

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
WITH THE CITY OF AGOURA HILLS**

NAME OF CONSULTANT: KIMLEY-HORN AND ASSOCIATES, INC.

RESPONSIBLE PRINCIPAL
OF CONSULTANT: BILL DVORAK
PRINCIPAL-IN-CHARGE

CONSULTANT'S ADDRESS: 5520 TOPANGA CANYON BLVD
WOODLAND HILLS, CALIFORNIA 91367

COMMENCEMENT DATE: September 1, 2007

TERMINATION DATE: August 31, 2010

**CONTRACT WITH THE CITY OF AGOURA HILLS
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

FOR PROFESSIONAL ENGINEERING SERVICES

THIS CONTRACT, is made and entered into in the CITY of Agoura Hills on this 1st day of September 2007, by and between CITY OF AGOURA HILLS, a municipal corporation, herein After referred to as CITY, and KIMLEY-HORN AND ASSOCIATES, INC., hereinafter referred to as "CONSULTANT"

W I T N E S S E T H:

WHEREAS, CITY desires to obtain the services of a competent and experienced CONSULTANT to perform related professional duties as set forth in Exhibit "A" attached and made a part of this agreement; and

WHEREAS, CONSULTANT possesses the required competence and experience and is available to provide the required service for the period of this Agreement.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM.** The term of this Contract shall be from September 1, 2007, through August 31, 2010. This Contract may be extended for a maximum of two, one-year extensions upon the expiration of the initial contract, upon mutual consent of the parties.

2. **CITY'S OBLIGATIONS.** After CONSULTANT has performed the services as specified in this Contract, CITY will pay, and CONSULTANT shall receive, payments based upon the actual services received by CITY and the fees charged by CONSULTANT at the rates established as shown in Exhibit "B" attached hereto and made a part of this Agreement.

Payments to the CONSULTANT shall be made within 30 days after receipt of an original invoice from the CONSULTANT and acceptance of the services.

3. **CONSULTANT'S OBLIGATIONS.** For and in consideration of the payments and agreements herein, before-mentioned to be made and performed by CITY, CONSULTANT agrees with CITY to furnish the services and to do everything required by this CONTRACT, the scope of work attached hereto as Exhibit "A", and the Proposal submitted by the CONSULTANT. Without limiting the generality of the foregoing, CONSULTANT represents on behalf of itself and all subcontractors engaged for the performance of this Contract that only persons authorized to work in the United States, pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws, shall be employed in the performance of the work hereunder.

4. **HOLD HARMLESS AND INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify, and hold harmless CITY, its officials, officers, employees, representatives, and agents, from and against all claims, lawsuits, liabilities or damages of whatsoever nature arising out of or in connection with any intentional misconduct or negligent act or omission of CONSULTANT, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Contract. The CONSULTANT shall thoroughly investigate any and all claims and

indemnify the CITY and do whatever is necessary to protect the CITY, its officials, officers, employees, agents, and representatives as to any such claims, lawsuits, liabilities, expenses, or damages.

5. INSURANCE. CONSULTANT shall furnish CITY with proof of the following minimum insurance coverages prior to the execution hereof:

- | | | | |
|----|---|-------------|-----------------------|
| a) | General Comprehensive Liability
(must be written on an occurrence form and include bodily injury, property damage) | \$2,000,000 | Combined single limit |
| b) | Automobile Liability for owned autos and non-owned/hired autos (must be written on an occurrence form) | \$2,000,000 | |
| c) | Professional Liability/Errors & Omissions | \$2,000,000 | |
| d) | Worker's Compensation | \$ 250,000 | Statutory |

Coverage 5.a) and b) shall also include a CITY approved endorsement form or a copy of insurance policies providing an additional insured endorsement covering the CITY, its agents and employees, and all of the foregoing insurance shall include an unequivocal clause stating that none of the required insurance shall be canceled or materially changed without 30 days prior written notice to the CITY. For coverage 5.a) and b) a CITY-approved endorsement or certified copy of insurance policies providing coverage shall be submitted to and approved prior to commencement of any work.

6 AMENDMENTS. Any amendment, modification, or variation from the terms of this Contract shall be in writing and shall be effective only upon approval by the City Engineer of the CITY.

7. TERMINATION. CONSULTANT may not terminate this Contract except upon 30 days written notice, and upon receiving the prior written consent of CITY, which shall not be withheld unreasonably. CITY may terminate this Contract without cause, upon thirty (30) days written notice to CONSULTANT in which case CONSULTANT shall be entitled to receive compensation for the reasonable value of CONSULTANT'S services performed through the termination date. Furthermore, if, during the term of this Contract, CITY determines that CONSULTANT is not faithfully abiding by any term or condition contained herein, CITY may notify CONSULTANT in writing of such defect or failure to perform; such notice must give CONSULTANT a 24-hour notice of time thereafter in which to perform said work or cure the deficiency. If CONSULTANT has not performed the work or cured the deficiency within the time specified in the notice, or if a similar failure to perform or deficiency is repeated, such shall constitute a breach of this Contract and CITY may terminate this Contract immediately by written notice to CONSULTANT to said effect. In said event, CONSULTANT shall be entitled to the reasonable value of its services performed up to the day it received CITY's Notice of Termination, minus any offset from such payment representing the CITY's damages from such breach. Failure of CONSULTANT to provide CITY staff reports, exhibits, charts, graphs, and other written material, which meets or exceeds reasonable professional standards, shall cause damages which are unascertainable at the inception hereof, entitling CITY to offset any payments due on the contract in the form of liquidated damages not exceeding the balance due on the contract, and not as a penalty. CITY reserves the right to delay any post-termination payment until completion or confirmed abandonment of the project, as may be determined in the CITY's sole discretion, so as to permit a full and complete

