

STAFF REPORT

SUBJECT: ITS South Coast Implementation Project

MEETING DATE: November 20, 2008

AGENDA ITEM: 6A

STAFF CONTACT: Fred Luna

RECOMMENDATION:

Authorize the Chair to execute a contract with Kimley-Horn & Associates Inc. for project management and implementation services at a cost not-to-exceed \$200,000 related to the ITS South Coast Implementation Project.

SUMMARY:

The 101 In Motion study approved by SBCAG in July 2006 established a multi-modal program of projects to resolve congestion on Highway 101. The final 101 In Motion plan included a number of other modal and operational management strategies for improving congestion such as increased bus transit usage, ridesharing, and implementation of traveler information and intelligent transportation systems (ITS) in the corridor. Many of these projects have been put into effect with the on-going 101 widening work, the success of Curb Your Commute as part of the Milpas Hot Springs project, and ITS projects being implemented by Caltrans. Two federal earmarks totaling \$1.6 million have been authorized specifically for ITS projects in the 101 corridor. A draft ITS Implementation Plan prioritizing how to use the earmarks was developed by staff with the assistance of corridor stakeholders in late 2007. SBCAG staff has since worked to get the federal earmark funding obligated and is now recommending that the board move forward on implementing projects.

SBCAG staff recommends that the board retain the services of a consultant to validate the projects in the draft ITS plan and assist the agency in implementing them. An RFP was released in August 2008 to engineering firms. A committee, consisting of SBCAG staff, Caltrans, and local agencies reviewed the proposals received and conducted interviews. Kimley Horn & Associates was the top-ranked consultant. Staff is recommending that the SBCAG board authorize the execution of a contract with Kimley-Horn & Associates in the amount not-to-exceed \$200,000 for planning, engineering and design services which would include completion of the draft ITS plan, project engineering and design, and implementing the projects. With approval of the contract, the draft ITS Plan will be finalized with a list of recommended projects for implementation and presented to the board for approval in the spring 2009. The consultant would then assist SBCAG by preparing engineering plans, securing encroachment permits from Caltrans to construct the improvements, helping SBCAG bid out projects, and monitoring project construction.

DISCUSSION:

Background

SBCAG has received two federal earmarks through Congresswoman Lois Capps' office to implement Intelligent Transportation System (ITS) projects on Highway 101. The two earmarks total approximately \$1.6 million and require a 20% local match. SBCAG and its regional partners have determined through the 101 In Motion planning effort that ITS projects are a key component to address congestion on the corridor by improving system operations. The benefits from these type of projects which provide traveler information and network surveillance on primary routes such as Highway 101 and parallel arterials is to give commuters and travelers information that would result in trips being diverted outside of the peak hours. Examples of ITS projects include providing real time traffic congestion information to motorists on websites, cell phones, and to in-car navigation systems, changeable message signs informing motorists of road and safety information, traffic signal coordination, and "next bus" systems that inform fixed-route transit users of the time of arrival of the next bus using GPS technology.

After 101 in Motion was approved by the SBCAG board, staff began to look at specific ITS projects that could be implemented with the federal funding. SBCAG assembled an ITS committee which included members from SBCAG staff, Caltrans, from the cities of Santa Barbara, Carpinteria, and Goleta, from the County of Santa Barbara, from the Metropolitan Transit District California Highway Patrol and County Sherriff and Office of Emergency Services. The task for the committee was to prepare a specific plan for projects to be implemented on the South Coast of Santa Barbara County (as defined in the federal earmark). The committee used as a baseline projects that had been identified and included in the Central Coast ITS Implementation Plan, which was a plan developed for a multi-county region from Santa Barbara north to Monterey and was sponsored by Caltrans District 5.

The ITS committee met on a regular basis for several months during 2007 and developed a draft ITS Implementation Plan which included a list of recommended projects. The focus of the committee was to identify or recommend projects that addressed congestion on local arterials and adjacent highways on the South Coast. As a result, the ITS Committee came up with the list of projects shown below. The projects are separated by type of project, Network Surveillance (Table 1) and traveler Information (Table 2). For each project, a description is given and the corridor which would benefit is shown.

Table 1 - Network Surveillance and Systems Operations

Corridor	Project Name and Description
Local	Upper State Street Corridor Bus Signal Extension: Install signal extension transponders on MTD diesel bus fleet (80 vehicles) and associated intersection hardware to allow extended green light period for buses in close proximity in the upper State Street corridor.
Local/Hwy 101	Transit Vehicle Tracking: Install Automated Vehicle Location (AVL) devices on MTD bus fleet. Implement real-time bus arrival signs at various high demand bus stops in Goleta and other areas. Implement mechanism for County Traffic Section and other local jurisdictions to access AVL information outputs. Funding could be used to assist MTD with cost of the project. MTD has programmed balance of project cost.
Hwy 101/Hwy 154	Smart Call Boxes: Implement pilot project to install weather detection and telecommunication devices on existing infrastructure, i.e. call boxes on Highway 154. Weather information will be transmitted to Caltrans and the CHP to warn of possible hazardous roadway conditions. Information can be displayed on Changeable Message Signs and also posted on publicly accessible websites.

Table 2 - Traveler Information

Corridor	Project Name and Description
Local / Hwy 101	Web-based Traveler Information System: Web-based traveler information system with additional phone and instant messaging capabilities. Web-site will function as “one-stop shop” for traveler information with links to camera images, 101 speed data, and other travel related information. Cost for initial launch: one-time conversion costs, marketing, and operations.
Hwy 154	Hwy 154 (San Marcos Pass) Changeable Message Signs: Install Changeable Message Signs (CMS) at two locations to disseminate roadway and weather conditions related to northbound/southbound travel. Locations are: 1) Near junction of SR 154 and SR 192 (Foothill Road) in Santa Barbara; and 2) Near junction of SR 154 and SR 246.
Hwy 101/Hwy 126	Hwy 126 Changeable Message Signs: Install Changeable Message Signs (CMS) at junction of SR 126 and Highway 101 (Ventura County) for roadway and weather conditions related to northbound/southbound travel.
Hwy 101	Highway Advisory Radio: Implement a Highway Advisory Radio (HAR) network on the South Coast to broadcast traffic, roadway condition and safety information. Pilot project being implemented during the construction of Milpas to Hot Springs Improvement Project between Santa Barbara and Montecito.

