

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND KIMLEY-HORN ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED \$171,000.00, FOR THE DESIGN AND IMPLEMENTATION OF THE TOWN-WIDE TRAFFIC SIGNAL OPTIMIZATION PROJECT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Agreement for Professional Engineering Services between the Town of Addison and Kimley-Horn Associates, Inc., in an amount not to exceed \$171,000.00, for the design and implementation of the Town-wide Traffic Signal Optimization project, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 27th day of March 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Christie Wilson, Interim City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this ____ day of _____, 2018, by and between the Town of Addison, Texas ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC., ("the Consultant").

NAME OF PROJECT: **Traffic Signal Optimization Project** ("the Project").

The Client and the Consultant agree as follows:

(1) Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in **Exhibit A**, which is attached and made a part of this Agreement ("the Services"). However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) Client's Responsibilities. In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as the Client's representative with respect to this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A), current traffic signal control information and NCTCOG Aerial photography electronic files.

(e) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(f) Examine all studies, reports, sketches, drawings, specifications, proposals and other

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documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays resulting from Client's failure to review documents promptly.

(g) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(h) Cause to be provided such accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project.

(i) If the Client designates a person to represent it at the site other than Consultant or its agent or employee, set forth the duties, responsibilities and limitations of authority of the representative and the effect on the responsibilities of the Consultant in an exhibit to this Agreement before services begin.

(j) Furnish to the Consultant data or estimates as to the Client's anticipated costs for services to be provided by others as required for the Consultant to support opinions of probable total Project costs.

(k) Attend the project kick-off meeting, monthly progress meetings, teleconference meetings, a public workshop, community meetings and related Town Council meetings.

(l) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope, timing, or payment of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(m) Bear all costs incidental to the responsibilities of the Client.

(3) Period of Services. This Agreement has been made in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement and any required retainer amount. The times for performance shall be extended as necessary for periods of delay or suspension resulting from circumstances the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively) for reasons beyond the Consultant's control, the rates of compensation provided for in this Agreement shall be renegotiated.

(4) Compensation for Services.

(a) The Consultant's compensation shall be as stated herein, unless otherwise provided in Exhibit A. The Client shall pay the Consultant an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost. Direct Expenses are included in the Consultant's Fee and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "A," and consistent with Exhibit

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"D," Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Client for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Client for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Client's sole and exclusive remedy for said overpayment.

(b) If the Consultant's compensation is on an hourly basis, the parties may have estimated in Exhibit A costs and expenses for the various portions of the scope of Services. Services undertaken or expenses incurred by the Consultant exceeding any estimates shall be the liability of the Client. Any additional expenses should only be made with written authorization from the Client.

(5) Method of Payment.

(a) Invoices will be submitted on a monthly basis to Client for services performed and expenses incurred. The Client may reasonably require additional information and/or documentation to verify invoices received. Payment of each invoice will be due within 30 days of receipt and should include the invoice number and Kimley-Horn project number. Interest will be added to accounts not paid within 30 days at the lower of the rate of 12% per annum or the highest rate permitted by law, beginning on the 30th day. If the Client fails to make any payment due the Consultant under this Agreement that is not disputed by Client, within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings to secure its right to payment.

(b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.

(c) If the Client objects to any charge on an invoice submitted by the Consultant, the Client shall so advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall be conclusively deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition except as Client may otherwise indicate in writing in connection with a payment. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts.

(6) Use of Documents. All documents, including but not limited to drawings, databases,

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specifications, reports, and data or programs stored electronically, prepared by or for the Consultant pursuant to this Agreement are related exclusively to the services described in this Agreement, and, except to the extent described in this section below, shall belong to, and remain the sole property of Client's for its exclusive reuse at any time without further compensation and without any restrictions only if the Client has satisfied all of its payment obligations under this Agreement that are not in dispute. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(7) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, all opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Any cost limitations of the Client shall be provided in writing to the Consultant prior to the commencement of Consultant's services, otherwise, Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(8) Termination. This Agreement may be terminated (a) by either party upon fifteen days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, unless the non-terminating party corrects such default or presents a mutually agreeable plan to cure such failure within such time, or (b) upon thirty days' written notice for the convenience of the terminating party. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination in accordance with and subject to the other terms and provisions of this Agreement. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount

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of services which were to have been performed.

