



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: **T-6**

September 30, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**TRAFFIC CONTROL SYSTEM
AWARD OF PROCUREMENT AND SERVICE AGREEMENT
ALL SUPERVISORIAL DISTRICTS
3 VOTES**

**CIO RECOMMENDATION: APPROVE () APPROVE WITH MODIFICATION ()
DISAPPROVE ()**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chairman to execute the enclosed agreement with Kimley-Horn and Associates, Inc. (Kimley-Horn). The agreement is for the procurement and installation of the Kimley-Horn Integrated Transportation System (KITS), a traffic control system, in the unincorporated County areas, including system support and maintenance, all for a not-to-exceed fee of \$2,072,250. This amount includes an optional task of \$200,000 to provide for an interface with the County-owned traffic signal controller firmware (LACO-IV).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

We are recommending that your Board execute an agreement with Kimley-Horn. The agreement will be for the procurement and installation of KITS, a traffic signal control system developed by Kimley-Horn, in the unincorporated County areas. The agreement also outlines the details for a 4-year maintenance agreement to be

commenced upon expiration of the 1-year warranty period. In addition, this agreement also includes a countywide license for other cities within the County that may wish to use our system or purchase a separate version of KITS for their traffic signals. This countywide license allows any city to use the County's system with no additional fees. Any city within the County of Los Angeles that acquires KITS will only pay for labor charges associated with installation and integration, and maintenance and support and not license fees.

The agreement also includes an optional task for interfacing with KITS. LACO-IV was developed by former County employees currently working in the private sector. Kimley-Horn is currently exploring options to obtain the services of the LACO-IV developers, or any other consultants, to interface KITS with LACO-IV, subject to approval by the County. If successful, these consultants will be hired as subconsultants under this agreement. The agreement includes a not-to-exceed budget of \$200,000 for this optional task that will only be performed upon authorization from the Interim Director of Public Works. In the event Kimley-Horn is unsuccessful in hiring subconsultants to perform the KITS/LACO-IV interface, we may select other firmware to interface with KITS. Should the cost of the ultimate solution for interfacing exceed the currently budgeted amount, we shall seek further approval from your Board.

Since 1995, we have administered Intelligent Transportation System (ITS) projects within various cities and in the unincorporated County areas. The primary system component of these projects is a traffic signal control system that allows traffic signals to be monitored and controlled from a remote location, such as a traffic management center, city hall, or maintenance yard.

This traffic signal control system will provide for continuous monitoring of traffic conditions and traffic signal operations and build upon the benefits achieved by the traffic signal synchronization projects currently underway. The system will provide once-per-second monitoring of traffic signals. Traffic signal monitoring will provide our engineering staff with immediate notification of signal malfunctions, thereby enabling faster and more efficient maintenance responses. The system also enables traffic signal timing to be controlled and coordinated from remote workstations to adjust to actual traffic conditions. The traffic signal control system will also provide two-way communications and control functions between the traffic signal controllers and remote workstations.

Upon installation, this traffic signal control system will interface with the County's Information Exchange Network (IEN), thereby allowing for the exchange of arterial traffic data and information across jurisdictional boundaries. This information sharing will enable the implementation of arterial traffic management strategies and coordinated traffic signal operations. It will also enable agencies to work together to reduce response time during incidents and emergencies. The capability to monitor and control the operation of traffic signals between jurisdictions will benefit the motorists and transit users that rely on the arterial highways.

Implementation of Strategic Plan Goals

This recommendation is consistent with the County Strategic Plan Goal of Children and Families' Well-Being, as implementation will result in reduced traffic congestion and delay, improved mobility, and reduced vehicle emissions, thus improving the overall quality of life for the residents of the County of Los Angeles.

The Subregional Traffic Forum Intelligent Transportation System is included in Public Works' Fiscal Year 2004-05 Business Automation Plan.

FISCAL IMPACT/FINANCING

There will be no impact to the County's General Fund. This project will be funded by Los Angeles County MTA 1995 Call for Projects, Proposition C Discretionary Grant Funds for the East San Gabriel Valley Traffic Signal Forum, and County matching funds included in the Fiscal Year 2004-05 Proposition C Local Return Fund Budget. The MTA will provide 86.3 percent of the funds while the County will fund the remaining 13.7 percent.

The recommended agreement for this project is for a not-to-exceed fee in the amount of \$2,072,250. This includes \$280,000 for 4 years of maintenance, \$30,000 for database support, and \$227,250 for unforeseen additional work that may arise during progress of the work. Any additional work within this allowance will only be performed with prior written authorization from the Interim Director of Public Works or his designee. The total project cost also includes up to \$80,000 in computer hardware to be reimbursed by MTA.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The agreement has been approved as to form by County Counsel. The standard Board-directed clauses that provide for contract termination, renegotiation, and hiring qualified displaced County employees have been included.

The agreement also requires Kimley-Horn to indemnify the County for liability arising out of the provision of its products and services, including intellectual property (such as patent or copyright infringement), and to provide appropriate types and limits of commercial insurance coverage.

As required by the Board, language has been incorporated into the agreement stating that the consultant, and each of its subconsultants, shall notify its employees that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. The agreement also contains provisions requiring the consultant to comply with the Safely Surrendered Baby Law.

As requested by the Board on August 12, 1997, and as a threshold requirement for consideration of a contract award, Kimley-Horn states that it is willing to consider Greater Avenues for Independence/General Relief Opportunity for Work Program participants for future employment.

Kimley-Horn also represents that it is in full compliance with Los Angeles County Code Chapter 2.200 (Child Support Compliance Program) and Chapter 2.203 (Contractor Employee Jury Service Program).

ENVIRONMENTAL DOCUMENTATION

A finding of environmental impact is not required for this agreement.

CONTRACTING PROCESS

On June 3, 2004, we submitted an advance notification (copy enclosed) to advise your Board of our intent to conduct contract negotiations with Kimley-Horn for the procurement, installation, and system support of the traffic control system. The notice explained the purpose of the system and the procurement process.

The Honorable Board of Supervisors
September 30, 2004
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current County services or projects during the performance of the recommended services.

CONCLUSION

Enclosed are two originals of the agreement. It is requested that one original, together with two approved copies of this letter, be returned to us for our transmittal to Kimley-Horn. The County original of the agreement is for your file.

Respectfully submitted,

Reviewed by:

DONALD L. WOLFE
Interim Director of Public Works

JON W. FULLINWIDER
Chief Information Officer

IY:ja

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Enc.

cc: Chief Administrative Office
Chief Information Office
County Counsel
Department of Public Social Services (GAIN Program)

**CHIEF INFORMATION OFFICE
CONTRACT ANALYSIS
FACT SHEET**

The Board of Supervisors charged the Chief Information Office (CIO) with responsibility for reviewing all Information Technology (I/T) related contracts submitted for Board-approval. We are providing this FACT SHEET as an aid to departments to allow the CIO to perform a comprehensive analysis in the shortest time possible. If these elements are omitted, the CIO may require additional time to perform their analysis and prepare a recommendation to the Board. This could result in a request for additional information or clarification to your department and extend or delay the anticipated Board filing date.

TIME FRAME

The CIO is committed to providing timely responses to departments; our goal is to provide feedback within ten (10) business days. Therefore, departments **MUST** submit documents to our office at least **four weeks** prior to the intended Board filing date.

DEPARTMENT CHECKLIST/FACTS

The elements below are grouped by headings or sub-headings, several of which have been taken from the formal board letter. If topic is discussed in the Board letter, please indicate that fact. Ensure that you have thoroughly explained the following elements. There are additional points that will be included in the CIO Analysis. Space is provided for you to provide information on these points at the time you submit your Board letter and agreement for our review. Providing the information in this Fact Sheet will allow us to complete our analysis in the shortest time possible.