Federal Authorization and RFP

In early 2008, with the Draft ITS Plan completed, SBCAG staff informed the ITS Committee that it would be retaining a technical consultant with experience in ITS projects to provide SBCAG with recommendations about the feasibility and constructability of these projects and evaluate whether the recommended projects would provide South Coast region with the best value. ITS technology is constantly evolving, and keeping abreast of the latest innovations is a specialty area that requires outside consultant assistance. SBCAG staff also believes that the consultants will need to assist in engineering and constructing the projects selected because they often involve computers, wireless technology, and electronics that require engineering experience that SBCAG does not have in-house. SBCAG would task the consultant with completing the project evaluation process and the Draft ITS Plan prior to submitting it to the board for approval. The consultant would then assist SBCAG in preparing engineering plans for vendors to bid on. The consultant would also stay under contract to SBCAG during installation of the ITS projects to ensure they are installed properly. Staff presented the recommendation to issue the RFP to TTAC in August 2008 and they supported this approach.

Consultant Selection Process

In August 2008, SBCAG released an RFP for ITS Program Management and Implementation Services. The RFP was circulated broadly through various means including direct notification of consultants on SBCAG’s list of qualified consultants, placed on our website via our “Contract Opportunities” and also posted on www.ebidboard.com.

The RFP identified the criteria by which consultant proposals would be evaluated. Proposals were due on September 12, 2008. SBCAG received three proposals, from the following firms:

1. ICX Transportation Consultants (San Francisco, CA)
2. Iteris (Santa Ana, CA)
3. Kimley-Horn & Associates, Inc. (Orange, CA)

To help evaluate the proposals and interview prospective consultants, SBCAG assembled an ad-hoc selection committee. The committee included two SBCAG staff representatives, Fred

Luna and Andrew Orfila, as well as Steve DeGeorge of Ventura County Transportation Commission and Julie Gonzalez of Caltrans District 5. On October 9, 2008, the selection committee held a conference call to discuss each member's review of the individual consultant proposals. Individual scoring sheets of the proposals were submitted by each member to SBCAG and filed. SBCAG reminded the selection panel that the proposal and interview portion of the process would be weighted equally.

On October 14, 2008, each of the three firms were interviewed. At the conclusion of the interviews the selection panel convened and a de-briefing was conducted. A unanimous recommendation from the selection panel members was to recommend Kimley-Horn & Associates, Inc. as the top-ranked consultant. Kimley-Horn was found to not only have provided the best overall response to the RFP in their proposal but was also equally proficient and competent during the presentation and interview. The recommendation was presented to SBCAG's Deputy Director for Project Development who accepted the recommendation to present to the SBCAG board.

The Kimley-Horn team was found to be outstanding not only due to their personnel, but in their approach in getting the Draft ITS Plan approved, exhibiting local knowledge, and intent to work with local stakeholders. Kimley-Horn also has a strong implementation background in adhering federal-aid requirements as well as their relationship with both FHWA and FTA.

Contract Services

Staff has presented to Kimley-Horn our standard agreement for professional services which will form the basis for all contract services. A copy of the agreement is included as Attachment A. The total contract amount recommended for approval is \$200,000. This is consistent with the request for authorization of \$200,000 for engineering and design work that SBCAG received for the federal earmark in June 2008. Under this authorization, all \$200,000 is eligible for federal reimbursement. With the agreement in place and approved with Kimley-Horn, it is staff's intent to define and negotiate scope and fee on individual task orders for work efforts that will be required from planning to implementation. Staff has already negotiated a scope for Task Order No. 1 which will essentially complete work through the approval of the final ITS Implementation Plan and begin initial steps for implementing the projects. The fee for this work has been negotiated at \$63,227. The scope is included in Attachment B. By approving the contract, the board would be delegating the authority of executing individual task orders to the Executive Director within the \$200,000 contract budget amount.

Funding

SBCAG has two federal earmarks totaling \$1.6 million that were separately secured through Congresswoman Lois Capps' office that will be the primary source of funding for the project. The first earmark has a 100% reimbursement ratio, thus no local matching funds are required for the \$200,000 in services that Kimley-Horn would provide. The second earmark has a reimbursement ratio of 80% and thus some local match funding would be required. It is SBCAG's intent to use SAFE funding as the local match for projects that would be implemented and administered by SBCAG. For other projects that would be owned and operated by other agencies or the MTD, another source of local funding would be needed. This will be part of the funding agreements that will need to be in place before moving forward with implementation.

Cost and Schedule for Implementation

The draft ITS Implementation Plan included a list of projects, in tables 1 and 2 above, that will be considered by the board, after review by Kimley-Horn, for implementation. The preliminary cost for those projects was estimated in the Draft ITS Plan at approximately \$3.0 million. Of this

amount, the federal funding is intended to cover \$1.6 million. The remaining costs are to be provided by the owner/operator of the project which could be either SBCAG, a local city, or MTD depending on the project. Part of the initial work efforts by Kimley-Horn will be to review and update estimates of costs for implementation and also estimate operational and maintenance costs such that the total cost commitment is made apparent prior to beginning implementation. The costs will be documented and agreed to in funding agreements between SBCAG as the recipient and dispersing agency of the federal funds and the benefactor entity.

With regard to timeline, it is anticipated that the ITS Implementation Plan would be presented to the SBCAG board for approval during the spring 2009. This would complete Phase I of the consultant scope as currently identified. It is SBCAG's intent to authorize at this time Phase II services in another task order to have the consultant prepare among other key products the 1) Implementation agreements; 2) Concept of Operations for FHWA approval; 3) Final PS&E. These products, in addition to others, will be instrumental to get the various projects fully implemented.

Summary and Recommendation

Staff recommends that the SBCAG board authorize the Chair to execute an agreement with Kimley-Horn & Associates Inc. for project management and implementation services at a cost not-to-exceed \$200,000 related to the ITS South Coast Implementation Project.

COMMITTEE REVIEW: None

Attachments:

- 1. Attachment A: Agreement for Professional Services**
- 2. Attachment B: Scope of Services for Task Order No. 1**

CONTRACT
FOR
PROGRAM MANAGEMENT
AND
PROJECT IMPLEMENTATION SERVICES
FOR
SOUTH COAST ITS IMPLEMENTATION PLAN
BETWEEN
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
AND
KIMLEY-HORN AND ASSOCIATES, INC.