(9) Insurance.

(a) At all times in connection with this Agreement, the Consultant shall purchase, provide and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- (i) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.
- (ii) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (iv) Professional Liability coverage at minimum limits of \$2,000,000 covering claims resulting from negligent engineering errors and omissions. This coverage must be maintained for at least four (4) years after the project for which Consultant's services are being provided is finally completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four year period thereafter described herein.

(b) With reference to the foregoing insurance, Consultant shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.

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- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
 - (iii) A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.
 - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
 - (v) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
 - (vi) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
 - (viii) Consultant may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
 - (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.
- (c) All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and executed by the insurance company or its authorized agent, delivered to Client simultaneously with the execution of this Agreement (and updated as needed), and shall contain provisions representing and warranting the following:
- (i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
 - (ii) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.
- (d) Upon request, Consultant shall furnish the Client with complete copies of all insurance policies certified to be true and correct by the insurance carrier.
- (e) Client reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by Client.

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(10) Standard of Care. The standard of care applicable to Consultant's services will be the degree of professional care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. Consultant warrants and represents that its services shall, to the best of Consultant's knowledge, information and belief as an engineer performing the practice of engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error. In accordance with the standard of care set forth herein, Consultant agrees that if it shall recommend unsuitable methodology for assessing signal operation in connection with the project or this Agreement or if its services should be defective in any way, Consultant will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Consultant's failure to meet the standard of care set forth herein or methodology for assessing traffic signal operations. Except as may be set forth in this Agreement, no other warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(11) CONSULTANT'S INDEMNITY OBLIGATION.

IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CLIENT AND CLIENT'S ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "CLIENT PERSONS" AND EACH BEING A "CLIENT PERSON"), FROM AND AGAINST ANY AND ALL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR, RELATED TO, OR ARISING OUT OF INJURIES (INCLUDING BUT NOT LIMITED TO DEATH), LOSSES, EXPENSES, LIABILITY, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, SUITS, HARM, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), OF ANY KIND OR NATURE WHATSOEVER, MADE UPON OR INCURRED BY CLIENT OR BY ANY OTHER CLIENT PERSONS, (COLLECTIVELY, "CLAIMS"), TO THE EXTENT DAMAGES ARE CAUSED BY OR RESULT FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR BY THE CONSULTANT'S EMPLOYEE, OR THE CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL (THE CONSULTANT'S EMPLOYEE, AGENT, CONSULTANT UNDER CONTRACT, OR SUCH OTHER ENTITY BEING, COLLECTIVELY, "CONSULTANT PERSONS").

WHEN CLAIMS ARISE OUT OF THE CO-NEGLIGENCE OR OTHER CO-LIABILITY OF CLIENT OR OTHER CLIENT PERSON AND THE CONSULTANT OR ANY CONSULTANT PERSONS, CONSULTANT'S LIABILITY UNDER THIS ARTICLE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (EXCLUDING ATTORNEYS' FEES AND COSTS INCURRED IN DEFENSE OF CLAIMS) EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE OR OTHER LIABILITY. LIKewise, IN SUCH INSTANCE, CONSULTANT'S LIABILITY, IF ANY, FOR CLIENT PERSON'S DEFENSE

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COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE OR OTHER LIABILITY.

THE PROVISIONS IN THE FOREGOING DEFENSE, INDEMNITY AND HOLD HARMLESS ARE SEVERABLE, AND IF ANY PORTION, SENTENCE, PHRASE, CLAUSE OR WORD INCLUDED THEREIN SHALL FOR ANY REASON BE HELD BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, ILLEGAL, VOID, OR UNENFORCEABLE IN ANY RESPECT (INCLUDING, WITHOUT LIMITATION, FOR VIOLATING SECTION 271.904(A), TEX. LOC. GOV. CODE, OR SECTION 130.002(B), TEX. CIV. PRAC. & REM. CODE), SUCH INVALIDITY, ILLEGALITY, VOIDNESS, OR UNENFORCEABILITY SHALL NOT AFFECT ANY OTHER PROVISION THEREOF, AND THIS DEFENSE, INDEMNITY AND HOLD HARMLESS PROVISION SHALL BE CONSIDERED AS IF SUCH INVALID, ILLEGAL, VOID, OR UNENFORCEABLE PROVISION HAD NEVER BEEN CONTAINED IN THIS AGREEMENT.