accounting of costs. In no event shall CONSULTANT be entitled to receive in excess of the compensation quoted in its proposal/bid.

8. INCORPORATION BY REFERENCE. The Request for Proposal and the Proposal Submission are hereby incorporated in and made a part of this Contract. In the event of a conflict the priority of documents shall be: (1) This Agreement; (2) Request for Proposal; (3) Proposal Submission.

9. ASSIGNMENT/SUCCESSORS. Neither party hereto shall assign any of the benefits or burdens hereunder without the prior written consent of the other party hereto. Assigns and successors to the parties hereto shall be bound by the provisions hereof.

10. COMPLETE AGREEMENT. This written Contract, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

11. TIME OF PERFORMANCE. Time is of the essence in this Contract.

12. ANTI-DISCRIMINATION. In the performance of the terms of this Contract, CONSULTANT agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of the age, race, color, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred to Labor Code Section 1735.

13. AUDIT. CITY shall have the option of inspecting and/or auditing all records and other written materials used by CONSULTANT in preparing its statements to CITY as a condition precedent to any payment to CONSULTANT.

14. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

CITY: Ramiro Adeva, City Engineer
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

CONSULTANT: Kimley-Horn and Associates, Inc.
5550 Topanga Canyon Blvd
Woodland Hills, California 91367

15. AUTHORITY TO EXECUTE AGREEMENT. Both CITY and CONSULTANT do covenant that each individual executing this Contract on behalf of each party is a person duly authorized and empowered to execute Contract for such party.

16. CONFLICT OF INTEREST. Neither CONSULTANT nor any employees, agents, or subcontractors of CONSULTANT who will be assigned to this project, to the best of CONSULTANT'S knowledge, own any property or interest in properties, business relationships, or sources of income which may be affected by the performance of this Contract. Should either party hereto learn of any such interest, income source, or business relationship, such fact shall immediately be brought to the attention of

the other party hereto. If the parties thereupon cannot mutually agree upon a means to eliminate the conflict CITY may terminate the agreement immediately on the same conditions applicable when CONSULTANT fails to provide to CITY staff reports, exhibits, charts, etc. (See Section 7 hereof).

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

ATTEST:

CITY OF AGOURA HILLS,
a Municipal Corporation

Kimberly M. Rodrigues, City Clerk
City of Agoura Hills

By: _____
Dan Kuperberg, Mayor
City of Agoura Hills

APPROVED AS TO FORM:

Craig Steele, City Attorney
City of Agoura Hills

CONSULTANT:

Kimley-Horn and Associates, Inc

5550 Topanga Canyon Blvd

Woodland Hills, California 91367

By: _____
Name, Title

By: _____
Name, Title

EXHIBIT A
SCOPE OF SERVICES

I. ENGINEERING SERVICES

A. Engineering Services

When requested:

1. Analyze CITY's needs and prepare, recommend, and administer long-and short-range programs consistent with the economic capabilities of the CITY.
2. Review and comment on planning programs and land development projects.
3. Recommend regulations and ordinances pertaining to engineering matters.
4. Advise CITY as to engineering and construction financing available from other governmental agencies and, when so requested, prepare and initiate application for such funding.
5. Perform technical plan review of public improvement plans submitted to the CITY, including, but not limited to, street improvements, sewer plans, storm drain plans, traffic-related plans (signal, signing and striping, traffic control, etc) and grading plans.
6. Perform technical checks on land development projects, Final Maps and other Subdivision Map Act documents, submitted to the CITY for approval.

B. City Traffic Engineering Services

1. In the capacity of City Traffic Engineer, advise and assist CITY's departments, commissions, committees, and City Council and provide interface with regional and State transportation agencies.
2. Assess the potential traffic impact of proposed development/redevelopment projects.
3. When requested, prepare engineering reports to the City Council in response to requests for traffic calming and traffic control device installations and modifications such as stop signs, speed humps, crosswalks, traffic channelization and speed zones.
4. Prepare grant applications for funding from federal, state and regional agencies for traffic safety studies and improvements.
5. Identify, review, and develop recommendations for corrective measures at locations experiencing unusually high accident rates.
6. Provide technical advice to CITY's staff in connection with the maintenance and operation of CITY's traffic signal facilities, and any other traffic related items.

