc. has submitted to the City a proposed scope of work to prepare the IS/MND, and staff finds the proposal acceptable. Kimley Horn and Associates, Inc. has lent its expertise to the City in the areas of transportation planning, transportation management systems design, landscape architecture, capital improvement construction plans preparation and its staff as an extension of City staff for land development including traffic plan plan checking review in the past to the satisfaction of the City Manager. Kimley Horn and Associates, Inc. adds environmental documentation preparation expertise to their consulting services capabilities. Staff has been pleased with the firm's quality of current and past work and timely product deliveries and respectfully requests approval of both agreements.

Both agreements has been reviewed by the City Attorney and approved as to form.

## **RECOMMENDATION**

Staff respectfully requests the City Council approve the following: (1) an Agreement for the Consultant Services between the City of Agoura Hills and Kimley Horn and Associates, Inc. for the preparation of a Mitigated Negative Declaration (Reimbursable) on a time-and-material basis for a not-to-exceed fee of \$55,600; and (2) an Agreement between the City of Agoura Hills and Ladyface Vista, L.P. for the payment of the above-mentioned fee plus the City Overhead fee of \$11,120 for a total of \$66,720.

### Attachments:

1. Agreement for Consultant Services for the Preparation of Environmental Documentation (Exhibit A Parts 1 and 2)
2. Agreement for Payment of Costs for the Preparation of Environmental Documentation (Exhibit B)

AGREEMENT FOR CONSULTANT SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT:	Kimley-Horn and Associates, Inc.
RESPONSIBLE PRINCIPAL OF CONSULTANT:	Attn: Jason Melchor, P.E
CONSULTANT'S ADDRESS:	1100 West Town and Country Road, Suite 700 Orange, CA 92868
CITY'S ADDRESS:	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attn: City Manager
PREPARED BY:	Valerie Darbouze
COMMENCEMENT DATE:	April 13, 2022
TERMINATION DATE:	April 13, 2023
CONSIDERATION:	Contract Price Not to Exceed: \$55,600

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN  
THE CITY OF AGOURA HILLS AND KIMLEY HORN AND  
ASSOCIATES, INC.**

**THIS AGREEMENT** is made and effective as of April 13, 2022, between the City of Agoura Hills, a municipal corporation ("City") and Kimley-Horn and Associates, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on April 13, 2022, and shall remain and continue in effect until tasks described herein are completed, but in no event later than April 13, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

**2. SERVICES**

Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

**3. PERFORMANCE**

In meeting its obligations under this Agreement, Consultant shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

**4. PAYMENT**

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed Fifty Five Thousand Six Hundred Dollars and Zero Cents (\$55,600) ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within

thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

**5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

**6. DEFAULT OF CONSULTANT**

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

**7. OWNERSHIP OF DOCUMENTS**

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation

of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## **8. INDEMNIFICATION**

Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent consultants serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any negligent acts or omissions of Consultant, its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Consultant shall defend Indemnitees at Consultant's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or Indemnitees. All duties of Consultant under this Section shall survive termination of this Agreement.

## **9. INSURANCE REQUIREMENTS**

Prior to commencement of work, Consultant shall procure, provide, and maintain, at Consultant's own expense, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

4) Professional Liability coverage: One million (\$1,000,000) per claim and in aggregate.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any

insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Consultant'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, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Consultant shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized



by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

## 10. INDEPENDENT CONSULTANT

A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services and tasks under this Agreement on behalf of Consultant shall not be City employees and shall at all times be under Consultant's exclusive direction and control. Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services and tasks. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents.

B. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services and tasks required by this Agreement. Consultant shall perform all services and tasks off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about, or to check on, the status of projects pertaining to the services and

tasks performed under this Agreement. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services and tasks hereunder. Consultant shall be responsible for and pay all salaries, wages, benefits and other amounts due to Consultant's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **11. PERS COMPLIANCE AND INDEMNIFICATION**

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a

manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **12. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of all local, State and Federal ordinances, 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 ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

## **13. RELEASE OF INFORMATION**

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or sub-consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **14. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii)

delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, California 91301  
Attention: City Manager

To Consultant: **Kimley-Horn and Associates, Inc.**  
**1100 West Town and County Road,**  
**Suite 700**  
**Orange, CA 92868**  
**Attention: Jason Melchor, P.E.**