November 20, 2008



260 North San Antonio Road, Suite B
Santa Barbara, CA 93110-1315
805 961-8900

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CONTRACT
FOR
PROGRAM MANAGEMENT AND PROJECT IMPLEMENTATION SERVICES
FOR
SOUTH COAST ITS IMPLEMENTATION PLAN

This contract is entered into as of _____, 2008 by the firm, **Kimley-Horn and Associates, Inc.** (hereinafter called CONSULTANT) whose address is **765 the City Drive, Suite 400, Orange, CA 92868** and the **Santa Barbara County Association of Governments** (hereinafter called SBCAG) whose address is **260 North San Antonio Road, Suite B, Santa Barbara, California 93110**.

Whereas, SBCAG is the regional transportation planning agency for Santa Barbara County and is a proponent for improvements to mobility and traveler information.

Whereas, SBCAG has received federal earmarks for implementing ITS projects on the Santa Barbara South Coast.

Whereas, SBCAG has, in cooperation with local agencies and transit providers, produced a preliminary list of ITS projects for implementation.

Whereas, SBCAG desires to complete the planning phase for the ITS projects and begin implementation of the South Coast ITS Implementation Project (hereinafter referred to as "PROJECT"), which includes ITS type projects in the area of Traveler Information and Network Surveillance to be located on the South Coast of Santa Barbara County.

Whereas, SBCAG, as implementing and funding agency, has conducted a selection process for retaining a consultant, and the selection panel recommended that SBCAG select the firm of **Kimley-Horn and Associates, Inc.**

Whereas, CONSULTANT and SBCAG have agreed to a scope of services (hereinafter referred to as "SERVICES", and compensation that will form the basis of this agreement.

Whereas, word "SERVICES," includes without limitation, the performance, fulfillment and discharge of all obligations, duties, tasks, services and warranties imposed upon or assumed by CONSULTANT hereunder; and the SERVICES performed hereunder shall be done to the satisfaction of SBCAG, with their satisfaction being based on prevailing engineering standards.

Whereas, CONSULTANT represents that it is qualified and prepared to provide certain professional and technical services in accordance with the professional engineering standards, which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined herein and CONSULTANT desires to do so for the compensation and in accordance with the terms and conditions set forth herein and shall be performed to the satisfaction of SBCAG.

Whereas, CONSULTANT agrees to perform the SERVICES, which are herein described to include without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, services and warranties imposed upon or assumed by CONSULTANT.

NOW, THEREFORE, the parties do mutually agree as follows:

To enter into an Agreement fully comprised of the terms and conditions herein described.

To execute individual task orders comprised of a description of SERVICES to be performed, cost for said SERVICES, a schedule for performance, and deliverables, a rate schedule, and a list of key personnel. SBCAG has delegated ability to execute individual task orders to the Executive Director.

Article 1 Description of Work - General

CONSULTANT shall perform SERVICES as set forth and as defined according to individual task orders. CONSULTANT shall commence performance of said SERVICES upon receipt of a fully executed task order signed by the Executive Director of SBCAG and the assigned contract officer for CONSULTANT. Each fully executed task order shall be incorporated by amendment to the Agreement and shall hereinafter be referred to as AGREEMENT.

Article 2 Performance Schedule and Force Majeure

- 2.1 The contract shall commence upon receipt of the letter notifying CONSULTANT of contract award by SBCAG Board of Directors and shall continue in effect until December 31, 2010 or until otherwise terminated, canceled, or extended.
- 2.2 The period of performance for each specific task order shall be in accordance with Article 4 of each individual task order. If SERVICES under any task order are in progress on the expiration date of this AGREEMENT, the terms of the contract may be extended by contract amendment.
- 2.3 CONSULTANT shall make every reasonable effort to complete the deliverables within the timeline included as part of each individual task order. If CONSULTANT determines that the timeline cannot be met, CONSULTANT shall advise SBCAG in writing as soon as this seems likely, stating the reason for the delay and proposing a revised schedule. Any changes in the project schedule must be agreed upon by CONSULTANT and SBCAG.
- 2.4 CONSULTANT shall not be considered in default in the performance of its duties and obligations with respect to schedule performance to the extent that the performance of any obligation is prevented or delayed by Force Majeure. In any event, CONSULTANT shall use its best efforts to minimize any schedule extension or additional cost to SBCAG resulting from such delay. Force Majeure includes, but is not limited to, acts of God or of

the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter initiatives, legal actions, changes in law, fires, floods, labor disputes, freight embargoes, unusually severe weather and interference caused by, or failure to act of, SBCAG, SBCAG's CONSULTANTS (other than CONSULTANT), or other third parties. In every case, the failure to perform must be beyond the control and without the fault or negligence of CONSULTANT.

Article 3 Agreement Compensation and Cost Principles

- 3.1 CONSULTANT shall be reimbursed for hours worked and at the rates specified and agreed to in each task order. The specified hourly rates shall include direct salary costs, employee benefits, overhead and fee. In addition, CONSULTANT shall be reimbursed for incurred direct costs, other than salary costs, that are identified in each executed task order. CONSULTANT shall be compensated for full and complete performance of the SERVICES, in compliance with all the terms and conditions of this AGREEMENT, and payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of the SERVICES, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this AGREEMENT as furnished by SBCAG). The total AGREEMENT compensation shall not exceed \$200,000. The compensation to CONSULTANT for each individual task order shall not exceed the amounts set forth in Article 3 of each Task Order. Total compensation to CONSULTANT shall be governed by the aggregate amount of each individual Task Order pursuant to Article 27, Precedence, of the Agreement.
- 3.2 The Cost principles set forth in Part 31 of the Federal Acquisition Regulation (FAR) as constituted on the effective date of this agreement shall be utilized to determine allowability of costs under this agreement and may be modified from time to time by amendment of the AGREEMENT.
- 3.2.1 The CONSULTANT agrees to comply with Federal procedures in accordance with 49 CFR, Part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 3.2.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government are subject to repayment by CONSULTANT to SBCAG.
- 3.2.3 Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this Article 3.2.
- 3.2.4 Allowable Costs and Documentation: For billings on a time and materials basis, all costs charged to AGREEMENT by CONSULTANT shall be supported by properly executed payrolls, time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges. CONSULTANT shall also comply with Title 49, Code of Federal Regulations, Part 18, in the procurement of services, supplies or equipment.
- 3.3 From time to time the SERVICES may be changed by additions and/or deletions in accordance with Article 12, *Changes*, and in such event, the compensation limit shall be adjusted accordingly.

- 3.4 Any services provided by the CONSULTANT not specifically covered under SERVICES approved for AGREEMENT shall not be compensated without prior written authorization from SBCAG. It shall be CONSULTANT'S responsibility to recognize and notify SBCAG when services not covered by the SERVICES have been requested or are required. All changes and/or modifications to the SERVICES shall be made in accordance with Article 12, *Changes*.