CONSULTANT SHALL PROMPTLY ADVISE CLIENT IN WRITING OF ANY CLAIM OR DEMAND AGAINST CLIENT OR ANY OTHER CLIENT PERSON, CONSULTANT, OR CONSULTANT PERSON RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S SOLE COST AND EXPENSE. CLIENT PERSONS SHALL HAVE THE RIGHT, AT CLIENT PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS HEREUNDER. THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(12) Consultant Representations. Consultant represents and warrants that it has all necessary licenses, permits, certificates, or other authorization to perform the work and services described in Exhibit A. Consultant acknowledges that Client is entering into this Agreement in reliance on Consultant's professional abilities with respect to performing the services set forth in this Agreement.

Consultant further represents and warrants that:

- its services and work will be provided in a professional, good and workmanlike manner, consistent with the professionally accepted best practices and standards that are in use in Consultant's line of business as of the time such services and work are provided;
- it has the skills, qualifications, experience and financial capability necessary to perform the services described in this Agreement and has performed and continues to perform the same and similar services for other businesses (including governmental entities); and
- it is and shall be during all time of this Agreement validly existing and authorized to do business, and be in good standing in the State of Texas.

(13) Certifications. The Consultant shall not be required to execute certifications or third-party

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reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(14) Dispute Resolution. All claims by either party arising out of this Agreement or its breach may by agreement of the parties be submitted first to mediation, however, this shall not limit or affect any rights or remedies that the Consultant or the Client may exercise at law or in equity.

(15) Hazardous Substances. In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in Exhibit A of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(16) Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. Neither party hereto shall assign, sublet, convey or otherwise transfer any rights or duties under, or interest in this Agreement, without the written consent of the other party. The Consultant may, with Client's prior written consent, augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant does so, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are proved by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. If any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions.

(a) This Agreement is to be governed by the law of the State of Texas, without regard to choice of laws rules of any jurisdiction. In the event of any suit, action, or proceeding under this Agreement, exclusive venue for the same shall lie in Dallas County, Texas. This Agreement contains the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements or

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understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.

- (b) Consultant is and shall in all events be an independent contractor exercising control over its work and services and the manner in which they are performed. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise relationship, or to allow Client to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by Consultant shall be provided in a manner consistent with all applicable laws, rules, standards and regulations governing such work and services.
- (c) The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to negotiate the insertion of a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible, with the intent that such added provision is legal, valid and enforceable.
- (d) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Client, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.
- (e) The persons signing this Agreement on behalf of the parties have the authority to do so.
- (f) For purposes of this Agreement, "includes" and "including" are terms of enlargement and

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not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. Section headings herein are for convenience only and shall not be used in interpretation of this Agreement.

(g) For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier, or seventy-two (72) hours after deposit if sent by certified mail. Addresses for notices and communications are as follows:

To Consultant:	To Client:
Kimley-Horn and Associates, Inc.	Town of Addison, Texas
13455 Noel Road	5300 Belt Line Road
Two Galleria Office Tower, Suite 700	Dallas, Texas 75254
Dallas, Texas 75240	Attn: City Manager

(h) From time to time either party may designate another address and person to whom attention is to be sent within the State of Texas for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

TOWN OF ADDISON, TEXAS

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____
Wesley S. Pierson
ITS: _____ City Manager
ATTEST: _____
(IF CORPORATION, AFFIX CORPORATE SEAL)

BY: _____
Eric Z. Smith
ITS: _____ Assistant Secretary
ATTEST: _____
Synthia Day

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SCOPE OF PROFESSIONAL SERVICES

Project Description

Addison's Town-wide traffic signal timing plans for coordinated arterial progression were last updated in 2009 and 2010. These plans provide coordination along Belt Line Road, Midway Road, Arapaho Road, Addison Road, Marsh Lane, and Keller Springs, and at many locations are synchronized with adjacent signals in the cities of Dallas, Carrollton, and Farmers Branch. While timing has been adjusted, and maintained over time, this project will revisit control strategies for the entire traffic signal system and develop new timing solutions based on current standards and state of practice.