**15. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

**16. LICENSES**

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**17. GOVERNING LAW**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**18. PROHIBITED INTEREST**

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-consultants for this project, during his/her tenure or for one year

thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**19. EXHIBITS**

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**20. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**21. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time that do not result in monetary changes; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**22. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF AGOURA HILLS**

---

Deborah Klein Lopez,  
Mayor

ATTEST:

---

Kimberly M. Rodrigues, MMC  
City Clerk  
*Date Approved by City Council:* \_\_\_\_\_

APPROVED AS TO FORM:

---

Candice K. Lee,  
City Attorney

**CONSULTANT**

Kimley-Horn and Associates, Inc.  
1100 West Town and County Road,  
Suite 700  
Orange, CA 92868  
Phone: (714) 939-1030  
Jason Melchor, P.E.

By:  Digitally signed by Jason Melchor,  
P.E. (CA PE No. 65218)  
Date: 2022.04.05 13:33:04-07'00'

Name:

Title:

By: 

Name: Jean B. Fares, TR2097

Title: Senior Vice President

**[Signatures of Two Corporate Officers Required]**

**EXHIBIT A**  
**TASKS TO BE PERFORMED**  
**INCLUDING PAYMENT RTES AND SCHEDULE**  
**SEE ATTACHED**



March 10, 2022

Ms. Valerie Darbouze  
Associate Planner, Planning Division  
City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301

Re: Proposal to Provide Consulting Services for the Ladyface Vista Professional Office Complex Project, City of Agoura Hills, California

Dear Ms. Darbouze:

Kimley-Horn ("Kimley-Horn" or "Consultant") is pleased to submit this Proposal to the City of Agoura Hills ("City" or "Client") to provide Consulting Services for the Ladyface Vista Professional Office Complex Project ("Project") CEQA documentation and supporting studies.

## **PROJECT UNDERSTANDING**

This Project understanding is based on Kimley-Horn's conversations with you, review of City-provided documentation, and understanding of City and Project issues. The City has preliminarily determined that an Initial Study (IS) leading to a Mitigated Negative Declaration (MND) is the appropriate CEQA documentation for the Project.

The approximately 3.23-acre Project site consists of one hillside parcel (APN # 2053-001-008) located at 29555 Canwood Street. The Project site is currently undeveloped and is generally bound by undeveloped land to the north, Canwood Street to the south, office uses to the east, and Los Angeles County Fire Department Fire Station 89 to the west. The Applicant proposes approximately 20,279 square feet (SF) of medical/general professional office uses, resulting in a floor area ratio (FAR) of 0.14:1. The proposed development would be comprised of five single-story buildings that would vary in size from 3,526 SF to 5,767 SF and would be clustered at the site's center, with parking (110 spaces and 6 bike racks) along the perimeter. Vehicular access to the site would be provided via one driveway at Canwood Street. The hillside would be retained with soil nail walls along the property's northern boundary and conventional walls along the eastern and western boundaries. There are seven surveyed oak trees on the Project site- all are proposed to remain in place with minor encroachment occurring on five of the seven trees.

Approximately 30 percent of the Project site is proposed to remain undeveloped. The Project's undeveloped areas and landscaping would be subject to compliance with the Los Angeles County Fire Department Fuel Modification requirements. The Project site has immediately available power from



Southern California Edison, water and sewer service from the Las Virgenes Water District, natural gas from Sempra Gas, and internet service from Spectrum.

The Project site is designated Business Park– Office Retail (BP-OR) and zoned Business Park– Office Retail (BP-OR) with a Freeway Corridor District Overlay (FC). Preliminarily, the requested entitlements include: Conditional Use Permit (CUP-2021-004); Site Plan/Architectural Review (SPR-2021-007); Tentative Tract Map (TRM-2021-001); Oak Tree Permit (OAK-2021-0012); Sign Permit (SIGN-2021-0013).