Article 4 Availability of Funds

This Agreement is awarded on the contingency of availability of funds. The obligation of SBCAG is conditioned upon the availability of funds which are allocated and available for the payment of such an obligation. If funds are not allocated and available for the continuance of the SERVICES performed by CONSULTANT, the SERVICES directly or indirectly involved may be suspended or terminated by SBCAG at the end of the period for which funds are available. When SBCAG becomes aware that completion of SERVICES may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve SBCAG from its obligation to compensate CONSULTANT for SERVICES performed pursuant to this Agreement prior to such notification and for any reasonable project related costs incurred. No penalty shall accrue to SBCAG in the event this provision is exercised.

Article 5 Taxes, Duties, Fees, and Prevailing Wages

Except to the extent expressly provided otherwise elsewhere in this Agreement, CONSULTANT shall pay when due, and the compensations set forth in Article 3, *Agreement Compensation and Cost Principles*, shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONSULTANT, d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business, including prevailing wage rates as determined by the California Department of Industrial Relations.

The CONSULTANT hereby acknowledges the California Labor Code Provisions requiring payment of prevailing wage on public works projects. If such provisions are or have been determined by the Office of the State Director of Industrial Relations to apply to the SERVICES to be performed hereunder, CONSULTANT shall abide by such determination.

Article 6 Invoicing and Payments (Final Payment)

- 6.1 Except to the extent expressly stated otherwise elsewhere in this Agreement, the compensation of CONSULTANT as provided herein shall be payable in monthly payments, thirty (30) calendar days after receipt by SBCAG of an invoice prepared in accordance with instructions below.
- 6.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by SBCAG and it shall be accompanied by documentation supporting each element of measurement and/or cost. Any invoice submitted, which fails to comply with the terms of this Agreement, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT'S sole expense.
- 6.3 Within 30 days following receipt of payment from SBCAG, CONSULTANT shall furnish evidence, satisfactory to SBCAG, that all labor and materials furnished and equipment used in the period covered by the payment have been paid in full. When requested by SBCAG, CONSULTANT shall submit evidence that prevailing wages were paid to its

employees or subconsultant's where applicable. SBCAG may withhold payment of future invoices until CONSULTANT furnishes such evidence.

6.4 CONSULTANT shall submit separate monthly invoices to SBCAG as follows:

6.4.1 Progress invoices, for payments for SERVICES completed by CONSULTANT during each progress billing period. The cutoff date for CONSULTANT'S progress invoice shall fall within seven days of the last calendar day of the month. The required retention of fee for subconsultants may be waived at the discretion of SBCAG. Payment shall not be construed to be an acceptance of SERVICES.

6.4.2 The final invoice shall be submitted for final payment after completion and acceptance of plans and specifications by SBCAG and compliance by CONSULTANT with all terms of this Agreement. Such invoice shall contain a complete itemized listing of progress and additional work invoices by number, date, gross amount, retention amount, and the total amount of sums retained and due. It shall also contain, or be supported by a written acceptance of the SERVICES signed by SBCAG.

6.5 SBCAG shall not be obligated to make final payment to CONSULTANT until CONSULTANT has delivered to SBCAG a statement and release satisfactory to SBCAG that CONSULTANT has fully performed the SERVICES pursuant to this Agreement, and that all claims of CONSULTANT and its subconsultants for the SERVICES will be satisfied upon the making of such final payment. If CONSULTANT has made a claim for additional compensation which has not then been resolved under the dispute procedure set forth in Article 20, *Claims*, SBCAG shall make such final payment even though such dispute has not been resolved. Upon resolution of such dispute, any additional amount due CONSULTANT shall be paid by SBCAG.

Article 7 Documentation and Right of Audit

CONSULTANT shall keep and maintain all books, papers, records, accounting records including but not limited to all direct and indirect costs allocated to the PROJECT, files, accounts, reports, cost proposals with backup data, and all other material relating to the SERVICES, and shall make all such materials available at any reasonable time during the term of performance on the PROJECT and for three (3) years from the date of final payment to CONSULTANT, for auditing, inspection, and copying by SBCAG or its designee, upon request. CONSULTANT shall insert in each of its subcontracts the above requirement.

Article 8 Responsibility of Engineer

CONSULTANT shall be responsible for SERVICES as described in each individual task order.

Article 9 Reporting Requirements/Deliverables

All reports and deliverables shall be submitted in accordance with each individual task order description of SERVICES and performance schedule.

Article 10 Permits and Licenses

CONSULTANT shall, without additional compensation, keep current all governmental permits, certificates and licenses, including professional licenses, necessary for CONSULTANT to perform the SERVICES.

Article 11 Technical Direction

- 11.1 Performance of the SERVICES under this Agreement shall be subject to the technical direction of the SBCAG Executive Director or his designee. The Executive Director shall advise CONSULTANT in writing the name of his designee. The term "Technical Direction" is defined to include, without limitation directions to CONSULTANT which redirect the Agreement effort, shift emphasis between tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the SERVICES under this Agreement.
- 11.2 Technical direction must be within the SERVICES stated in the Agreement. The SBCAG Executive Director or his designee does not have the authority to, and may not, issue any technical direction which:
- 11.2.1 Constitutes an assignment of additional SERVICES.
 - 11.2.2 Constitutes a change as defined in Article 12, *Changes*.
 - 11.2.3 In any manner causes an increase in the Agreement's estimated cost, price or the time required for Agreement performance.
 - 11.2.4 Changes any of the expressed terms, conditions or specifications of the Agreement.
 - 11.2.5 Interferes with CONSULTANT'S right to perform the terms and conditions of the Agreement.
- 11.3 All technical directions shall be issued in writing by the SBCAG Executive Director or his designee.
- 11.4 CONSULTANT shall proceed promptly with the performance of technical directions duly issued by SBCAG in the manner prescribed by this article and within the authority provided in this clause. If, in the opinion of CONSULTANT, any instruction or direction by SBCAG falls within one of the categories defined in 11.2.1 through 11.2.5 above, CONSULTANT shall not proceed but shall notify SBCAG in writing within ten (10) working days after receipt of any such instruction or direction and shall request the SBCAG Executive Director to modify the Agreement accordingly. Upon receiving the notification from CONSULTANT, the SBCAG Executive Director shall:
- 11.4.1 Advise CONSULTANT in writing within thirty (30) days after receipt of CONSULTANT'S letter that the technical direction is within the scope of Article 12, *Changes*, of the Agreement; or
 - 11.4.2 Advise CONSULTANT within a reasonable time that SBCAG will issue a written change order.
- 11.5 A failure of CONSULTANT and the SBCAG Executive Director to agree that the technical direction is within the scope of the Agreement, or a failure to agree upon the Agreement action to be taken with respect thereto shall be subject to the provisions of Article 29, *Disputes*.