The Consultant will perform the professional Engineering services described herein for the Client. All thirty-eight (38) of the Town's signalized intersections (inclusive of the pedestrian signal on Belt Line Road) are included in the project area. The project will include developing an updated base model for the signalized intersections and roadway segments connecting these intersections; performing a baseline analysis of AM, Midday, PM, Late-Night, and Weekend peak periods; recommendation of minor intersection and signal improvements; and development, implementation, and fine-tuning of newly optimized signal timing plans.

Basic Services

Kickoff Meeting

At the outset of the project, the Consultant will prepare for and attend one (1) kickoff meeting with the Client to begin the exchange of data to be provided to the Consultant. Also, various policy issues related to signal timing will be discussed.

Assemble Existing Data

The Consultant will obtain from Client the current local controller and coordination timing for all project intersections. It is anticipated that this information will be provided in the form of printouts from the signal system database in PDF format. This information will need to include the following:

- Local controller timing parameters
 - Minimum and maximum green times;
 - Vehicular clearances (e.g. yellow and all-red);
 - Pedestrian timing (e.g. walk and flashing-don't-walk);
 - Phase sequences;

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- Local special functions; and
- Phase orientation.

- Coordination timing
 - Cycle lengths, offsets, splits, and phase sequences;
 - Time-of-day, day-of-week (TOD/DOW) schedules;
 - Special events timing; and
 - System-commanded special functions.

Qualitative Assessment

Using personnel experienced in traffic signal operations, the Consultant will perform an in-field qualitative traffic operations assessment. This will specifically include observing existing cycle lengths, splits, offsets, phase sequences, and left turn operations modes (e.g., permissive-only, protected-permissive, or protected-only). The Consultant will also identify by movement any intersection approaches where excessive queuing is observed, where capacity appears to be substantially constrained, and/or where excessive delay appears to be the result of inefficient signal operations. For all Project intersections, the Consultant will also make note of locations where possible changes in lane assignment may improve intersection operation.

All project intersections will be observed during the weekday AM, midday, PM peaks, and on Saturday.

Verification of Arterial and Intersection Geometry and Pedestrian Accommodation

The Consultant will perform a field inventory to collect or verify the following information:

- Project intersections
 - Number of lanes and lane use;
 - Modes of left turn operation;
 - Existence of push buttons;
 - Length of left-turn bays; and
 - Crosswalk and stop bar locations.
- Arterial segments between project intersections
 - Number of lanes; and
 - Posted speed limits.
- Pedestrian accommodation (for each pedestrian movement)
 - Pedestrian LED countdown signal modules; and
 - Accessible pedestrian signals.

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Traffic Counts

- Machine Counts

New recording machine counts are being collected under a separate contract, as part of the 2018 Town-Wide Count Program. Data from that program will be used for this retiming effort.

- Turning Movement Counts

New Turning movement counts (TMCs) will be collected under a separate contract, as part of the 2018 Town-Wide Traffic Count Program. Peak periods being counted are as follow:

- Weekday AM Peak (7:00 AM to 8:30 AM)
- Weekday Midday Peak (12:00 PM to 1:30 PM)
- Weekday PM Peak (4:45 PM to 6:15 PM)
- Weekend Midday Peak (2:00 PM to 3:30 PM)

For signalized intersections adjacent to Greenhill School, Trinity Christian Academy, and George Bush Elementary, times will be adjusted to capture the inbound and outbound school peaks.

Each of the weekday TMCs will be made on a non-holiday Tuesday, Wednesday, or Thursday when the local schools are in session. The weekend TMC will be made on a weekend when a holiday does not occur on Saturday or Sunday, the preceding Thursday or Friday, or the following Monday.

- Travel Time Runs (Before and After)

“Before” and “After” travel time runs will be made under a separate contract, as part of the 2018 Town-Wide Traffic Count Program.

Five runs will be made in each direction for the following four corridors:

- Arapaho Road (Marsh Lane through Dallas Parkway NB)
- Belt Line Road (Marsh Lane through Dallas Parkway NB)
- Addison Road (Sojourn through Belt Line Road)
- Midway Road (Keller Springs through Spring Valley)

These travel-time runs are used to quantify benefits achieved through this project, as they relate to reduced travel time along the specified corridors (travel time, delay, speeds, and numbers of stops).