The City has provided to Kimley-Horn the Project Plans and the following Applicant-prepared studies:

- Biological Resources:
  - *Biological Resources Inventory and Impact Analysis, Ladyface Vista Office Project* (Biological Resources Assessment) (Envicom Corporation, May 2021);
  - *Protected Oak Tree Report, Ladyface Vista Office Project* (Tree Inventory) (Envicom Corporation, May 2021);
- Cultural Resources: *Cultural Resources Phase I Assessment for Ladyface Vista Office Project* (Cultural Resources Assessment) (Envicom Corporation, March 2021);
- Geology and Soils: *Geotechnical Site Evaluation for Ladyface Vista Business Center, 29555 Canwood Street, Agoura Hills, California* (Geotechnical Evaluation) (Gorian & Associates, Inc., May 2021);
- Noise: *Noise Study for Ladyface Vista Professional Center* (Noise Study) (Envicom Corporation, May 2021);<sup>1</sup>
- Transportation:
  - *Local Transportation Impact Assessment for Canwood Office Campus Project* (TIA) (Linscott Law & Greenspan Engineers [LLG], May 2021);
  - *Vehicle Miles Traveled Assessment* (VMT Assessment) (LLG, May 2021)

The City is seeking a consultant to prepare environmental compliance documentation for the proposed Project.

---

<sup>1</sup> This Study does not include a Vibration Assessment, which is required to address the following State CEQA Guidelines Appendix G threshold: *Would the Project generate excessive groundborne vibration or groundborne noise levels?* Kimley-Horn will address vibration as part of the Initial Study.

## SCOPE OF SERVICES

Kimley-Horn will provide the Scope of Services specifically set forth below. This Scope of Services has been prepared based on Kimley-Horn's conversations with Ms. Valerie Darbouze, our review of City-provided documentation, and our understanding of the City and Project issues. This Scope assumes:

- Baseline conditions, Project Description, and approach will not change once the City issues the Authorization to Proceed (ATP).
- The City will provide the following Project data to support the analysis:
  - Applicant-prepared plans (e.g., architectural, grading, and landscaping) (Electronic PDF format),
  - Detailed construction phasing and estimated grading/excavation/paving quantities,
  - Detailed listing of all water/energy conservation measures that will be incorporated into the Project's design. Any planned sustainable Project features should also be provided.
- The following technical studies will be prepared by others and provided to Kimley-Horn for inclusion in the IS/MND:
  - Phase I Environmental Site Assessment (Phase I)
  - Preliminary Hydrology Study and Preliminary Low Impact Development (LID) Report; and
  - Utilities and Service Systems Analysis (e.g., water supply and sanitary sewer analyses)Concerning these three studies, as well as the Applicant-prepared studies outlined in the *Project Understanding* Section above, it is assumed the City will review/approve and confirm their adequacy for inclusion in the IS/MND. Kimley-Horn will not conduct a peer review of any Applicant-prepared study.
- All technical studies provided to Kimley-Horn in both WORD and PDF formats that will be unlocked (printable and accessible) and have Optical Character Recognition (OCR), pursuant to recent State Clearinghouse requirements.
- The City will: prepare, distribute, and file (at the State Clearinghouse and County, as needed) all CEQA Notices; and be responsible for any required radius mailing, newspaper notices, and payment of California Department of Fish and Wildlife (CDFW) fees.
- For each deliverable, Kimley-Horn will:
  - Respond to one reconciled set of City comments – additional City review cycles are excluded;
  - Provide a “redline copy” that reflects the proposed edits and addresses the City's comments; and
  - Provide a “check copy” for City approval prior to finalizing;
- City comments will not raise new substantive issues requiring re-analysis; and
- All deliverables will be submitted to the City in electronic format (WORD and PDF).

## **TASK 1.0: PROJECT SCOPING**

### **Task 1.1: Project Kick-Off**

This Task includes a Kick-Off Meeting with the City to discuss the “CEQA Project” in greater detail. This initial meeting is a key milestone, which is vital to the Project’s success and CEQA compliance. The primary objectives will be to confirm the City’s expectations and Project goals and develop/refine the Project Description. The analysis parameters, construction details, buildout conditions, scheduling, and overall communications protocol will also be established. Prior to the meeting, Kimley-Horn will distribute a Kick-Off Meeting Agenda and Data Needs Technical Memorandum (TM).

### **Task 1.2: Research and Investigation**

Kimley-Horn will collect and review readily available reference data, including planning and policy documentation from the City, County of Los Angeles, State and federal agencies, and other agencies that may be affected by the Project. Data obtained through this Task will be foundational to the environmental documentation and incorporated into the analysis, as appropriate.