Article 12 Changes

- 12.1 The SERVICES shall be subject to changes by additions, deletions, or revisions thereto by SBCAG. CONSULTANT will be advised of any such changes by written notification from SBCAG describing the change.

- 12.2 Promptly after such written notification of change is given to CONSULTANT by SBCAG, CONSULTANT and SBCAG will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Agreement accordingly. If CONSULTANT and SBCAG are unable to agree on the compensation change, CONSULTANT may make a claim per Article 20, *Claims*. CONSULTANT shall have no obligation to perform the changes, and shall not be entitled to compensation for SERVICES performed on such changes, prior to the execution of the change order relating to the changes required by SBCAG.
- 12.3 CONSULTANT shall not suspend performance of this Agreement during the negotiation of any change order, except as may be directed by SBCAG. CONSULTANT shall perform all changes in accordance with all the terms of this Agreement.

Article 13 Federal and State Provisions

13.1 Disadvantaged Business Enterprise (DBE)

In connection with the performance of this Agreement, and in compliance with 49 CFR, part 26, CONSULTANT will cooperate with SBCAG to insure the maximum utilization of disadvantaged business enterprises and shall insure these businesses have the maximum practicable opportunity to compete for subcontract under this Agreement. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant contracts. CONSULTANT shall prepare and submit at the time of award a “Bidder-DBE Consultant Contract Information” form whose purpose is to collect data required under 49 CFR, part 26. Even if no DBE participation will be reported, CONSULTANT shall complete form.

13.2 Equal Employment Opportunity/Nondiscrimination

13.2.1 In connection with the execution of this Agreement, CONSULTANT shall not discriminate directly or indirectly against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selections of training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of the Equal Opportunity clause.

13.2.2 CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applications shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

13.2.3 CONSULTANT shall send to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice advising the labor union or workers representative of CONSULTANT'S commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 13.2.4 CONSULTANT shall comply with all provisions of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and shall permit access to its books, records, and accounts by SBCAG and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 13.2.5 In the event of CONSULTANT'S noncompliance with the Equal Opportunity clause of this Agreement or any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 13.2.6 CONSULTANT shall include the provisions contained in Articles 13.2.1 through orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 1246 as amended by Executive Order 1375, and as supplemented in Department of Labor regulations (41 CFR Part 60), so that such provisions will be binding upon each subcontract or vendor. CONSULTANT shall take such action with respect to any subcontract or purchase order as SBCAG may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by SBCAG, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13.3 Affirmative Action for Handicapped Workers

CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

13.4 Debarment and Suspension Certificate

CONSULTANT'S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to SBCAG.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

13.5 Prohibition of Expending State or Federal Funds for Lobbying

CONSULTANT certifies to the best of their knowledge or belief that:

13.5.1 No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

13.5.2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

13.5.3 This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13.5.4 The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

Article 14 Conflict of Interest

14.1 The CONSULTANT agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. The CONSULTANT further agrees that in the performance of this AGREEMENT, no person having any such interest shall be employed or retained by subcontract.

14.2 No portion of the funds received by the CONSULTANT under this AGREEMENT shall be used for political activity or to further the election or defeat of any candidate for public office.

Article 15 Key Personnel

15.1 The personnel specified in Article 15.2 below are considered to be essential to the work being performed hereunder. Prior to reassigning or changing the responsibilities of the specified individuals to other projects, CONSULTANT shall notify and obtain approval

from SBCAG. CONSULTANT shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the proposed changes to PROJECT personnel.

15.2 Key Personnel and Title are:

Senior Vice President: Bill Dvorak
Project Manager: Melissa Hewitt

Article 16 Standard of Care

CONSULTANT represents to SBCAG that services supplied by CONSULTANT in performance of this Agreement shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Agreement and represents to SBCAG that the same shall conform to usual and customary professional and engineering principles and standards which are generally accepted in the State of California.

Article 17 Proprietary Rights/Confidentiality

- 17.1 If requested by SBCAG, CONSULTANT shall deliver to SBCAG the original of all deliverables described in each individual task order which shall become the property of SBCAG.
- 17.2 All materials, documents, data or information obtained from SBCAG's data files or any SBCAG medium furnished to CONSULTANT in the performance of this Agreement will at all times remain the property of SBCAG. Such data or information may not be used or copied by CONSULTANT for direct or indirect use outside of SERVICES provided without the express written consent of SBCAG.
- 17.3 Except as reasonably necessary for the performance of the SERVICES, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article 17, *Proprietary Rights/Confidentiality*, which are produced by CONSULTANT for SBCAG in the performance and completion of SERVICES by CONSULTANT under the Agreement, until released in writing by SBCAG, except to the extent such materials and information is required by CONSULTANT insurance carrier, is required under a contractual or legal obligation or become a part of public domain information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use SBCAG's name or photographs of projects in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCAG.
- 17.5 All press releases relating to the PROJECT or this Agreement, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCAG unless otherwise agreed to by CONSULTANT and SBCAG.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subconsultants will hold confidential and not divulge to third parties without the prior written consent of SBCAG, any information obtained by CONSULTANT from or through SBCAG in connection with CONSULTANT'S performance of this Agreement, unless (a) the information was known to CONSULTANT prior to obtaining same from SBCAG pursuant to a prior Agreement; or

(b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subconsultants, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from SBCAG and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same, or (d) disclosure as required by law, contractual obligation or as required by CONSULTANT insurance carrier.

Article 18 Terminations

18.1 Termination for Convenience

SBCAG shall have the right at any time, with or without cause, to terminate further performance of the SERVICES under this AGREEMENT by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of SERVICES and shall preserve work in progress and completed, pending SBCAG's instruction, and shall turn over such work covered under SERVICES in accordance with SBCAG's instructions.

18.1.1 CONSULTANT shall deliver to SBCAG, in accordance with SBCAG's instructions, all work prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCAG. Upon such delivery, CONSULTANT may then invoice SBCAG for payment in accordance with the terms hereof.