EXHIBIT A

INRIX Data Analysis

INRIX is a cloud-based platform that delivers granular traffic data, analytics, and visualizations on-demand. The crowd-sourced probe-based data includes historical GPS data from over 300 million global sources and features historical data availability for nearly 3 years up to the previous day.

To supplement traditional data, the Consultant will obtain crowd-sourced probe data from INRIX for the Belt Line Road, Addison Road, and Midway Road corridors. This data will supplement “before” and “after” travel time runs to quantify the benefits of the signal retiming effort. The data can be used by the Town to monitor their system and evaluate and rank corridors for future regional traffic signal retiming efforts, based on quantifying the natural degradation of coordinated signal timing.

Data from INRIX will be used to estimate the signal performance before and after the corridor was retimed. The data will be collected one month before and one month after implementation, excluding major special events, holidays, and changes in school schedule. Measures of effectiveness (MOEs) expected to be evaluated include:

- Speed
- Travel time
- Delay
- Travel Time Index
- User Delay Cost

Other MOEs may be available and/or deemed appropriate by the Consultant for analysis.

Clearance Interval Calculations

The new 2011 edition of the *Texas Manual on Uniform Traffic Control Devices* (Texas MUTCD) became effective on December 8, 2011. That manual included changes in the procedures for calculation of vehicular and pedestrian clearance times. As such, clearance intervals recalculated in 2009 were not performed in accordance with the new Texas MUTCD. The current state of the practice is found in National Cooperative Highway Research Program ([NCHRP Report 731](#)). NCHRP 731 forms the basis of the new [ITE Recommended Practice](#), and is considered state of the practice for calculating clearance times.

Values calculated using the NCHRP formulas are very conservative, due to speed assumptions used in the calculation. Essentially, the NCHRP calculations provide as much or more total clearance time as the ITE formula, with more yellow and slightly less red.

As part of this project, the Consultant will work with Client staff to determine appropriate and consistent clearance interval calculations to be used in Addison, and will recalculate the clearance intervals accordingly.

EXHIBIT A

Number of New Timing Plans

For the entire project area, five (5) base timing plans will be developed, with the planned addition of two (2) variant plans (Off-peak and Midday) for use on weekends:

- Weekday AM Peak;
- Weekday Off-peak.
- Weekday Midday Peak;
- Weekday PM Peak; and
- Late-Night.

The off-peak timing plan will be intended for use during time periods when traffic volumes are relatively low but still great enough for coordinated operation to be desirable. Typical times when this timing plan may be desirable include weekday mornings between 9 and 11 AM, evenings between 7 PM and 9 PM, and extended periods on the weekends. The Late-Night plan could conceivably run from 9 PM until 6 AM.

Updated Synchro™ Models

Trafficware's Synchro™ is a macroscopic analysis and simulation software application. This software is the basic tool used to model, analyze, simulate and develop new optimized timing solutions for signalized traffic networks.

The Consultant will develop updated Synchro™ models for each plan, inclusive of any planned changes to be made on the street during this project. New TMCs will be incorporated into each of seven (7) models. Newly calculated clearance times will also be incorporated into the models. The Consultant will then use the following process to calibrate each model for existing peak conditions. Modeled link speeds will be adjusted to achieve a reasonable correlation with actual corridor travel times as determined during the qualitative assessments and the *before* travel time runs. The SimTraffic™ feature will be used to perform a qualitative (i.e., visual) assessment of the adequacy of the calibration. Specific factors that will be reviewed include queue lengths and the locations of significant stops and delays. Iterative adjustments will be made until reasonable calibration is achieved.

The Synchro™ model for the off-peak timing plan will be developed using approximately 70 percent of the counted volumes the weekday midday peak. Exact percentages will be based on factors derived from new 4-day count data.

Intersection Operations Assessment

During the qualitative assessment and field verification process, the Consultant will identify possible opportunities to improve intersection operations through hardware modifications and lane assignment changes (e.g., by changing a shared left-through lane to a left-only lane).

EXHIBIT A

Using the Synchro™ models and new TMC data, the Consultant will quantitatively assess the benefits of such possible changes.