**Task 1.0 Deliverables:** Kick-Off Meeting Agenda; Kick-Off Meeting Minutes and Action Items; Data Needs TM

## **TASK 2.0: PROJECT DESCRIPTION**

Building on the CEQA Project information obtained at the Project Kick-Off Meeting, Kimley-Horn will prepare a Draft Project Description for City review and approval. The Project Description will detail the Project’s location, environmental setting, background and history, characteristics, discretionary actions, goals/objectives, construction schedule/phasing, and required permits and approvals. Kimley-Horn will prepare exhibits to depict the regional and site vicinity and key Project components to support the environmental analyses.

**Task 2.0 Deliverables:** Draft and Final Project Descriptions

## **TASK 3.0: TECHNICAL ANALYSES**

Kimley-Horn will conduct the technical analyses outlined below for inclusion in the IS/MND. No separate stand-alone technical reports will be prepared, and only modeling outputs will be provided as appendices to the IS/MND. Additional studies/analyses may be identified during IS preparation.

### **Task 3.1: Air Quality Analysis**

Kimley-Horn will conduct an air quality analysis of the proposed Project in accordance with the South Coast Air Quality Management District’s (SCAQMD’s) recommended methodologies. Fugitive dust and

equipment exhaust emissions from construction activities will be quantitatively evaluated using the California Emissions Estimator Model (CalEEMod). The air pollutant emissions during construction will be compared to the SCAQMD regional thresholds of significance. Operational emissions (i.e., area and mobile sources) will be quantified and compared to SCAQMD thresholds of significance. Modeled emissions will also be compared to SCAQMD Localized Significance Thresholds to determine whether localized impacts would occur. Where necessary, carbon monoxide hotspots will be evaluated. Project consistency with the SCAQMD's latest Air Quality Management Plan (AQMP) will be addressed. Additionally, Kimley-Horn will qualitatively address the Project's potential to impact human health. If necessary, mitigation measures will be identified and incorporated, to reduce the Project's potentially significant air quality impacts.

**Task 3.2: Energy Impacts Analysis**

Kimley-Horn will analyze the Project's energy implications (in an IS Section) pursuant to Public Resources Code §21100(b)(3) and State CEQA Guidelines §15126. 2[b], Appendix F, and Appendix G.III. State CEQA Guidelines require analysis of the Project's potential to result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation. Additionally, the Project's potential to conflict with or obstruct a state or local plan must be evaluated. Accordingly, Kimley-Horn will analyze energy consumption associated with short-term construction activities, long-term operations, buildings, and transportation-related energy during construction and operation. Project energy consumption related to electricity, natural gas, and transportation fuel for vehicle trips as well as the fuel necessary for Project construction will be quantified.

In addition to building code compliance, other relevant considerations may include, among others, the Project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the Project. The Project's effects on local and regional energy supplies and on requirements for additional capacity will also be analyzed. Additionally, if necessary, the assessment of environmental impacts on energy resources will include mitigation measures to reduce inefficient and unnecessary consumption of energy. This Scope assumes the City will provide Kimley-Horn a detailed listing of all water/energy conservation features that will be incorporated into the Project's design. Any planned sustainable Project features should also be detailed.

**Task 3.3: Greenhouse Gas Emissions Analysis**

Kimley-Horn will conduct a greenhouse gas emissions analysis of the proposed Project. Kimley-Horn will inventory greenhouse gas (GHG) emissions (i.e., nitrous oxide, methane, and carbon dioxide) from direct sources during Project construction (i.e., construction equipment) and during Project operations (i.e., Project-generated vehicular traffic, on-site combustion of natural gas, and operation of any landscaping equipment), and from indirect sources during Project operations. The emissions

inventory will be compiled utilizing CalEEMod. Consistency with applicable GHG reduction plans including applicable City plans and Statewide GHG emissions reduction strategies (e.g., California Air Resources Board [CARB] Scoping Plan and Regional Transportation Plan) will be addressed, as applicable. If necessary, mitigation measures will be identified and incorporated, to reduce the Project's potentially significant GHG impacts.

**Task 3.0 Deliverables (per analysis): Modeling Outputs****TASK 4.0: ASSEMBLY BILL 52 NATIVE AMERICAN COMMUNICATIONS**

The City has distributed the Assembly Bill (AB) 52 Native American letters needed for consultation initiation. As of this writing, the City has not received a request for consultation. Should the City receive such a request, the City would be required to enter a consultation process. This Task assumes BCR Consulting Principal David Brunzell and one Kimley-Horn Staff will be available during a maximum of one conference call with the City and participating tribes (as necessary), and to participate in reasonable email and telephone correspondence. Additional services (e.g., consultation or meetings) will be provided on a time-and-materials basis. Noticing results (e.g., AB 52 initiation letter and subsequent responses from consulting tribes) will be incorporated into the IS/MND.