❖ **PURPOSE OF RECOMMENDED ACTION**

- ☒ New/Revised Contract Term: Base Term 6 Years (November 2004 to October 2010)
- ☒ Number of Options: 2 two-year terms

- | | |
|---|--------------------------------|
| ☒ <u>Contract TYPE</u> | <u>Contract Components</u> |
| <u>X</u> New Contract | <u>X</u> Software |
| <u> </u> Sole Source | <u>X</u> Professional Services |
| <u> </u> Contract Amendment | <u> </u> Hardware |
| <u> </u> Contract Extension of Term Only | <u> </u> Telecommunications |

❖ **Implementation of Strategic Plan Goals**

- ☒ Is this proposal in alignment with the County of Los Angeles Strategic Plan? YES X NO
- ☒ Is GSO (Goal, Strategy, Objective) referenced in the Board letter? YES X NO
- ☒ Is this project included in the Department's BAP? YES X NO
- ☒ Is the proposal's technology solution in compliance with the preferred County of Los Angeles IT Standards?
YES X NO
- ☒ Is the project's technology solution in compliance with the County of Los Angeles IT Directions Document?
YES X NO

❖ **JUSTIFICATION**

☞ Identify the benefits of the requested project/agreement and the metrics that will be used to validate the project or agreement's success.

The implementation of this project will result in reduced traffic congestion and delay, improved mobility, and reduced vehicle emissions thus improving the overall quality of life for the residents of Los Angeles County. The successful implementation of the project components associated with this agreement will be evident by the installation of a traffic signal control system to provide for continuous monitoring of traffic conditions and traffic signal operations. The result will be faster and more efficient maintenance responses and better operational coordination of traffic signals between jurisdictions.

❖ **FISCAL IMPACT/FINANCING**

☞ Is this project subvented? YES X NO ___ If yes, what percentage is offset? 86.3

☞ Budget Information:

☞ Year-To-Date Expenditures: \$ 0

☞ Requested Contract Amount: \$ 2,072,250

☞ Describe the impact if project/agreement is not approved.

The full implementation of the project components as originally envisioned will not occur, and our Department will be forced to abandon our \$150 million dollar Intelligent Transportation Program which we have undertaken on behalf of numerous agencies throughout the County .

❖ **FACTS AND PROVISIONAL/LEGAL REQUIREMENT**

☞ Is this project legislatively mandated? YES ___ NO X

❖ **ALTERNATIVES CONSIDERED**

☞ Describe the alternatives considered and the reasons for selecting the recommended course of action.

The Department conducted an extensive evaluation of commercial off-the-shelf traffic control systems for a system that will meet the majority of our required functionality and therefore minimize the need for extensive custom modifications and staff training. Out of the sixteen competitors, two were invited for hands-on testing. The selected consultant was the second ranked. Negotiation with the top ranked consultant was terminated due to inability to reach a mutual agreement on the cost.

❖ **PROJECT RISKS**

☞ Describe any identified risks to the department and County in undertaking this project/agreement. Additionally, describe what, if anything, the department intends to do to mitigate the risks.

Overall, there is very little risk to the Department as a substantial portion of the project is funded by grants so therefore there is no impact on the County's general fund. The MTA holds DPW responsible for any and all cost overruns on the project. Mitigation of these risks will occur by our compliance with the provisions of the Grant funds. DPW will also hold back 10 percent of each invoice until the end of the project. In addition, another risk could be that the consultant fails to complete tasks by the deadline. To mitigate delays, payments will be paid once the deliverable is approved and accepted by DPW.

❖ **Other facts, if any.**

N/A

TRAFFIC CONTROL SYSTEM AGREEMENT
FOR
DEPARTMENT OF PUBLIC WORKS
BY AND BETWEEN
COUNTY OF LOS ANGELES
AND
KIMLEY-HORN AND ASSOCIATES, INC.

DEPARTMENT OF PUBLIC WORKS AGREEMENT

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- EXHIBIT A – ADDITIONAL TERMS AND CONDITIONS
- EXHIBIT B – STATEMENT OF WORK
- EXHIBIT C – PRICE AND SCHEDULE OF PAYMENTS
- EXHIBIT D – DESCRIPTION OF SOFTWARE
- EXHIBIT E – MAINTENANCE & SUPPORT
- EXHIBIT F – THIRD PARTY SOFTWARE
- EXHIBIT G – PREAPPROVED SUBCONTRACTORS
- EXHIBIT H – SAMPLE SUBCONTRACT
- EXHIBIT I – LETTER OF CREDIT
- EXHIBIT J – KHA’S EMPLOYEE ACKNOWLEDGEMENT,
CONFIDENTIALITY & ASSIGNMENT OF RIGHTS
- EXHIBIT K – TASK/DELIVERABLE ACCEPTANCE CERTIFICATE

THIS TRAFFIC CONTROL SYSTEM AGREEMENT is entered into on the Effective Date by and between the Los Angeles County Department of Public Works (“County”) and Kimley-Horn and Associates, Inc., a North Carolina Corporation, headquartered at 3001 Weston Parkway, Cary, NC 27513-2301 (“KHA”).

WHEREAS, KHA is a consultant that has developed proprietary software systems, including the communication and control system known as “KITS”;

WHEREAS, County desires to employ KHA to deliver, implement, integrate and customize or modify the KITS software system in order to provide County an advanced traffic management system for the benefit of County’s Department of Public Works (the “Department”); and

WHEREAS, KHA possesses the necessary special skills, knowledge and technical competence and sufficient staffing to provide all components of the traffic management system.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and KHA agree as follows:

1. AGREEMENT AND INTERPRETATION.

- 1.1 Agreement. This base document along with Exhibits A through K and any schedules attached hereto or thereto collectively constitute and throughout and hereinafter are referred to as the “Agreement.” This Agreement shall constitute the complete and exclusive statement of understanding between County and KHA and supersedes any and all prior or contemporaneous agreements, written or oral, and all communications between the parties relating to the subject matter of this Agreement.
- 1.2 Interpretation. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, subtask, Deliverable, service, or other Work, or otherwise, such conflict or inconsistency shall be resolved by giving precedence first to this base document, and then to the Exhibits according to the following priority:
 - 1.2.1. Exhibit A – Additional Terms and Conditions
 - 1.2.2. Exhibit B – Statement of Work
 - 1.2.3. Exhibit C – Price and Schedule of Payments
 - 1.2.4. Exhibit D – Description of Software
 - 1.2.5. Exhibit E – Maintenance & Support
 - 1.2.6. Exhibit F - Third Party Software
 - 1.2.7. Exhibit G - Preapproved Subcontractors

1.2.8. Exhibit H - Sample Subcontract

1.2.9. Exhibit I – Letter of Credit

1.2.10. Exhibit J - KHA’s Employee Acknowledgement, Confidentiality & Assignment of Rights

1.2.11. Exhibit K - Task/Deliverable Acceptance Certificate

1.3 Additional Terms and Conditions. Without limiting the generality of Paragraph 1.1 (Agreement), attached hereto as Exhibit A (Additional Terms and Conditions), and incorporated by reference herein, are additional terms and conditions to this Agreement. KHA acknowledges and agrees that it shall be bound by the additional terms and conditions enumerated in such Exhibit as if such terms and conditions were enumerated in the body of this base document.

1.4 Construction. The words “herein”, “hereof”, and “hereunder” and words of similar import used in this Agreement refer to this Agreement, including all annexes, attachments, Exhibits, and Schedules as the context may require. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural. Whenever examples are used in this Agreement with the words “including”, “for example”, “e.g.”, “such as”, “etc.”, or any derivation of such words, such examples are intended to be illustrative and not limiting.

2. DEFINITIONS. The following terms and phrases in quotation marks and with initial letters capitalized shall have the following specific meaning when used in this Agreement.

2.1. “Additional Services” has the meaning set forth in Paragraph 13.5 (Additional Services).

2.2. “Agreement” has the meaning set forth in Paragraph 1.1 (Agreement).

2.3. “Baseline Software” means KHA’s KITS program, as described in Exhibit D (Description of Software). Such Baseline Software is Licensed by County pursuant to this Agreement, and is and becomes a component of the System Software.

2.4. “Board” means the Los Angeles County Board of Supervisors.