The Consultant will prepare and submit a brief technical memorandum that discusses the following:

- Recommended lane assignment changes; and
- Modifications to intersection control hardware;
- Potential safety enhancements.

Cycle Length Requirements and Control Area Boundaries

Using the Synchro™ models, the current coordinated cycle lengths will be analyzed for critical intersections on each arterial, to verify that these cycles are still practical moving forward. Having just one control area is desirable since progression cannot be provided across the boundary between control groups that are operating at different cycle lengths. However, Addison has areas that differ greatly in characteristics and traffic demand, so it is anticipated that the recommended strategies will continue to have multiple control areas.

For each of this project's timing plans, the intent will be to determine if current control groups are still the most efficient, or if certain intersections should be moved to different control groups during certain times of the day or days of the week. It is assumed that multiple control groups are will still be the best overall solution for minimizing delays, especially on side streets, but the potential of a single control group will be explored.

Considering all of these factors, the Consultant will determine the most appropriate control groups.

Develop Preliminary Timing Plans

Each of the new timing plans will be developed using the following process.

- Synchro™ will be used to generate a "first cut" version of the timing plan.
- "On-screen" review and adjustment will then be performed by senior engineers with extensive experience in traffic signal operations. At intersections that are not over-saturated, Synchro™ tends to allocate more time than necessary to minor movements. Accordingly, the splits for non-coordinated phases will be reduced to provide additional split times for the coordinated phases. The progression bands will be reviewed and offset will be made to improve operations for the coordinated movements. Also, to the extent possible without creating a yellow trap, phase sequence adjustments will be made as deemed appropriate.

EXHIBIT A

For capacity-critical intersections, the Consultant will review the TMC data to determine if multiple splits appear to be needed. For example, if the peak 15-minute volumes occur at the same time for all movements, only one split will be presumed to be needed. However, if the peak 15-minute period for one critical movement occurs substantially earlier or later than the peak 15-minute period for other critical movements, it may be appropriate for that timing plan to have more than one split at that intersection. This is often the case at intersections like Quorum & Belt Line, or Arapaho & Addison Road where the local outbound commuter peak may occur before traffic commuting to or through Addison peaks. Another example is Hornet & Midway, where there is a significant school peak.

Develop Preliminary Time-of-Day Schedule

Using the four-day count data, the Consultant will develop a recommended time-of-day/day-of-week (TOD/DOW) schedule(s) for operation of the new signal timing plans. History in the areas surrounding Addison show that the AM and PM peaks have been increasing in duration, corresponding to a need for operating those timing plans for a longer period of time. Such recommendations would be communicated with adjacent agencies that currently have signals coordinated with Addison on a common schedule.

Timing Plan Review Meeting

The Consultant will prepare for and attend up to two (2) meetings with the Client to review the proposed timing plans. The Consultant will present the proposed timing plans and TOD/DOW schedules to the Client. The Consultant will also present recommendations for any operational changes that appear to be needed due to interactions between u-turns and right turns on red.

An LCD or large on-wall monitor will be used so that the effects of possible timing plan modifications can be viewed on-screen. Through interactive discussions, consensus will be reached regarding modifications to be made before the new timing plans are implemented.

Following these meetings, the Consultant will make agreed-upon modifications and prepare the timing plan data in the format needed by Client staff to enter the new timing into the controllers. This will consist of Synchro™ timing sheet print-outs of the intersection timing along the standard Client timing sheets previously developed by the Consultant.

Given the number of intersections and timing plans, it is assumed that not more than two (2) review meetings will be required to reach consensus regarding the new timing plans.

Timing Plan Data Entry

The actual entry of new timing plans into the controller databases will be done by the Client staff responsible for operating and maintaining the signals. This is typically done by first entering the timing data into a computer. During this process, the Consultant will provide on-call support to resolve issues that may arise.

EXHIBIT A

Timing Plan Implementation and Fine-Tuning

The Consultant will plan to be on-site with Client staff as new timing is downloaded from the computer into the field controllers. The Consultant will then perform in-field fine-tuning to enhance actual on-street operation of new timing plans. It is assumed that Client staff will be on-hand to download desired timing adjustments into the controller databases, at least during normal business hours, and that Consultant staff will have access to the field controller cabinets to verify operations and to make changes in cases when Client staff is not otherwise available.