**TASK 5.0: PUBLIC REVIEW IS/MND****Task 5.1: Administrative Public Review IS/MND**

Kimley-Horn will prepare an IS in accordance with Public Resources Code §§21080(c)-(e) and State CEQA Guidelines §§15060-15065. The IS will be patterned after State CEQA Guidelines Appendix G and will describe the Project's location, environmental setting/baseline conditions, and characteristics. The IS' main body will consist of an environmental checklist and the supporting environmental analyses. Kimley-Horn will explain all responses and "No Impact" responses will be supported by cited information sources. The responses will consider the whole action involved with the Project/all potential impacts: on- and off-site, Project- and cumulative-level, direct and indirect, and short-term construction and long-term operational. For all IS sections, the explanation of each issue will also identify the significance criteria or threshold used to evaluate each question. Preliminarily, it is assumed the IS will confirm the Project would not have a significant effect on the environment, and an MND is the appropriate CEQA document.

**Task 5.2: Public Review IS/MND Completion**

Kimley-Horn will respond to one reconciled set of City comments on the Administrative Public Review IS/MND. Kimley-Horn will provide the City with a redline copy that reflects the proposed edits and addresses the City's comments, and a check copy for approval prior to finalizing.

**Task 5.3: Graphics**

The IS/MND will include approximately 12 exhibits to enhance the written text and clarify the Project's environmental impacts. Our in-house graphic design team will create black and white/full-color exhibits, as well as covers and dividers for the IS/MND and Appendices. This Task assumes the City will provide high-resolution plans and maps.

**Task 5.0 Deliverables:** Administrative Public Review IS/MND; and Public Review IS/MND .

**TASK 6.0: CEQA NOTICES AND STATE CLEARINGHOUSE FORMS**

The City will prepare, distribute, and file all CEQA Notices (i.e., Notice of Intent (NOI), Notice of Completion (NOC), and Notice of Determination (NOD)); see *Scope of Services* assumptions above.

**TASK 7.0: FINAL IS/MND AND MITIGATION MONITORING AND REPORTING PROGRAM****Task 7.1: Administrative Final IS/MND (Responses to Public Review Comments)**

Kimley-Horn will respond to written comments received on the IS/MND during the public review period. Kimley-Horn will prepare responses to relevant environmental issues and will incorporate them in the IS/MND. It is noted that the extent of public/agency comments that will result from the public review process is presently unknown. Kimley-Horn has budgeted conservatively, assuming a maximum of 20 hours for completion of the Administrative Responses to Comments. Should the level of comments and responses exceed the assumed effort, Kimley-Horn will provide additional services on a time-and-materials basis.

**Task 7.2: Final IS/MND (Responses to Public Review Comments) Completion**

Kimley-Horn will respond to one reconciled set of City comments on the Administrative Responses to Comments. Kimley-Horn will provide the City with a redline copy that reflects the proposed edits and addresses the City's comments, and a check copy for approval prior to finalizing/reproduction.

**Task 7.3: Mitigation Monitoring and Reporting Program (MMRP)**

Kimley-Horn will prepare a MMRP to be defined through working with the City to identify appropriate monitoring steps/procedures, to provide a basis for monitoring such measures during and upon Project implementation. The MMRP Checklist will indicate the mitigation measure number, mitigation measure, monitoring milestone, method of verification (documentation, field checks, etc.), and a verification section for the initials of the verifying individual, date of verification, and pertinent remarks.

**Task 7.0 Deliverables:** Administrative and Final Responses to Public Review Comments; and Administrative and Final MMRP

**TASK 8.0: PROJECT MANAGEMENT AND MEETINGS**

**Task 8.1: Project Management**

Ms. Rita Garcia will be responsible for Project Management, including overall Project Team management and supervision, and ongoing consultation with the City. Ms. Garcia will coordinate with technical staff, consultants, and support staff, toward completion of the IS/MND. This Task assumes a six-month schedule.

**Task 8.2: Meetings and Hearings**

Ms. Garcia and one additional Kimley-Horn Staff will attend the assumed meetings, as outlined below. This Task assumes a maximum of 12 hours. Should the City determine that additional meetings beyond the assumed are required, services will be provided on a time-and-materials basis.