2.5. “Change Order” has the meaning set forth in Paragraph 6.2 (Change Order).

2.6. “Compatible” or “Compatibility” has the meaning set forth in Paragraph 17 (Minimum System Requirements; Compatibility).

2.7. “Contractor Hearing Board” has the meaning set forth in the then current Chapter 2.202.020 of Los Angeles County Code.

2.8. “Confidential Information” has the meaning set forth in Paragraph 3.2.1 of Exhibit A (Additional Terms and Conditions).

- 2.9. “County” has the meaning set forth in the Recitals.
- 2.10. “County Indemnitees” has the meaning set forth in Paragraph 13.1 (Indemnification) of Exhibit A (Additional Terms and Conditions).
- 2.11. “County-Owned Customizations” means: (i) the LACO-IV Optional Work and (ii) the customizations developed by or on behalf of KHA for the benefit of County, which customizations the parties agree do not constitute an improvement, modification or addition to existing KHA proprietary software (other than developer tools or programs), and which is provided pursuant to a Change Order. Any customization that will become a County-Owned Customization pursuant to clause (ii) above shall be specifically identified as a County-Owned Customization in the applicable Change Order. Subject to Paragraph 14 (Ownership), such County-Owned Customizations are and become a component of the System Software. County and KHA acknowledge that as of the Effective Date, the only County-Owned Customization contemplated by this Agreement is the LACO-IV Optional Work.
- 2.12. “County-Owned Customizations Source Code” means all the Source Code for the County-Owned Customizations.
- 2.13. “County Project Director” has the meaning set forth in Paragraph 3.1 (County Project Director).
- 2.14. “County Project Manager” has the meaning set forth in Paragraph 3.2 (County Project Manager).
- 2.15. “CSCP certification” has the meaning set forth in Paragraph 31.3 of Exhibit A (Additional Terms and Conditions).
- 2.16. “CSSD” has the meaning set forth in Paragraph 30 (KHA Certification of Principal Owner Information) of Exhibit A (Additional Terms and Conditions).
- 2.17. “Custom Programming Modifications” has the meaning set forth in Paragraph 13.5.1.
- 2.18. “Customizations” means KHA-Owned Customizations and County-Owned Customizations.
- 2.19. “Deficiency” has the meaning set forth in Paragraph 11.1 (Deficiencies).
- 2.20. “Deliverable” means an item identified as a numbered Deliverable in the SOW, as well as the Specifications for any System Hardware or other materials to be purchased directly by County and not by KHA.
- 2.21. “Department” has the meaning set forth in the Recitals.
- 2.22. “Deputy Director” means a Deputy Director of the Los Angeles County Department of Public Works.

- 2.23. “Director” means the Director of the Los Angeles County Department of Public Works, or his designee.
- 2.24. “Dispute Resolution Procedure” has the meaning set forth in Paragraph 2 (Dispute Resolution Procedure) of Exhibit A (Additional Terms and Conditions).
- 2.25. “Disabling Device” has the meaning set forth in Paragraph 12.7 of Exhibit A (Additional Terms and Conditions).
- 2.26. “Documentation” means any and all written materials, including user manuals, quick-reference guides, FAQs, training materials, testing protocols, methodologies, Specifications, and system designs and system design reviews that support the use and execution of the Integrated System, including the System Software.
- 2.27. “Effective Date” means the date the Agreement is executed by all parties and approved by the Board.
- 2.28. “Final Acceptance” has the meaning set forth in Paragraph 5.2.2 (Final Acceptance).
- 2.29. “Final Acceptance Date” has the meaning set forth in Paragraph 5.2.2 (Final Acceptance).
- 2.30. “Go-Live” has the meaning set forth in Paragraph 5.2.1 (Go-Live).
- 2.31. “Go-Live Date” has the meaning set forth in Paragraph 5.2.1 (Go-Live).
- 2.32. “Holdback Amount” has the meaning set forth in Paragraph 10.7 (Holdbacks).
- 2.33. “Hourly Labor Rate” means a fully burdened hourly rate, which includes a blended and allocated average of direct and indirect costs, overhead, administrative expenses, and any other incidental expenses attributable to each personnel hour worked.
- 2.34. “Infringement Claim” or “Infringement Claims” has the meaning set forth in Paragraph 14.1 of Exhibit A (Additional Terms and Conditions).
- 2.35. “Initial Term” has the meaning set forth in Paragraph 7 (Term).
- 2.36. “Integrated System” means an advanced traffic management system capable of monitoring and controlling traffic signal controllers using County specified communication protocols and all other Work required by this Agreement and the Statement of Work, including the System Software.
- 2.37. “Interfaces” means the software mechanisms which allow the transfer of electronic data or software commands between computer systems, computer programs, or computer program modules which are (a) required to be provided by KHA as Work under the Statement of Work, or (b) requested by County to be provided by KHA as Additional Services pursuant to Paragraph 6.2 (Change Order) and Paragraph 13.5 (Additional

Services), in each case, which Interfaces are and become a component of the System Software.

- 2.38. “Invoice Discrepancy Report” or “IDR” has the meaning set forth in Paragraph 10.5 (Invoice Discrepancy Report).
- 2.39. “Jury Service Program” has the meaning set forth in Paragraph 33.1 (Jury Service Program) of Exhibit A (Additional Terms and Conditions).
- 2.40. “KHA Key Personnel” has the meaning set forth in Paragraph 4.3.2.
- 2.41. “KHA-Owned Customizations” means the customizations or modifications to the Baseline Software, other than County-Owned Customizations, developed by or on behalf of KHA specifically for the Work required, and provided as Deliverables, under the Statement of Work. Such KHA-Owned Customizations are and become a component of the System Software.
- 2.42. “KHA Project Director” has the meaning set forth in Paragraph 4.1 (KHA Project Director).
- 2.43. “KHA Project Manager” has the meaning set forth in Paragraph 4.2 (KHA Project Manager).
- 2.44. “KHA Technical Staff” has the meaning set forth in Paragraph 4.3.2.
- 2.45. “KITS” has the meaning set forth in the recitals of this Agreement.
- 2.46. “LACO-IV Optional Work” means the customizations developed by or on behalf of KHA for the benefit of County under Task 5 (Custom Programming Modifications to LACO-4 Firmware) of Exhibit B (Statement of Work).
- 2.47. “License” has the meaning set forth in Paragraph 14.2 (License).
- 2.48. “Maintenance Fee” means the amount charged by KHA per annum for Maintenance Services provided to the Integrated System, as set forth on the attached Exhibit C (Price and Schedule of Payments).
- 2.49. “Maintenance Services” has the meaning set forth in Paragraph 13 (Maintenance, Support and Additional Services) and the attached Exhibit E (Maintenance & Support).
- 2.50. “Maximum Contract Sum” has the meaning set forth in Paragraph 8 (Prices and Fees).
- 2.51. “Natural Degeneration” has the meaning set forth in Paragraph 15.2 (Self-Escrow).
- 2.52. “Option Term” has the meaning set forth in Paragraph 7 (Term).
- 2.53. “Pool Dollars” has the meaning set forth in Paragraph 8.3 (Pool Dollars).