18.1.2 At the time of termination, CONSULTANT will be paid for SERVICES accomplished and delivered in accordance with the terms of this Agreement. Final compensation to CONSULTANT will include a prorata share of the fixed fee.

18.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT'S field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress and completed in accordance with SERVICES and SBCAG's instructions plus the actual cost necessarily incurred in effecting the termination.

18.2 Termination for Cause

In the event CONSULTANT shall file a petition for bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Agreement and shall fail immediately to correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, SBCAG may, without prejudice to any other rights or remedies SBCAG may have, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Agreement by written notice to CONSULTANT specifying the date of termination. In the event of such termination by SBCAG, SBCAG may take possession of any deliverables in process or completed and finish SERVICES by whatever method SBCAG may deem expedient. A waiver by SBCAG of one default of

CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Agreement.

18.2.1 In the event of termination CONSULTANT shall deliver to SBCAG all deliverables in process or completed, prepared by CONSULTANT or its subconsultants or furnished to CONSULTANT by SBCAG and any reports, programs, files and procedures utilized in performing SERVICES.

18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCAG, satisfactory in form and content to SBCAG and verified by SBCAG. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

Article 19 Stop Work Orders

Upon failure of CONSULTANT or its subconsultants to comply with any of the requirements of this Agreement, SBCAG shall have the authority to stop any operations of CONSULTANT or its subconsultants affected by such failure until such failure is remedied or to terminate this Agreement in accordance with Article 18, *Terminations*. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time or for increased costs or damages by CONSULTANT.

Article 20 Claims

CONSULTANT shall give SBCAG written notice within thirty (30) days after the happening of any event which CONSULTANT believes may give rise to a claim by CONSULTANT for an increase in the Agreement Price or in the scheduled time for performance. Within forty five (45) days after the happening of such events, CONSULTANT shall supply SBCAG with a statement supporting CONSULTANT'S claim, which statement shall include CONSULTANT'S detailed estimate of the change in Agreement Price and scheduled time occasioned thereby. SBCAG shall not be liable for, and CONSULTANT hereby waives, any claim or potential claim of CONSULTANT of which CONSULTANT knew or should have known and which was not reported by CONSULTANT in accordance with the provisions of this Article. CONSULTANT agrees to continue performance of the SERVICES during the time any claim of CONSULTANT hereunder is pending. SBCAG shall make every effort to respond to claims in a timely manner. SBCAG shall not be bound to any adjustments in the Agreement Price or scheduled time for CONSULTANT'S claim unless expressly agreed to by SBCAG in writing and any such adjustments in the Agreement Price so agreed to in writing shall be paid to CONSULTANT by SBCAG. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this Agreement.

Article 21 Insurance

In order to accomplish the indemnification herein provided for, but without limiting the indemnification, CONSULTANT and subconsultants shall secure and maintain throughout the term of the Agreement the following types of insurance with limits as shown:

21.1 Professional Liability Insurance coverage in an amount of not less than \$1,000,000 combined single limit and in the aggregate.

21.2 Workers' Compensation Insurance or state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of

California, including Employers Liability with \$250,000 limits, covering all persons providing services on behalf of CONSULTANT.

- 21.3 Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.
- 21.4 Comprehensive Automobile Liability Coverage, including owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.
- 21.5 Proof of Coverage. CONSULTANT and subconsultants shall furnish certificates of insurance to SBCAG evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder. Such certificates shall include the Santa Barbara County Association of Governments as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written notice to SBCAG, and CONSULTANT and subconsultants shall maintain such insurance from the time CONSULTANT and subconsultants commence performance of services hereunder until the completion of such services.

Article 22 Indemnity

- 22.1 CONSULTANT agrees to indemnify and hold harmless, SBCAG, and their officers, employees, agents, and representatives, from and against:
- 22.1.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by SBCAG of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of and to the extent caused by the use of methods, processes, designs, information, or other items furnished or communicated to SBCAG by CONSULTANT in connection with performance of the SERVICES; and
 - 22.1.2 Any claim, cause of action, liability, loss, cost or expense, on account of injury to or death of persons or damage to or loss of property arising out of and to the extent caused by the negligent acts of CONSULTANT or its subconsultants, employees, or agents, in the performance of the SERVICES, and including any expenses for attorneys' fees incurred by SBCAG for legal action to enforce CONSULTANT's indemnification obligations hereunder, but excepting where the injury or death of persons or damage or loss of property was caused by the negligence or willful misconduct of the party to be indemnified.
- 22.2 SBCAG shall hold harmless and indemnify CONSULTANT and its officers and employees from and against losses, liability, damages, and costs arising out of the negligent acts, errors, or omissions of SBCAG or those for whom SBCAG is legally liable.

Article 23 Ownership of Drawings and Data

All drawings, specifications, reports and other data developed by CONSULTANT under this Agreement shall become the property of SBCAG when prepared, whether delivered to SBCAG or not.

Article 24 Subcontracts

- 24.1 CONSULTANT shall not subcontract performance of all or any portion of the SERVICES under this Agreement without first notifying SBCAG of the intended subcontracting and obtaining SBCAG's approval in writing of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all lower-tier subcontracts.
- 24.2 CONSULTANT agrees that any and all subconsultants of CONSULTANT will comply with the terms of this Agreement applicable to the portion of the SERVICES performed by them. If requested by SBCAG, CONSULTANT shall furnish SBCAG a copy of the proposed subcontract for SBCAG's approval of the terms and conditions thereof and shall not execute such subcontract until SBCAG has approved such terms and conditions. SBCAG approval shall not be unreasonably withheld.
- 24.3 Approval by SBCAG of any services to be subcontracted and the subconsultant to perform said services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said services.

Article 25 Inspection and Access

SBCAG shall at all times have access during normal business hours to CONSULTANT'S operations and SERVICES performed, wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCAG shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Agreement or to subsequently reject unsatisfactory SERVICES.

Article 26 Independent Consultant

CONSULTANT is and shall be at all times an independent CONSULTANT. Accordingly, all SERVICES provided hereunder shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. SBCAG shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT'S employees in the performance of the SERVICES or as to the manner, means and methods by which the SERVICES are performed. All workers furnished by CONSULTANT pursuant to this Agreement, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT'S subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees of SBCAG.

Article 27 Precedence

- 27.1 The Agreement documents consist of these General Terms and Conditions and is supplemented by individual task orders.
- 27.2 Specific language in the task orders shall prevail where there is a conflict with these General Terms and Conditions. The following order of precedence shall otherwise apply:
 - 27.2.1 This Agreement, its General Terms and Conditions

- 27.2.2 CONSULTANT'S Proposal
- 27.2.3 SBCAG's Request for Proposal

27.3 In the event of a conflict between the documents listed in Article 27, *Precedence*, or between any other documents which are a party of the Agreement, CONSULTANT shall notify SBCAG immediately and shall comply with SBCAG's resolution of the conflict.