**Assumed Meetings/Hearings (Virtual):** 1 Project Kick-Off Meeting, 1 Progress Meeting, 1 Planning Commission Hearing

**Task 8.0 Deliverables** (per meeting, as appropriate): Agenda; Minutes and Action Items

**PRELIMINARY SCHEDULE**

We will provide our services as expeditiously as practicable with the goal of meeting the Preliminary Schedule outlined below. Opportunity exists for accelerating the schedule, based on review cycles, which will be verified with the City.

Project Kick-Off Meeting	Month 1
Kimley-Horn Prepares Draft Project Description	Month 1
City Reviews Draft Project Description	Month 1
Kimley-Horn Completes Project Description	Month 1
Kimley-Horn Prepares Administrative Public Review IS/MND	Months 1-3
City Reviews Administrative Public Review IS/MND	Month 4
Kimley-Horn Prepares Check Copy Public Review IS/MND	Month 4
City Approves Check Copy Public Review IS/MND	Month 4
Kimley-Horn Completes/Publishes Public Review IS/MND	Month 4
30-Day IS/MND Public Review	Month 5
Kimley-Horn Prepares Administrative Final IS/MND and MMRP	Month 6
City Reviews Administrative Final IS/MND and MMRP	Month 6
Kimley-Horn Completes Final IS/MND and MMRP, Submits Responses to Agencies	Month 6
Planning Commission Hearing Attendance	TBD



## 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 the Fee and Expenses Table presented below, except that additional efforts associated with Tasks 7.1 and 8.2 will be performed on a time-and-materials basis, if required. Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the City. Individual Task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among Tasks, as necessary.

### Fee and Expenses Table

Task #	Task	Fee
1.0	Project Scoping	\$ 3,800
2.0	Project Description	\$ 4,500
3.0	Technical Studies	
3.1	Air Quality Assessment	\$ 6,500
3.2	Energy Assessment	\$ 3,200
3.3	GHG Emissions Assessment	\$ 3,700
4.0	AB 52 Communications	\$ 1,100
5.0	Public Review IS/MND	\$ 18,500
6.0	CEQA Notices	\$ 0
7.0	Final IS/MND & MMRP	\$ 9,000
8.0	Project Management & Meetings	
8.1	Project Management	\$ 2,800
8.2	Meetings	\$ 2,500
<b>Total Fee and Expenses</b>		<b>\$55,600</b>

Labor fee will be billed on an hourly basis according to our then-current rates. The Kimley-Horn Hourly Labor Rate Schedule is effective through June 30, 2022. As to these Tasks, 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 as to these Tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the Project may be billed hourly. All permitting, application, and similar Project fees will be paid directly by the Client.

Invoices will be provided monthly. 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 "Client" shall refer to **City of Agoura Hills**.

Kimley-Horn, to expedite invoices and reduce paper waste, 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 this Agreement in the spaces provided below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your project and enable us to 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](mailto:rita.garcia@kimley-horn.com), if you have any questions.

Sincerely,

**KIMLEY-HORN**



By: Rita Garcia  
Project Manager



Sri Chakravarthy, P.E., T.E.  
Vice President  
P.E. No C73629

Attachments: Request for Information  
Kimley-Horn Standard Provisions

**CITY OF AGOURA HILLS**

By: \_\_\_\_\_  
(signature)

(print name) \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_  
\_\_\_\_\_

**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 1.10 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.** The Consultant shall not be required to execute certifications 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.

AGREEMENT BETWEEN APPLICANT AND THE CITY OF AGOURA HILLS  
FOR PAYMENT OF COSTS IN CONNECTION WITH THE PREPARATION OF  
ENVIRONMENTAL DOCUMENTATION

NAME OF APPLICANT:	Ladyface Vista, L.P. Martin Teitelbaum
APPLICANT'S ADDRESS:	29601 Agoura Road Agoura Hills, CA 91301
CITY'S ADDRESS:	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attention: City Manager
COMMENCEMENT DATE:	April 13, 2022
TERMINATION DATE:	April 13, 2023
CONSIDERATION:	\$66,720.00



**AGREEMENT FOR PAYMENT OF COSTS BETWEEN  
THE CITY OF AGOURA HILLS AND LADYFACE VISTA, L.P.  
IN CONNECTION WITH THE PREPARATION OF  
ENVIRONMENTAL DOCUMENTATION**