- 2.54. “Preapproved Subcontractor” has the meaning set forth in Paragraph 1.2 (Preapproved Subcontractors) of Exhibit A (Additional Terms and Conditions).
- 2.55. “Project Status Reports” has the meaning set forth in Paragraph 4.4 (Status Reports by KHA).
- 2.56. “Replacement Product” has the meaning set forth in Paragraph 41 (Continuous Product Support) of Exhibit A (Additional Terms and Conditions).
- 2.57. “Source Code” means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation, including the tools and developer kits that created and that enable creation of such code.
- 2.58. “Specifications” means the specifications for the Integrated System as set forth in this Agreement, the SOW, the Documentation and any approved Change Order, including Custom Programming Modifications.
- 2.59. “Statement of Work” or “SOW” means the Statement of Work, attached as Exhibit B (Statement of Work) to this Agreement.
- 2.60. “System Hardware” means any and all hardware that is required for County to enjoy and exercise fully its rights in respect of the Integrated System.
- 2.61. “System Software” means the Baseline Software, and the computer programs, including Third Party Software, conceived, created, or developed by KHA in furtherance of all of KHA’s obligations pursuant to this Agreement, which includes the application programs, Customizations and Interfaces, and including any and all Updates, Custom Programming Modifications, extensions and components provided from time to time.
- 2.62. “System Software Source Code” means all the Source Code for the System Software.
- 2.63. “Task/Deliverable Acceptance Certificate” means the certificate attached hereto as Exhibit K (Task/Deliverable Acceptance Certificate) issued by County upon KHA’s satisfactory completion of the applicable Tasks, subtasks, Deliverables and services in accordance with the requirements, Specifications, and timetables set forth in the Statement of Work.
- 2.64. “Tasks” means one or more major areas of work to be performed under this Agreement and identified as a numbered Task in the SOW.
- 2.65. “Tax” and “Taxes” means governmental fees (including , license, filing and registration fees) and all taxes (including, franchise, excise, stamp, value added, income, gross receipts, gross revenue, import, export, sales, use, transfer and property taxes), withholdings, assessments, levies, imposts, duties, charges, or interest thereon imposed.
- 2.66. “Term” has the meaning set forth in Paragraph 7 (Term).

- 2.67. “Third Party Software” has the meaning set forth in Paragraph 16 (Third Party Software).
- 2.68. “Updates” has the meaning set forth in Paragraph 13 (Maintenance, Support and Additional Services).
- 2.69. “Warranty Period” has the meaning set forth in Paragraph 12.2.
- 2.70. “Work” means any and all Tasks, subtasks, Deliverables, Custom Programming Modifications, Additional Services and other items, materials and services performed, or delivered, by or on behalf of KHA in order to develop and deliver to County an Integrated System, including the work required pursuant to this Agreement, the SOW, and all the Exhibits, Change Orders, and amendments hereto.

3. ADMINISTRATION OF AGREEMENT – COUNTY.

3.1 County Project Director.

3.1.1. County Project Director for this Agreement shall be the following person:

Jane White
County of Los Angeles
Department of Public Works
Traffic and Lighting Division
P.O. Box 1460
Alhambra, CA 91802-1460

Telephone: (626) 300-2020
Fax: (626) 300-4736
E-mail: jwhite@ladpw.org

3.1.2. County will notify KHA in writing of any change in County Project Director.

3.1.3. Except as set forth in Paragraph 6 (Change Notices and Amendments), County Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

3.1.4. County Project Director shall have the right at all times to inspect any and all Work provided by or on behalf of KHA.

3.2 County Project Manager.

3.2.1. County Project Manager for this Agreement shall be the following person:

Fernando Villaluna
County of Los Angeles
Department of Public Works
Traffic and Lighting Division
P.O. Box 1460
Alhambra, CA 91802-1460

Telephone: (626) 300-2030
Fax: (626) 300-4736
E-mail: fvillalun@ladpw.org

- 3.2.2. County shall notify KHA in writing of any change in the name or address of County Project Manager.
 - 3.2.3. County Project Manager shall be a resource for addressing the technical standards and requirements of this Agreement.
 - 3.2.4. County Project Manager shall interface with KHA Project Manager on a regular basis.
 - 3.2.5. County Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement nor obligate County in any respect whatsoever.
 - 3.2.6. County Project Manager shall advise County Project Director as to KHA's performance in areas relating to technical requirements and standards, County policy, information requirements, and procedural requirements.
 - 3.2.7. County reserves the right to consolidate the duties of County Project Director, which duties are enumerated in Paragraph 3.1 (County Project Director), and the duties of County Project Manager, which duties are enumerated in this Paragraph 3.2, into one County position, and to assign all such duties to one individual who will act as County's liaison in all matters relating to this Agreement. County will notify KHA no later than five (5) days prior to exercising its rights pursuant to this Paragraph 3.2.7.
- 3.3 County Personnel. All County personnel assigned to this Agreement shall be under the exclusive supervision of County. KHA understands and agrees that all such County personnel are assigned only for the convenience of County.

4. ADMINISTRATION OF AGREEMENT – KHA.

4.1 KHA Project Director.

- 4.1.1. KHA Project Director shall be the following person:

Pierre Pretorius
Kimley-Horn and Associates, Inc.
7878 N. 16th Street
Suite 300
Phoenix, AZ 85020-4467

Telephone: (602) 906-1166
Fax: (602) 906-7423
Email: pierre.pretorius@kimley-horn.com

- 4.1.2. KHA Project Director shall be responsible for KHA's performance of all of the Work and ensuring KHA's compliance with this Agreement.
- 4.1.3. From the Effective Date through the Final Acceptance Date, KHA Project Director shall be available to meet and confer with County Project Director at least monthly, in person or by phone, to review project progress and discuss project coordination; thereafter, KHA Project Director shall be available to meet and confer with County Project Director on such schedule as may be reasonably requested by County Project Director, but not more frequently than monthly.

4.2 KHA Project Manager.

- 4.2.1. The KHA Project Manager shall be the following person who shall be a full-time employee of KHA:

Jason Castillo
Kimley-Horn and Associates, Inc.
7878 N. 16th Street
Suite 300
Phoenix, AZ 85020-4467

Telephone: (602) 906-1108
Fax: (602) 906-7423
Email: jason.castillo@kimley-horn.com

- 4.2.2. KHA Project Manager shall be responsible for KHA's day-to-day activities as related to this Agreement and for reporting to County in the manner set forth in Paragraph 4.4 (Status Reports by KHA).
- 4.2.3. From the Effective Date through the Final Acceptance Date, KHA Project Manager shall be available to meet and confer as necessary, but no less frequently than weekly, in person or by phone, with County Project Manager; thereafter, KHA Project Manager shall be available to meet and confer with County Project

Manager on such schedule as may be reasonably requested by County Project Manager, but not more frequently than monthly.

4.3 Approval of KHA's Staff.

- 4.3.1. County approves the proposed KHA Project Director and KHA Project Manager listed in Paragraphs 4.1.1 and 4.2.1. County Project Director has the right to approve or disapprove any proposed replacements for the persons set forth in Paragraphs 4.1.1 and 4.2.1 as KHA Project Director and KHA Project Manager. If KHA desires to replace, or if County, at its discretion, requires removal of, either KHA Project Director or the KHA Project Manager, KHA shall provide County with a resume of each such proposed replacement, and an opportunity to interview such proposed replacement prior to the proposed replacement performing any Work hereunder. County shall not unreasonably delay its approval of a replacement of KHA Project Director or KHA Project Manager.
 - 4.3.2. KHA shall endeavor to assure continuity during the Term of KHA personnel performing key functions under this Agreement, including Robert Barkley and John Kerenyi (collectively, "KHA Technical Staff," and together with KHA Project Director and KHA Project Manager, the "KHA Key Personnel"). Notwithstanding the foregoing, County Project Director may require removal of any KHA Technical Staff.
 - 4.3.3. In the event KHA should desire to remove any KHA Key Personnel from performing Work under this Agreement, KHA shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible (*e.g.*, a removal for cause or other egregious act), and shall work with County on a mutually agreeable transition plan so as to ensure project continuity, especially during any period prior to the Final Acceptance Date.
 - 4.3.4. KHA shall promptly fill any vacancy in KHA Key Personnel with individuals having qualifications at least equivalent to those of KHA Key Personnel being replaced.
 - 4.3.5. All staff employed by and on behalf of KHA shall be adults who are legally eligible to work under the laws of the United States of America and the state of California. All KHA Key Personnel and all other members of KHA's staff who have direct contact with County (either by telephone, electronic or written correspondence, or in person) shall be fully fluent in both spoken and written English.
- 4.4 Status Reports by KHA. In order to control expenditures and to ensure the reporting of all Tasks, subtasks, Deliverables, services, and other Work provided by KHA, KHA Project Director shall provide County Project Director and County Project Manager with monthly written reports ("Project Status Reports") as described in Task 1.2 (Project Status Reports) of the SOW.