Article 28 Communications and Notices

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States mail if delivery is by postage paid certified mail (return receipt requested), FAX, electronic mail, or private courier. Each such notice shall be sent to the respective party at the contact information below or to any additional or changed contact information that each respective party may designate from time to time as provided in this Article. A change in address may be made by notifying the other party in accordance with this section.

	Kimley-Horn and Associates, Inc.	SBCAG
Mailing Address	765 The City Drive Suite 400 Orange, CA 92868	260 North San Antonio Road Suite B Santa Barbara, CA 93110-1315
Telephone	714-939-1030	805 961-8900
FAX	714-938-9488	805 961-8901
Primary Contact	Melissa Hewitt	Fred Luna
Title	Project Manager	Project Manager
Telephone	714-939-1030	805 961-8926
FAX	714-938-9488	805 961-8901
E-mail	Melissa.hewitt@kimley-horn.com	fluna@sbcag.org
Contract Officer	Bill Dvorak	Jim Kemp
Title	Senior Vice President	Executive Director

Article 29 Disputes

29.1 In the event any dispute arises between the parties hereto under or in connection with this Agreement (including but not limited to disputes over payments, reimbursements, costs, expenses, SERVICES performed, and/or time of performance), the dispute shall be decided by the SBCAG Executive Director or his duly authorized representative within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with

the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of SBCAG. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.

- 29.2 During resolution of the dispute both parties shall proceed with due diligence with performance of these SERVICES of this Agreement not the subject of or affected by the outcome of the dispute.

Article 30 Gratuities

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of SBCAG, gifts, entertainment, payments, loans, or other gratuities to influence the award of an Agreement or obtain favorable treatment under an Agreement.

Article 31 Review and Acceptance of Work

- 31.1 All SERVICES performed by CONSULTANT shall be subject to periodic review and approval by SBCAG at any and all places where such performance may be carried on. Failure of SBCAG to make such review, or to discover SERVICES that are defective, shall not prejudice the rights of SBCAG at the time of final acceptance. All SERVICES performed by CONSULTANT shall be subject to periodic and final review and acceptance by SBCAG upon completion of all the SERVICES.

- 31.2 When SERVICES have been completed, CONSULTANT shall so advise SBCAG in writing. SBCAG acceptance shall be based on those provisions set forth in the SERVICES described in each individual task order. Within thirty (30) working days of receipt of such notice, SBCAG shall give CONSULTANT written notice of final acceptance, or of any SERVICES which have yet to be completed or which is unsatisfactory.

- 31.3 In the event SBCAG does not accept the SERVICES as submitted then upon its subsequent completion, CONSULTANT shall again so notify SBCAG, and within the above specified time period SBCAG shall give CONSULTANT written notice of final acceptance or notice that the specified unfinished SERVICES has not yet been completed or is still not satisfactory. In the latter instance, the foregoing procedures with respect to such specified unfinished SERVICES will be repeated. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to SBCAG under this Agreement or by law.

Article 32 Safety

CONSULTANT shall comply with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT'S operations in the performance of the SERVICES hereunder.

Article 33 Assignment

CONSULTANT shall not assign this Agreement wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SBCAG. Subject to the foregoing, the provisions of this Agreement shall extend to the benefit of and be binding upon the successors and assignees of the parties hereto.

Article 34 Amendments

This Agreement may only be changed by an amendment duly executed by CONSULTANT and SBCAG, except that changes to the Agreement to implement administrative changes such as approved changes in key personnel, may be made by administrative amendment signed by CONSULTANT and SBCAG's Executive Director or other duly authorized representative.

Article 35 Governing Law

This Agreement shall be subject to the law and jurisdiction of the State of California.

Article 36 Suspension of Services

36.1 SBCAG may at any time, and from time to time, by written Notice ("Suspension of Services") to CONSULTANT, suspend further performance of SERVICES by CONSULTANT. Said Suspension of Services shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such Suspension, CONSULTANT shall promptly suspend further performance of the SERVICES to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress. Such suspensions shall not exceed more than sixty (60) consecutive calendar days each, nor aggregate more than ninety (90) calendar days; and, if they do, CONSULTANT may, if it so elects by notifying SBCAG in writing, consider that this Agreement has been terminated for convenience of SBCAG. If the Agreement has not been so terminated by CONSULTANT, then SBCAG may at any time withdraw the Suspension as to all or part of the suspended work by written notice to CONSULTANT specifying the effective date and scope of withdrawal, and CONSULTANT shall resume diligent performance of SERVICES for which the suspension is withdrawn on the specified effective date of withdrawal.

36.2 If CONSULTANT believes that any such suspension or withdrawal of suspension justifies modification of the Agreement compensation, CONSULTANT may request additional compensation and CONSULTANT and SBCAG will attempt to negotiate a mutually acceptable change in compensation and amend the Agreement accordingly. If CONSULTANT and SBCAG are unable to agree on a change in compensation, CONSULTANT may request additional compensation, as specified in Article 20, *Claims*, herein. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such suspension.

Article 37 Contingent Fee

CONSULTANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, SBCAG has the right to annul this Agreement without liability, pay only for the value of the SERVICES actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 38 Entire Document

38.1 This Agreement and any subsequently executed task orders constitute the sole and only Agreement governing SERVICES and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Agreement, are superseded except to the extent that they have been incorporated into this Agreement.

38.2 No agent, employee or representative of SBCAG has any authority to bind SBCAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Agreement, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

Kimley-Horn and Associates, Inc.

SBCAG

By: _____
Name: Bill Dvorak
Title: Senior Vice President
Date: _____

By: _____
Name: Brooks Firestone
Title: Chair, SBCAG
Date: _____

Attest:

By: _____
Name: Jim Kemp
Title: Executive Director
Date: _____

Approved as to Form and Procedure:

Dennis Marshall
County Counsel

By: _____
Deputy County Counsel,
Counsel for SBCAG

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am a Senior Vice President and duly authorized representative of the firm of Kimley-Horn and Associates, Inc., whose address is 765 the City Drive, Suite 400, Orange, CA 92868, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-Aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Bill Dvorak, Senior Vice President
Kimley-Horn and Associates, Inc.