THIS AGREEMENT is made this 13th day of April, 2022 by and between the City of Agoura Hills, a general law city and municipal corporation (hereinafter "City"), and Martin Teitelbaum representing Ladyface Vista, L.P. (hereinafter "Applicant"), who agree as follows:

1. Applicant requests that California Environmental Quality Act documentation ("environmental documentation") be prepared for and under the direction of City, but at Applicant's expense, for consideration in connection with preparation of a Mitigated Negative Declaration for the development of an office business park proposed at 29541-29555 Canwood Street, Agoura Hills, AIN: 2053-001-008.

2. Costs for preparation of the environmental documentation will be as follows:

a. Costs incurred pursuant to an agreement between Kimley Horn and Associates, Inc. (hereinafter "Consultant") and City for preparation of the environmental documentation, the scope of work of which is attached hereto as Exhibit A. Consultant's estimate of the maximum cost of Consultant's services in the preparation of the environmental documentation is (\$55,600.00) ("Consultant's Cost").

b. Staff time for research, writing, reviewing and processing, calculated by the number of hours spent times the current hourly rate of the employee or contractor, plus general overhead costs. This amount is estimated to be 20 percent of Consultant's Cost, i.e. Eleven Thousand One Hundred Twenty Dollars and Zero Cents (\$11,120.00) ("Administrative Cost").

c. Additional consultant and administrative costs not included within the estimates in subsections (a) or (b) of this Section. To the extent such additional costs arise out of (1) new information supplied to the City regarding the project or its environmental impacts following commencement of the draft environmental document; (2) incomplete or inaccurate information supplied to the City by Applicant or Applicant's agents; or (3) revisions to the environmental document made necessary, in the City's judgment, by changes to the Applicant's project ("Additional Cost").

3. Applicant hereby agrees to pay City in full for all costs and expenses incurred by City for preparation of the environmental documentation. Concurrently with execution of this Agreement, Applicant shall pay City the full amount of Sixty Six Thousand Seven Hundred Twenty Dollars and Zero Cents (\$66,720.00) (Consultant's Cost plus Administrative Cost) to defray the costs of preparation of the environmental documentation and agrees to pay such Additional Costs or other additional sums as may

be billed by City for preparation of the environmental documentation within fifteen (15) days from the date of any invoice, or prior to consideration of the Project by the City Planning Commission or City Council, whichever first occurs.

4. Any excess of the amount deposited over the actual cost incurred in connection with preparation of the environmental documentation shall be refunded by City to Applicant within fifteen (15) days from the date the Notice of Determination for the Project is filed with the County Clerk.

5. In the event Applicant abandons the Project and upon written request from Applicant directed to City's Community Development Director, City will terminate or suspend performance of work by Consultant under the contract between City and Consultant. Applicant shall pay City for all costs incurred by City pursuant to its contract with Consultant and for all administrative and actual costs incurred by City.

6. Applicant shall not communicate with or discuss any matters relating to the preparation of environmental documentation with Consultant without prior approval from City's Community Development Director or his or her duly authorized representative. Applicant shall address all questions regarding scheduling, content or distribution of the environmental documentation, or any related matters, to City staff, and not to Consultant. In no case may Applicant direct Consultant as to how to undertake or prepare Consultant's work product. The purpose of this provision is to ensure that the environmental documentation is objective and is prepared on behalf of City, and not a document prepared for purposes of advocating approval of the Project.

7. Applicant hereby acknowledges and agrees as follows:

a. City has sole discretion to select which of its employees are assigned to work on Applicant's applications;

a. City has sole discretion to determine which persons City will hire as employees and contractors to work on the Applicant's applications;

c. City has sole discretion to direct the work and evaluate the performance of the employees and contractors whom the City hires to work on Applicant's applications and City retains the right to terminate or replace at any time any employee or contractor who is assigned to work on Applicant's applications;

d. City has sole discretion to determine the amount of compensation paid to employees and contractors hired by City to work on environmental documentation.

8. City and Applicant hereby acknowledge and agree that processing of Applicant's application is not contingent on the hiring of any specific contractor or consultant.