C. Public Works Permit And Inspection

When requested:

1. Provide construction observation of permit work on development projects within the public right-of-way.

D. Development Review and Control

When requested:

1. Check all improvement plans for facilities under the jurisdiction of CITY and prepared by private developers.

3. Establish performance/labor and material bond amounts, grading bond amounts, and development fee amounts when required.

4. Provide field inspection during construction, until the issuance of a Certificate of Occupancy, of such improvements by private developers, and at the proper time, recommend acceptance of the work.

5. Provide such necessary and related functions as are normal practice of CITY in the CITY Engineering review of private developments.

E. Capital Projects

When requested:

1. Prepare the design, construction plans, specifications, estimates and contract documents.

2. Provide design surveying, construction surveying, and construction observation together with construction administration.

3. Coordinate with utility companies in the relocation of affected utilities.

4. Process the plans and specifications through other agencies for review and approval in connection with special funding programs and permits when required.

5. Provide field inspection during construction of capital improvements by contractors, and at the proper time, recommend acceptance of the work.

F. Pavement Management System (PMS) Update

1. Prepare PMS update which is completed every 3 years (last update done in 2005). Update should follow similar format as current PMS document. Any revisions to format or content of PMS manual shall first be approved by the City Engineer.

2. Prepare/recommend an action plan in order to achieve a Pavement Condition Index (PCI) of 70 or above for all City streets. Details of what to include in the action plan shall be discussed with City staff.

II. OTHER SERVICES

CITY may from time to time have the need for other services not specifically listed in Paragraph I, Engineering Services for which CONSULTANT has necessary experience and capabilities to provide such services including, but not limited to, real property services, environmental planning, municipal planning, and related work. CITY, through its City Manager, Assistant City Manager, or City Engineer, may authorize CONSULTANT to perform such selected services on an as needed basis.

Attachment B

CONFLICT OF INTEREST STATEMENT FOR CONSULTANTS

AS REQUIRED BY THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) UNDER CALIFORNIA GOVERNMENT CODE SECTION 87306

Consultants who make or participate in the making of decisions which may affect financial interests are required to file a Conflict of Interest Statement, Form 730 under Disclosure Category 1.

Consultant, as defined, "shall include any natural person who provides, under contract, information, advice, recommendation, or counsel to a state or local government agency, provided, however, that 'consultant' shall not include a person who:

1. Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and
2. Possesses no authority with respect to any agency decision beyond rendition of information, advice, recommendation or counsel."

Procedure

1. All Request for Proposals (RFP's) for Consultant services should include the following clause in the General Terms and Conditions:

Conflict of Interest Disclosure - In accordance with California Government Code Section 97306, the Consultant awarded a contract to provide the requested services, may be required to file a Conflict of Interest Statement, Form 730 no later than 30 days after execution of the contract, annually thereafter prior to April 30th of each year for the duration of the contract, and within 30 days of termination of the contract. Failure to file any required statements will result in withholding payment for services rendered.

2. Prior to award of a contract, a determination is made as to whether the Consultant who will be retained to provide certain services is required to file a Conflict of Interest Statement based on the definition of Consultant.
3. The Determination of Reporting Status for Consultant form (Attachment C) is completed by the Department.
4. Award of contract staff reports along with the Determination of Reporting Status for Consultants form are routed to the Support Services Administrator and the City Attorney's Office prior to submittal to the City Manager's Office. The staff report, Contract and Determination of Reporting Status for Consultants form are then routed to the City Manager's office upon approval for contracts under \$15,000, and for inclusion on the City Council Agenda for contracts exceeding \$15,000.
5. The Department ensures that all Conflict of Interest filings by the Consultant are forwarded immediately to the City Clerk's office. The Department also does not authorize payment for services rendered until the proper Conflict of Interest filings have been completed.

Attachment C

DETERMINATION OF REPORTING STATUS FOR CONSULTANTS

NAME OF CONSULTANT: KIMLEY-HORN AND ASSOCIATES, INC.

ADDRESS 5550 TOPANGA CANYON BLVD
WOODLAND HILLS, CA 91367

BRIEF DESCRIPTION OF DUTIES:

On the basis of an evaluation of duties:

_____ I find the consultant is exempt from filing a Conflict of Interest Statement, Form 730. Consultant will not participate in the decision making process.

_____ I find the consultant must file a Conflict of Interest Statement, Form 730, with full disclosure as called for under Category I.

_____ I find the consultant must file a Conflict of Interest Statement, Form 730, with disclosure under Category I as indicated below, based on limited range of responsibilities:

- _____ 1. Real property, any loan, any gift, or any income in which the consultant or spouse has an interest within the jurisdiction of the City of Agoura Hills as defined in this Code.
- _____ 2. Investments in business entities or income from sources which provide supplies, equipment or services of the type utilized by the department or division for which the Designated Employee is utilized.

PREPARED BY:

Name Date

Title

APPROVED AS TO FORM:

CONCUR WITH DETERMINATION:

Craig Steele, City Attorney

Greg Ramirez, City Manager