Fine-tuning for the new timing plans will be performed as soon as practical after implementation.

Final Documentation

“After” travel time runs will be made under a separate contract, as part of the 2018 Town-Wide Traffic Count Program. The locations, times-of-day, and number of runs will be the same as for the *before* runs. The Consultant will develop a project final report the will include the following:

- Executive summary;
- Narrative discussion of the Project with supporting figures such as maps of the control groups by time period; and
- Tabular comparisons of the *before* and *after* travel time runs.

The Consultant will submit a draft version of the final report for review by the Client. It is anticipated that the draft report will be submitted electronically in a PDF format. Following receipt of comments, the Consultant will prepare and submit a sealed final report. Up to ten (10) copies will be provided for the Client. The Consultant will also provide the Client with a PDF version of the sealed final report.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates, or as lump-sum services as part of negotiated additional scope. Additional services we can provide include, but are not limited to, the following:

- Presentations and/or additional meetings
- Development of additional coordinated traffic signal timing plans
- Additional peak or off-peak periods
- Additional special event or school-related timing
- Coordination with other Cities, beyond that anticipated in the scope of services
- Additional in-field fine tuning efforts

EXHIBIT A

Lump Sum Fee Schedule:

Task	Fee
Field Data, Initial Observations, and Modeling	\$ 38,000
INRIX Data Assessment	\$ 6,000
Development of New Coordinated Timing	\$ 60,800
Implementation and Fine Tuning	\$ 54,200
Project Documentation	12,000
TOTAL	\$ 171,000

EXHIBIT A

EXHIBIT B

SCHEDULE AND DELIVERABLES

Schedule: The Consultant will provide its services as expeditiously as practicable and work with the Town to maintain a mutually agreeable schedule. The anticipated project schedule at the start of the project is shown below:

Anticipated Project Schedule (3/7/18)

Practical Schedule	Jan	Feb	Mar	April	May	Summer	Sept	Oct	Nov	Dec
NTP / Kickoff										
Assemble Data										
Develop Standards										
Calculate New Interval Timing										
Initial Field Observations										
Update Base Synchro Models										
Recommend Low-Cost Enhancements										
Develop Preliminary Timing Plans										
Timing Plan Review										
Deliver Timing Plans										
Implementation and Fine Tuning										
Final Data Collection										
Project Documentation										

Holidays Impacting Traffic Operations

Deliverables: The Consultant will deliver the following materials to the Town:

1. Memorandum of recommended enhancements to increase project benefits
2. Timing sheets representing new timing plans to be deployed
3. Draft and final project technical memorandums
4. Final “as fine-tuned” timing sheets that reflect timing on the street at conclusion of the project.

EXHIBIT A

EXHIBIT C

STANDARD HOURLY RATE SCHEDULE

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional I	\$240 - \$265
Senior Professional II	\$180 - \$250
Professional	\$160 - \$210
Senior Technical Support	\$115 - \$190
Technical Support	\$70 - \$100
Analyst	\$105 - \$175
Support Staff	\$ 75 - \$ 115

Effective July 2017

EXHIBIT A

EXHIBIT D

TOWN OF ADDISON GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expense, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those to be included under a sub-contract, prior to the Town for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the Town's sole and exclusive remedy for said overpayment.

- II. **GUIDELINES FOR DIRECT EXPENSES**.
 - A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall Town reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of Town's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by Town. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.
 - B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.
 - C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
 - D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses

EXHIBIT A

EXHIBIT D

for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – Town shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with Town for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – Town shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Town, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the Town's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT A

EXHIBIT D

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

1. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to Town specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to Town what costs would be considered direct costs. Town shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. Town reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

1. **Adherence to Currently Adopted Town Travel Policy** – Unless otherwise stated within this Agreement, reimbursements shall be governed by the same travel policies provided for Town employees according to current adopted policy. All lodging and meals are reimbursed in accordance with IRS rules and rates as shown on the U.S. General Services Administration website for the Town: <http://www.gsa.gov/portal/category/21287>.
2. Prior to the event, Consultant shall request, and the Town shall provide the provisions and the restrictions that apply to out-of-Town reimbursements.