9. City and Applicant hereby acknowledge and agree that the Applicant's duty to reimburse the City is not contingent upon the City's approval or disapproval of the Project or upon the result of any action of the City. Applicant acknowledges and understands that this Agreement in no way obligates the City to approve any entitlements or environmental documentation for the Project. The City and its elected and appointed officials retain sole discretion to either approve or deny any of the environmental documents or entitlements that are subject to or related to this Agreement and needed to effectuate the Project. Furthermore, the Applicant acknowledges that the City makes no promise, representation or warranty, express or implied, as to the timing of City's processing of the Project.

10. Conflict of Interest. Applicant makes the following warranties for the 12-month period preceding the submission of its application for the Project. Applicant warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to the Consultant, or any of the Consultant's agents or employees. Applicant further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee ("City Official") that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 *et seq.*). Furthermore, during the existence of City's contract with the Consultant, Applicant shall not enter into or cause any other person to enter into any financial relationship on behalf of or for the benefit of Applicant with (i) the Consultant or (ii) any City Official. During such period, Applicant shall not propose or cause any other person to propose to enter into any future financial relationship on behalf of or for the benefit of Applicant with (i) the Consultant or (ii) any City Official. If Applicant cannot provide such warranty because Applicant has entered into an arrangement to pay financial consideration to, or made payment to, a City Official that would create a legally cognizable conflict of interest, Applicant shall then be obligated to disclose such information to the Community Development Director in writing within five (5) days of the execution of this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties thereto with respect to the subject matter of this Agreement. City and Applicant acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

12. Amendment. This Agreement, including any exhibits hereto if applicable, may only be amended by a written document signed by the parties thereto.

13. Interpretation. This Agreement is deemed to have been prepared by all parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of contracts under the laws of the State of California.

14. Attorney's Fees. In the event that City is required to initiate litigation to enforce this agreement or collect any sum due hereunder, the City shall be entitled to

recover its reasonable attorneys' fees and costs of suit should the City prevail.

15. Assignment. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, successors, and assigns of the parties. Notwithstanding the foregoing, any reimbursement rights hereunder shall remain with Applicant unless Applicant specifically assigns those rights to a successor by a written assignment delivered to City. Applicant may assign its rights and transfer its obligations under this Agreement only with City's prior written consent, which shall not be unreasonably withheld or delayed. Immediately upon the granting of such consent and City's receipt of a duly executed assignment and assumption agreement by Applicant and Assignee in accordance with the requirements of this Agreement, Applicant shall be released from all liability and obligations hereunder.

16. No Agency, Joint Venture or Partnership. City and Applicant hereby renounce the existence of any form of agency, relationship, joint venture, or partnership between City and Applicant and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating such a relationship between City and Applicant.

17. Governing Law. This Agreement shall be governed by the laws of the State of California and the exclusive venue for all disputes arising hereunder shall be the Superior Court for the County of Los Angeles.

18. Effect of Waiver. No Waiver of any provision of this Agreement shall be considered a waiver of any provision or any subsequent breach of the same or any other provision including the time for performance of any such provisions. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent that party from any other remedy provided in this Agreement or at law.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

20. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Applicant warrants and represents that he or she has the authority to execute this Agreement on behalf of Applicant and has the authority to bind Applicant to the performance of its obligations hereunder.

21. Notice and Payments. All written notices and payments to be given or made under this Agreement shall be transmitted by personal delivery or by mail. Notices or payments given or made by mail shall be addressed as follows:

IF TO THE CITY:

City of Agoura Hills  
Community Development Department  
30001 Ladyface Court

Agoura Hills, CA 91301  
Attn: City Manager

IF TO THE APPLICANT:

Lady Face Vista LP  
29601 AGOURA RD  
AGOURA HILLS CA 91301  
MARTIN@HTCONSTRUCT.COM

When so addressed, notices or payments shall be deemed given or made upon deposit in the United States Mail, postage prepaid. In all other instances, notices or payments shall be deemed given or made at the time of actual delivery. Changes may be made in the names of persons to whom notices or payments are to be given or made, or in the addresses to which notices or payments are to be given or made, by the giving of notice pursuant to this section.

[Signatures provided on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF AGOURA HILLS:

By: \_\_\_\_\_  
Nathan Hamburger,  
City Manager

ATTEST:

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee  
City Attorney

APPLICANT:

By:           MTO            
\_\_\_\_\_  
Name:           MARTIN TEITELBAUM            
Title:           GENERAL PARTNER            
          LADYFALE VISTA LP          

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_