5. WORK; APPROVAL AND ACCEPTANCE.

5.1 General. All Tasks, Subtasks, Deliverables, including final Documentation, items, services and other Work provided by KHA, including Additional Services utilizing Pool Dollars, must be prepared and provided solely as specified under this Agreement and must receive the written approval of County's Project Director in order to qualify for payment. In respect of a Documentation Deliverable which is titled "draft" in Exhibit B (Statement of Work), and subject in all instances to any Holdback Amounts, County shall pay KHA fifty percent (50%) of the invoiced cost allocated to such draft Documentation Deliverable upon KHA's submission to County of the draft Documentation Deliverable, and the remaining fifty percent (50%) upon County's written approval of the draft Documentation Deliverable, as evidenced by County Project Director's countersignature to the Task/Deliverable Acceptance Certificate. All other Deliverables, including Deliverables titled "final" in Exhibit B (Statement of Work), submitted to County for review and approval shall be approved or disapproved as set forth herein. Upon completion of particular Tasks, including all applicable subtasks, Deliverables, services, and other Work to be provided by KHA pursuant to this Agreement, including the Statement of Work and any executed Change Order, KHA shall submit a Task/Deliverable Acceptance Certificate in the form attached as Exhibit K (Task/Deliverable Acceptance Certificate) to County Project Director, together with any supporting documentation reasonably requested by County, for County Project Director's written approval. Unless a shorter or longer time period is specified in respect of a particular Task or Deliverable, County's Project Director shall endeavor reasonably to approve or disapprove each Task or Deliverables within thirty (30) days of KHA submitting an applicable Task/Deliverable Acceptance Certificate. KHA acknowledges that notwithstanding anything herein to the contrary it must complete all Work required to complete and deliver to County an Integrated System. All Work shall be completed in a timely manner and in accordance with the requirements and Specifications set forth in the SOW, and must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Acceptance Certificate. In no event shall County be liable or responsible for payment respecting a particular Task prior to execution of the Task/Deliverable Acceptance Certificate for such Task.

5.1.1. Optional Work. Notwithstanding the provisions of this Paragraph 5 (Work; Approval and Acceptance), Task 5 (Custom Programming Modifications to LACO-4 Firmware) of Exhibit B (Statement of Work) is an optional Task, and KHA shall not commence Work on such Task unless and until County and KHA mutually agree in writing that KHA shall proceed with such Work. KHA acknowledges that production efficiencies and other technological advances that are developed prior to the date County and KHA agree that KHA should proceed with Work under Task 5 (Custom Programming Modifications to LACO-4 Firmware) may enable KHA to provide the Work for less than the amount originally set forth under Exhibit C (Price and Schedule of Payments). If County Project Director believes in good faith that such Work can be performed and

provided for less than the amount set forth for such Task under Exhibit C (Price and Schedule of Payments), County is entitled to request, and the parties thereafter shall negotiate reasonably and in good faith the fixed price payable for such Work. In no event, however, shall County be obligated to pay more for such Work than the amount originally agreed upon under this Agreement.

5.2 Specific Approval and Acceptance.

- 5.2.1. Go-Live. KHA shall achieve Go-Live on or before the date that is fifty-eight (58) weeks from the date County issues its notice to proceed under this Agreement. KHA shall achieve “Go-Live” upon successful completion of all the following: (a) its completion and delivery of all Tasks and Deliverables associated with the Go-Live requirements (including installing, implementing, and testing all System Software) set forth in the Statement of Work; (b) successful implementation of all functions and features of all phases has been verified by KHA; (c) County Project Director has provided KHA with written approval, as evidenced by County Project Director’s countersignature on all applicable Task/Deliverable Acceptance Certificates (including the Task/Deliverable Acceptance Certificate applicable to Go-Live), of all such Work (the date of satisfaction of the foregoing, including written approval thereof shall be referred to as the “Go-Live Date”).
- 5.2.2. Final Acceptance. KHA shall achieve Final Acceptance on or before the date that is seventy-four (74) weeks from the date County issues its notice to proceed under this Agreement, provided that such date may be extended in accordance with Paragraph 6 (Change Notices and Amendments). KHA shall achieve “Final Acceptance” upon successful completion of all the following: (a) its completion and delivery of all Tasks, subtasks, Deliverables, services and testing protocols associated with the Final Acceptance requirements set forth in the Statement of Work; (b) successful implementation of all functions and features of all phases and successful achievement of all testing protocols has been verified by KHA; (c) County Project Director has provided KHA with written approval, as evidenced by County Project Director’s countersignature on all applicable Task/Deliverable Acceptance Certificates, of all such Work; (d) all such Work has been provided, installed, and operates in County’s production environment with no Deficiencies more severe than a Level III Priority, as defined in Exhibit E (Maintenance & Support), for no less than two (2) thirty (30) day periods following the completion of Task 8 (System Acceptance and Configuration) of Exhibit B (Statement of Work); and (e) County Project Director has provided KHA with written approval, as evidenced by County Project Director’s countersignature on the applicable Task/Deliverable Acceptance Certificate, of KHA’s achievement of Final Acceptance (the date of satisfaction of the foregoing, including written approval thereof shall be referred to as the “Final Acceptance Date”).

6. **CHANGE NOTICES AND AMENDMENTS.** No representative of either County or KHA, including those named in this Agreement, is authorized to make any changes in any of the terms,

obligations, or conditions of this Agreement, except through the procedures set forth in this Paragraph 6.

6.1 General. County reserves the right to change any portion of the Work required under this Agreement, or amend such other terms and conditions, as may become necessary. Any such revision shall be accomplished in the following manner:

6.1.1. For any change which does not materially affect the scope of Work, period of performance, payments, or any other term or condition included under this Agreement, a Change Order shall be executed by both County Project Director and KHA Project Director.

6.1.2. Without limiting Paragraph 6.1.3, for any (a) Additional Services or (b) any other change related solely to the scope of Work, period of performance, or schedule or amount of payments, and provided such Additional Services or change is to be effected through the use of, and will not exceed, the available Pool Dollars, then in either instance a Change Order shall be mutually agreed upon and executed by both the Director and KHA Project Director.

6.1.3. For any change (a) that materially affects any term or condition in this Agreement, or (b) the cost for which would exceed the Pool Dollars, then a negotiated amendment to this Agreement shall be executed by the Board and KHA.

6.1.4. Notwithstanding any other provision of this Paragraph 6 or Paragraph 6 (Termination for Convenience; Suspension) of Exhibit A (Additional Terms and Conditions), the Director shall take all appropriate action to carry out any orders of the Board relating to this Agreement, and, for this purpose, the Director is authorized to: (i) issue written notice(s) of partial or total termination or suspension of this Agreement pursuant to Paragraph 6 (Termination for Convenience; Suspension) of Exhibit A (Additional Terms and Conditions) without further action by the Board and/or (ii) prepare and sign Amendments to this Agreement which reduce the Statement of Work and the Contract Sum without further action by the Board.

- (i) Such notices of partial or total termination shall be authorized under the following conditions:
 - (A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines and directives.
 - (B) Director shall obtain approval of County Counsel for any notice.
 - (C) Director shall file a copy of all notices with the Executive Office of the Board within fifteen (15) days after execution of each notice.

- (ii) Such amendments shall be authorized under the following conditions:
 - (A) Notices shall be in compliance with all applicable federal, state and County laws, rules, regulations, ordinances, guidelines and directives.
 - (B) The Board has appropriated sufficient funds for purposes of such Amendments.
 - (C) Director shall obtain approval of County Counsel for any notice.
- (iii) Director shall file a copy of all amendments with the Executive Office of the Board within fifteen (15) days after execution of each amendment.

6.1.5. Notwithstanding any other provision of this Paragraph 6 (Change Notices and Amendments), to the extent that extensions of time for KHA performance do not impact either the scope of Work or cost of this Agreement, County Project Director, in its discretion, may grant KHA extensions of time in writing for the Work listed in the SOW or otherwise in this Agreement provided such extensions shall not cause KHA to fail to achieve Go-Live and Final Acceptance by the dates required therefor, or extend the Term of this Agreement.