Date

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the Executive Director of the SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS, and that the consulting firm of KIMLEY-HORN AND ASSOCIATES, INC., or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- a) Employ, retain, agree to employ or retain, any firm or person, or
- b) Pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-Aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Jim Kemp, Executive Director
Santa Barbara County Association of Governments

Date

LOCAL AGENCY PROPOSER/BIDDER – DBE (Consultant Contracts) – Information

This information shall be provided by the successful Proposer/Bidder with the award document.

- Preliminary Engineering
 Studies
 Environmental Document
 Preliminary Design
 Final Design Right of Way
 Right of Way Engineering
 Right of Way Utility Relocation
 Construction
 Construction Engineering
 Construction Management

Agency: SBCAG Location: Santa Barbara County
 Project Description: ITS Implementation Plan
 Contract Number: 05-4A9668L
 Federal-Aid Project Number: HPLUL-6090(047)
 Total Contract Amount: \$200,000
 Federal Share (for local agency to complete): \$200,000
 Proposal/Bid Date: September 12, 2008
 Proposer's/Bidder's Name: Kimley-Horn & Associates, Inc.

Contract Item No.	Item of Work and Description or Services to be Subcontracted or Materials to be Provided ¹	DBE Certification No. and Expiration Date	Name of DBEs ² (Must be certified on the date bids are opened – include DBE address and phone number)	Dollar Amount DBE
Task 1	Project Review and Evaluation			
Task 2	Project Management and Stakeholder Outreach			
Task 3	Project Limitation			
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the first-tier DBE subcontractors and their respective items(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions. 1. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. 2. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces.			Total Claimed Participation \$ _____ % _____	
			Signature of Proposer: _____ Date: _____ Telephone: () _____ Person to Contact: _____ Type or Print	

The Scope of Services in this Task Order No. 1 provided by CONSULTANT are as described below.

Task 1: Project Review and Evaluation

The existing projects (ITS inventory), Central Coast ITS Architecture and Implementation Plan, 101 In Motion, and the South Coast ITS Implementation Plan will be reviewed. Based on this foundational knowledge, we will assess the existing infrastructure for comprehensiveness, available bandwidth (in the case of communications), and remaining useful life (if appropriate) in order to ascertain what equipment exists and can be built upon or adjusted to accommodate portions of the program.

The team will conduct this preliminary research and develop a recommended approach and preliminary list of criteria in advance of the workshop noted below. The approach and preliminary criteria will be developed in coordination with SBCAG.

One-on-one meetings will be held with the primary stakeholders: FHWA, Caltrans District 5, City of Santa Barbara, MTD, and SBCAG. At these meetings, we will seek out information regarding the current status and/or recent progress on related projects, the agency's opinion of the completeness of the current list of projects to be prioritized, and changes in inventory or priorities that have occurred since the draft Implementation Plan was developed. We will also discuss expectations for the outcome of this ITS Program for the region.

The team will hold a workshop with the ITS Committee and any other interested or affected parties to introduce the program implementation approach; confirm or define previously noted needs, challenges, constraints, issues, and priorities; and develop/approve the evaluation criteria. The list of criteria will be developed based on the specific needs, issues, and priorities of the stakeholders.

These steps will be taken to prepare the prioritization methodology and detail:

- Draft list of criteria delivered to SBCAG and ITS Committee
- Weight of each criterion collected from all agencies (each will be asked to weight the importance of criterion according to the region's goals and their agency's goals)
- Provide draft ranking formula/ definition for each criterion (e.g., regionally significant ranking definition: 5 points to projects that provide benefit to 3 or more agencies; 3 points for 2 agencies; 1 point for a single agency)
- Discuss and finalize criteria list in a workshop with ITS Committee; present average weighting factors for final agreement; and agree to ranking formula/definitions for each criterion

Following the workshop, the list of projects will be reviewed again for comprehensiveness based on the needs and concerns of stakeholders voiced during the workshop (and otherwise documented) and then prioritized for implementation.

Once the projects are confirmed, a high level project concept will be developed for each in order to better establish a preliminary opinion of cost and convey important concepts to the Board for their approval – namely general locations/aesthetics of field equipment, services to be provided (such as web-based traveler information), preliminary opinions of cost (capital and operations and maintenance), and anticipated benefits to the region. Preliminary project budgets will be reviewed (capital and annual O&M). The prioritization process will consider currently programmed funding as a means of ascertaining the cut-off for near-term (within 3 years), mid-term (3 – 5 years) and long-term (more than five years).

A revised Draft ITS Implementation plan will be prepared. Sections of the current Plan will be updated to reflect work completed under this task: stakeholder needs, methodology for prioritization, revised projects, project budgets, and proposed implementation schedule. The resulting revisions and prioritization of the projects will be reviewed with SBCAG and the ITS Committee.

Deliverables

- One-on-one meetings with stakeholders (up to 9)
- Workshop preparation, attendance, and materials (materials delivered in electronic format, up to 15 black and white copies of handouts are budgeted for distribution at the workshop)
- ITS Implementation Plan (draft and final to account for comments; delivered in electronic format)

Task 2: Project Management and Administration

Kimley-Horn’s project manager will maintain regular communications (via phone or in person) with SBCAG’s project manager through weekly phone calls. Additional meetings will be held with the ITS Committee as needed and determined in coordination with the SBCAG project manager (up to three additional meetings are budgeted in addition to those specifically called out in Task 1).

Following agreement on the Task 1 efforts and deliverables, the Kimley-Horn team will finalize the ITS Plan and quality check the final document.

We will present the final plan to the SBCAG Board. Presentation material will be prepared, including talking points, a PowerPoint presentation, and/or an executive summary-level overview to be included in the staff report.

Deliverables

- Meeting preparation, attendance, and materials for up to 3 ITS Committee meetings (materials delivered in electronic format)
- Project status reports and meeting documentation and attendance (via phone or in person) for project status meetings with SBCAG (up to 12)
- Final ITS Implementation Plan (delivered in electronic format)
- SBCAG Board presentation materials (delivered in electronic format)

Task 3: Additional As-needed Services (Contingency)

Kimley-Horn will be available to provide additional support services as needed and requested in writing by SBCAG including, but not limited to:

- Developing a Memorandum of Understanding among Affected Stakeholders
- Obtaining Signatures
- Attendance at additional meetings
- Prepare outreach materials: web site, press release, executive summary/brochure
- Assistance with RTP update(s)
- Assistance with TIP updates
- Assistance in preparation of federal aid forms

Deliverables

- TBD