6.2 Change Order. Any “Change Order” proposed or executed by the parties shall include, unless waived in writing by County Project Director:

- 6.2.1. a quotation of a “not to exceed” price for completion and delivery of the requested Work, including a proposed Task and Deliverable completion schedule and a monthly budget of anticipated expenditures (including labor expenses calculated using the Hourly Labor Rates for personnel time);
- 6.2.2. an accounting of the cost savings to be realized by County from the nonperformance of any Work that is to be supplanted by the Work to be performed under the Change Order;
- 6.2.3. KHA staff level recommended for completion of the applicable Work;
- 6.2.4. estimated personnel hours for completion of the requested Work;
- 6.2.5. to the extent Custom Programming Modifications are requested, functional System Software Specifications;
- 6.2.6. final delivery date for completed Work, including any post-delivery acceptance period as may be applicable;
- 6.2.7. if applicable, a revised Task and Deliverable completion schedule under the SOW for the remaining Work (*i.e.*, other than the Work requested under the Change Order);

- 6.2.8. a description of and KHA's cost of any applicable hardware, third party software, or other materials required to complete the requested Work; and
- 6.2.9. if applicable and mutually agreed upon by County and KHA, a statement that the requested Work is a County-Owned Customization.
- 6.3 Duration of KHA's Change Order Price Quotation. KHA's quotations under the proposed Change Order, including the "not to exceed price" under Paragraph 6.2.1, shall be valid for ninety (90) days from the date of its submission.
- 6.4 Change Order Dispute Resolution. In the event the parties fail to agree on the amount to be paid by County for the Work requested pursuant to a Change Order, County may, upon notice to KHA, elect to direct KHA to commence performing such Work (and KHA agrees to commence performing such Work) and resolve the dispute over amounts owed to KHA in accordance with the Dispute Resolution Procedure. To give effect to the preceding sentence, however, County agrees to pay and will pay the undisputed portion of such fees in accordance with the procedures set forth in Paragraph 5.1 (General) and Paragraph 10 (Invoices and Payments).
- 6.5 Change Order Audit. County is entitled to audit, in accordance with Paragraph 43 (Records and Audits) of Exhibit A (Additional Terms and Conditions), KHA's compliance with Paragraph 6.2 (Change Order) in respect of Work performed pursuant to a Change Order.
7. **TERM.** The term of this Agreement shall commence upon the Effective Date and shall continue until the date that is five (5) years from the Final Acceptance Date, unless terminated earlier in whole or in part, as provided in this Agreement (the "Initial Term"). County, through action taken by the Board, has the option, upon notice to KHA no later than fifteen (15) days prior to the end of the then current period of the Term, to extend the term of this Agreement for additional two (2) year periods, which additional periods shall not, in total, exceed four (4) additional years (each an "Option Term"). KHA shall notify County Project Manager and County Project Director when the Initial Term, or when each Option Term, as the case may be, is within six (6) months from the expiration of the Initial Term, or such Option Term, as the case may be, as provided for in this Paragraph 7 (Term). As used herein, the "Term" shall mean the Initial Term, and if extended, each Option Term, as the case may be.
8. **PRICES AND FEES.**
- 8.1 General. Attached to this Agreement as Exhibit C (Price and Schedule of Payments) is a schedule of all fees applicable to this Agreement, along with a payment schedule for completion of Work beginning on the Effective Date and continuing through the Term.
- 8.2 Maximum Contract Sum. The "Maximum Contract Sum" under this Agreement shall be the total monetary amount that would be payable by County to KHA for supplying the Integrated System and all Work, including the System Software and Pool Dollars under this Agreement for the Term. The Maximum Contract Sum for this Agreement,

including applicable Taxes, authorized by County hereunder shall in no event, expressly or by implication, exceed Two Million Seventy-Two Thousand Two Hundred and Fifty dollars (\$2,072,250.00) and shall be allocated as set forth in Exhibit C (Price and Schedule of Payments) which allocation shall include an itemization of the amount to be paid for: (a) license fee for the System Software, (b) Customizations, if applicable, (c) Interfaces, if applicable, (d) System Software implementation, (e) Maintenance Fees, (f) applicable Taxes, (g) Pool Dollars, and (h) applicable Hourly Labor Rates. KHA shall perform and complete all Work required of KHA by this Agreement in exchange for the amounts to be paid to KHA as set forth in this Agreement but in any event, not in excess of the Maximum Contract Sum. KHA acknowledges and agrees that the Maximum Contract Sum is an all-inclusive, not-to-exceed price, that is an agreed upon assessment of the amount to be paid by County to KHA in exchange for KHA delivering to County, and County accepting, within the required delivery schedule an Integrated System. KHA further acknowledges that the Specifications set forth in the Statement of Work are functional Specifications and that it is KHA's responsibility to design, achieve and timely deliver an Integrated System. Notwithstanding any provision of this Agreement to the contrary, KHA is not obligated to perform Work under Change Orders if Pool Dollars are not available to pay for such Work.

- 8.3 Pool Dollars. Exhibit C (Price and Schedule of Payments) includes the aggregate pool dollars available for Change Orders or for the purchase by County of Additional Services in accordance with Paragraph 13.5 (Additional Services) (collectively, "Pool Dollars"). KHA acknowledges that, as of the Effective Date, no Change Orders have been executed and no Additional Services have been requested by County.
- 8.4 Adjustments to Hourly Labor Rates. Commencing upon the expiration of the Initial Term, the Hourly Labor Rates may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for the Los Angeles – Riverside – Orange County Area for the most recently published percentage change for the twelve (12) month period preceding the anniversary date of the expiration of the Initial Term and any applicable Option Term, which shall be the effective date for any such adjustment. However, any increase shall not exceed the general annual percentage salary change granted to County employees as determined by County's Chief Administrative Office as of the prior July 1. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, KHA acknowledges that there shall be no corresponding adjustment to the Hourly Labor Rates for Additional Services.
- 8.5 Delivery of System Software; Taxes.
- 8.5.1. KHA agrees that all System Software and Documentation, including all Updates, Custom Programming Modifications, and any items or materials provided under Maintenance Services, shall be delivered (a) solely in electronic form (e.g. via electronic mail or internet download), or (b) personally by KHA staff who may load the System Software and Documentation onto County's hardware but who will retain possession of all originals and copies of such tangible media (e.g. CD-

ROM, magnetic tape, printed manuals) used to deliver the System Software and Documentation to County. KHA, including KHA's subcontractors, shall not deliver or provide any tangible items to County, and County will not accept delivery of any of the same. Without limiting the generality of the foregoing, KHA shall not deliver or provide any System Software, Documentation, training materials, or Maintenance Services on magnetic, optical, print or other tangible media under this Agreement.

8.5.2. County acknowledges that the amounts payable by County to KHA under this Agreement, including for Maintenance Services, do not include Taxes for products or services provided by KHA hereunder. County shall be solely responsible for any Taxes, other than Taxes based on KHA's income or gross revenue, properly charged or assessed on amounts payable thereunder by County to KHA, except that KHA acknowledges that it is responsible for any Tax liability arising as a result of KHA's breach of any obligations under this Agreement, including this Paragraph 8.5 (Delivery of System Software; Taxes).

9. COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS. Notwithstanding any other provision of this Agreement, either expressly or by implication, County shall not be obligated for KHA's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated and such termination shall be deemed a termination for convenience pursuant to Paragraph 6 (Termination for Convenience) of Exhibit A (Additional Terms and Conditions). County shall endeavor to notify KHA in writing of any such non-appropriation of funds at the earliest possible date.

10. INVOICES AND PAYMENTS.

10.1 Approval of Invoices. All invoices submitted by KHA for payment must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Acceptance Certificate, prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval.

10.2 Submission of Invoices. KHA shall invoice County upon completion of Tasks, subtasks, Deliverables, and services and other Work which are specified in this Agreement, Exhibit B (Statement of Work), Exhibit C (Price and Schedule of Payments), Exhibit E (Maintenance & Support), and any Change Orders, as applicable, and which have been approved in writing by County pursuant to Paragraph 5 (Work; Approval and Acceptance). With regard to Maintenance Services provided to County pursuant to Paragraph 13 (Maintenance, Support and Additional Services) and Exhibit E (Maintenance & Support), KHA shall invoice County the amount of the Maintenance Fee, on a monthly basis in arrears. Except with regard to Documentation Deliverables which are titled "draft" in Exhibit B (Statement of Work), which shall be invoiced as

described in Paragraph 5.1 (General), KHA agrees not to submit any invoice for payment until County has approved in writing the Work for which payment is claimed. County will endeavor reasonably to process each invoice received from KHA within thirty (30) days. All invoices and supporting documents under this Agreement shall be submitted in duplicate to the following address:

County of Los Angeles Department of Public Works
Fiscal Division, 7th Floor
Accounts Payable Section
P.O. Box 7508
Alhambra, CA 91803-7508

10.3 Detail. Each invoice submitted by KHA shall include:

- 10.3.1. The Tasks, subtasks, Deliverables, services, or other Work as described in Exhibit B (Statement of Work), Exhibit C (Price and Schedule of Payments), Exhibit E (Maintenance & Support), and any Change Order, as applicable, for which payment is claimed.
- 10.3.2. A copy of all applicable Task/Deliverable Acceptance Certificates.
- 10.3.3. If the invoice is for Additional Services or any other Work for which Pool Dollars will be utilized, a copy of the applicable Change Order, executed by the applicable representative of County, a copy of the Task/Deliverable Acceptance Certificate evidencing County's approval of such Work, and any additional supporting documentation reasonably requested by County. The invoice further shall include the cumulative amount of Pool Dollars charged to County to date, and the remaining Pool Dollars available for use in connection with future Additional Services or other Change Orders.
- 10.3.4. If applicable, the amount due under Task 1 (Project Management) or Task 9.1 (Final Acceptance) of Exhibit B (Statement of Work), which shall be the lesser of: (i) the maximum amount for Task 1 or Task 9.1 as enumerated in Exhibit C (Price and Schedule of Payments) or (ii) the total cost of Work performed for the invoiced period. The total cost of Work performed shall be calculated by multiplying the amount of hours worked by the applicable Hourly Labor Rates set forth in Attachment 2 (KHA's Applicable Hourly Labor Rates) to Exhibit C (Price and Schedule of Payments).
- 10.3.5. Indication of the maximum amount remaining under Task 1 (Project Management) or Task 9.1 (Final Acceptance) of Exhibit B (Statement of Work), which shall equal: (i) the maximum amount available for Task 1 or Task 9.1 as enumerated in Exhibit C (Price and Schedule of Payments) less (ii) the cumulative cost accrued for Work performed under Task 1 (Project Management) or Task 9.1 (Final Acceptance) of Exhibit B (Statement of Work) to date.

- 10.3.6. Indication of the applicable Holdback Amount and the cumulative Holdback Amount accrued under the Agreement.
- 10.3.7. Indication of any applicable withholds or credits due to County under the terms of this Agreement or reversals thereof, including credits assessed in accordance with Paragraph 10.8 (Credits to County).
- 10.4 No Partial or Progress Payments. KHA shall be entitled to payment in respect of a Task or Deliverable, or other Work, only upon successful completion by KHA and approval by County of such Task or Deliverable, or other Work. Except with regard to Documentation Deliverables which are titled “draft” in Exhibit B (Statement of Work), which shall be invoiced as described in Paragraph 5.1 (General), and Maintenance Services provided to County pursuant to Paragraph 13 (Maintenance, Support and Additional Services) and Exhibit E (Maintenance & Support), which shall be invoiced as described in Paragraph 10.2 (Submission of Invoices), no partial or progress payments towards anticipated or substantial completion of Tasks or Deliverables, or other Work, will be made under this Agreement.
- 10.5 Invoice Discrepancy Report. County Project Director or County Project Director’s designee shall review all invoices for any discrepancies and provide an “Invoice Discrepancy Report” (or “IDR”), orally or in writing, to KHA within fifteen (15) days of receipt of invoice if payment amounts are disputed. KHA shall review the disputed charges and issue a corrected invoice or send a written explanation detailing the basis for the charges within ten (10) days of receipt of the IDR from County Project Director or County Project Director’s designee. If County Project Director or County Project Director’s designee does not receive a written response within ten (10) days of County’s notice to KHA of an IDR, then County payment will be made, less the disputed charges.
- 10.6 County’s Right to Withhold. In addition to any rights of County provided in this Agreement, or at law or in equity, County may, upon notice to KHA, withhold payment for any Work while KHA is in default hereunder, or at any time that KHA has not provided County approved Work.
- 10.7 Holdbacks. County will hold back ten percent (10%) of the amount of each invoice approved by County pursuant to Paragraph 10 (Invoices and Payments) and ten percent (10%) of the amount of each invoice for Additional Services approved by County under Paragraph 13.5 (Additional Services) (collectively, the “Holdback Amount”). The cumulative amount of such holdbacks shall be due and payable to KHA upon the first working day following the expiration of the Warranty Period, subject to adjustment for any amounts arising under this Agreement owed to County by KHA, including, but not limited to, any amounts arising from Paragraphs 10.5 (Invoice Discrepancy Report), 10.6 (County’s Right to Withhold), 10.8 (Credits to County) and any partial termination of any Task, Subtask or Deliverable set forth in the Statement of Work as provided hereunder.
- 10.8 Credits to County.

10.8.1. In an increasingly mobile society, it is critical to improve traffic flow through multiple jurisdictions within the County of Los Angeles in an effort to enhance mobility, relieve traffic congestion and increase air quality. To meet these goals, County is implementing a Countywide information exchange network that will provide continuous monitoring of traffic conditions and traffic signal operations, as well as enable traffic signal timing to be controlled and coordinated remotely to adjust to actual traffic conditions. It will also allow for the exchange of traffic data and information among different agencies within the County of Los Angeles. For the information exchange network to function effectively, each agency must use a traffic control system that communicates with the information exchange network to allow the exchange of traffic data and information between agencies. The Integrated System will communicate with the information exchange network, and is being administered by County as the traffic control system for the unincorporated areas of the County of Los Angeles as well as certain agencies within the County. Because many agencies need to be brought online in a timely manner, time is of the essence to implement the Integrated System. Any delay in the completion and delivery of the Integrated System decreases the efficiency and value of both the Integrated System and the information exchange network. County and KHA have identified the key Deliverables set forth in Paragraph 10.8.2, KHA's timely completion and delivery of which will ensure County receives, and is able to implement, the Integrated System in a timely fashion, and therefore improve mobility, relieve traffic congestion and enhance air quality in the County of Los Angeles. If KHA fails to complete and deliver such Deliverables by the dates set forth in Paragraph 10.8.2, it is mutually agreed that such delay increases the likelihood that KHA will not complete and deliver the Integrated System in a timely manner, and therefore decreases County's ability to use the Integrated System to achieve its goals.

10.8.2. County shall be entitled to credits arising from KHA's noncompliance with its obligations relating to any of the following Deliverables:

- (i) Deliverable 6.3 – Factory Demonstration;
- (ii) Deliverable 6.5 – System Installation for Sixteen (16) Intersections;
- (iii) Deliverable 8.1(b) – Acceptance Test Report Final.

10.8.3. Such credits will be calculated according to the following rules:

- (i) Deliverables not properly completed within thirty (30) working days of the Deliverable due date, as specified in Exhibit C (Price and Schedule of Payments), shall entitle County to a credit of five percent (5%) of the actual cost of such Deliverable, as set forth in Exhibit C (Price and Schedule of Payments).

- (ii) The credit shall be increased by one percent (1%) of such cost each working day the Deliverable is late beyond the thirty (30) working days.

10.8.4. Deliverables shall not be considered late if their delay is due to circumstances above and beyond the control of KHA, including but not limited to, (i) the failure of County or other impacted jurisdictions to provide comments within the timeframes set forth in Exhibit C (Price and Schedule of Payments) and (ii) the failure of an approved subcontractor to complete work in accordance with the timeframes set forth in the statement of work attached to such subcontract, provided KHA has filed a timely Notice of Delay pursuant to Paragraph 15 (Notice of Delay) of Exhibit A (Additional Terms and Conditions) in respect of such circumstance. County may apply the full amount of any credit hereunder to offset and reduce any payments owing hereunder by County at any time by the full amount of such credit.

11. DEFICIENCIES.

- 11.1 Deficiencies. As used herein, the term “Deficiency” shall mean and include, as applicable to any Work provided by or on behalf of KHA to County: any malfunction, error, or defect in the design, development, or implementation of Work; any error or omission, or deviation from the Specifications or mutually agreed upon industry standards, or any other malfunction or error (other than a defect, error, omission or deviation to the Customizations or Interfaces caused by County’s modification of the Customizations Source Code), including the provision of negligent workmanship, which results in the Integrated System, in whole or in part, not performing in accordance with the provisions of this Agreement, including the SOW, as determined by County Project Director, which determination shall be subject to the Dispute Resolution Procedures set forth in Paragraph 2 (Dispute Resolution Procedures) of Exhibit A (Additional Terms and Conditions).
- 11.2 Corrective Measures. County Project Director shall notify KHA Project Director in writing, or if not practicable, orally to either KHA Project Director or KHA Project Manager, of any Deficiency. Upon the earlier of (a) notice (orally or in writing) from County, or (b) KHA’s discovery of such Deficiency, KHA shall promptly commence corrective measures to remedy any Deficiency, and shall remedy such Deficiency, in accordance with the timeline set forth in Exhibit E (Maintenance & Support). KHA acknowledges that, as part of Maintenance Services provided to County, KHA may be required to repair, replace or reinstall all or any part of the System Software, System Hardware (to the extent such hardware fails to achieve Compatibility with the Integrated System), or other material, or create an Update, in order to remedy a Deficiency.
- 11.3 Approval. No Deficiency shall be deemed remedied until all necessary remedial action has been completed and approved in writing by County Project Director in accordance with the procedures set forth in Paragraph 5.1 (General).

12. REPRESENTATIONS AND WARRANTIES.

- 12.1. KHA hereby represents, warrants and covenants to County that for the Term, the System Software shall be fully Compatible with and shall fully integrate, perform, and function with the System Hardware and the operating system software that conform to the specifications set forth in Appendix A (System Specifications) to Exhibit B (Statement of Work).
- 12.2. As used in the Agreement, the “Warranty Period” means the period commencing on the Final Acceptance Date and continuing for twelve (12) months thereafter. KHA hereby represents, warrants and covenants to County that for the Warranty Period:
 - 12.2.1. The System Software shall perform fully in accordance with the Specifications or any amendments thereto;
 - 12.2.2. KHA shall provide all Maintenance Services to correct all Deficiencies in accordance with Exhibit E (Maintenance & Support), and other than the dollar amount enumerated for Task 9.2 (System Warranty) in Exhibit C (Price and Schedule of Payments), KHA shall not charge, and County shall not pay, any Maintenance Fees until the beginning of the first calendar day following the expiration of the Warranty Period.

13. MAINTENANCE, SUPPORT AND ADDITIONAL SERVICES.

- 13.1 Maintenance Services. KHA shall provide support and maintenance services (collectively, “Maintenance Services”) to County for the Integrated System in accordance with this Agreement and Exhibit E (Maintenance & Support).
- 13.2 Correction of Deficiencies. Maintenance Services include the correction of any and all Deficiencies that occur during the Term in accordance with the timetable set forth in Paragraph II.C.3 of Exhibit E (Maintenance & Support). Correction of such Deficiencies shall be at no additional cost to County beyond the Maintenance Fee. If any component of the Integrated System requires Maintenance Services, KHA shall endeavor reasonably to provide such services at County’s location (which may include the provision of such services remotely by KHA).
- 13.3 Updates. Subject to the remainder of this Paragraph 13.3 (Updates), Maintenance Services include: (i) any upgrades, updates, enhancements, revisions, new version releases, improvements, bug fixes, patches, and modifications, other than Custom Programming Modifications, to the System Software, (ii) any testing or modifications as may be necessary to maintain System Software functionality, including as modified by any Updates, with the current version release of operating software and System Hardware that are utilized by County as of the Effective Date, and (iii) any updates or modifications required during the Term in order for the System Software and the Integrated System to remain in compliance with applicable federal or state and local laws and regulations (collectively, “Updates”), which Updates shall be provided by KHA to County at no additional cost beyond the Maintenance Fee. Any Update delivered by KHA to County

is deemed a part of the System Software and shall be included in the License granted to County pursuant to this Agreement.

13.4 System Hardware. Maintenance Services includes the support of System Hardware to the extent such System Hardware fails to achieve Compatibility with the Integrated System.

13.5 Additional Services.

13.5.1. Subject to Paragraph 6 (Change Notices and Amendments), upon the written request of County Project Director made at any time and from time to time during the Term, KHA shall provide to County “Additional Services,” such as customizations or modifications to the System Software that are requested by County Project Director in order to create new functionality and customizations or modifications not required of KHA in order to deliver the Integrated System or included as part of Maintenance Services (such custom programming is collectively referred to as “Custom Programming Modifications”). Additional Services may also include additional or refresher training beyond what is provided in Exhibit E (Maintenance & Support). Additional Services shall utilize available Pool Dollars under this Agreement, and in no event shall County be obligated to pay in excess of the then available Pool Dollars for Additional Services, nor shall KHA be required to perform any Additional Services for which there are no Pool Dollars available to pay KHA for such Additional Services.

13.5.2. Additional Services, including Custom Programming Modifications, shall be treated by the parties as a change requiring the execution of a Change Order pursuant to Paragraph 6 (Change Notices and Amendments).

13.5.3. Upon County’s request for Additional Services, KHA shall provide County, within seven (7) days of receipt of such request, a proposed Change Order containing all the information requested under Paragraph 6.2 (Change Order). Approval of the Change Order and of the Work to be performed thereunder shall be in accordance with Paragraph 6 (Change Notices and Amendments).

13.5.4. Upon completion, delivery and acceptance by County of any Custom Programming Modifications, such Custom Programming Modifications shall become part of and be included in System Software.

14. OWNERSHIP; LICENSE.

14.1 Ownership. The Baseline Software, Interfaces and KHA-Owned Customizations provided to County pursuant to this Agreement, other than Third Party Software, shall remain the property of KHA, and all such Baseline Software, Interfaces and KHA-Owned Customizations are subject to the License granted to County pursuant to this Paragraph 14 (Ownership; License). Upon delivery to and acceptance by County of any and all County-Owned Customizations, County shall own all right, title and interest in the

County-Owned Customizations, including the County-Owned Customizations Source Code, subject to a perpetual, non-exclusive license by County to KHA of the County-Owned Customizations for all uses by KHA in connection with the conduct by KHA of its business.

14.2 License. Subject to Paragraph 14.1 (Ownership), KHA grants to County, effective as of the Effective Date, a perpetual, nonexclusive license in respect of KHA's interest in the System Software (the "License"):

- 14.2.1. To use, install, integrate with other software, operate, and execute the System Software on an unlimited number of computers, servers, local area networks and wide area networks in order to communicate with an unlimited number of intersections, by an unlimited number of users, except that the use, operation, and execution of certain Third Party Software shall be subject to limitations on the number of concurrent users as set forth in Paragraph 16 (Third Party Software);
- 14.2.2. To extend connection of the Integrated System to all of the cities or agencies within County that acquire separate licenses to KHA's KITS system. Such licenses shall be provided to such cities or agencies at the price set forth on Exhibit C (Price and Schedule of Payments);
- 14.2.3. To permit agencies or cities to access, use, and conduct transactions with County using the System Software, or otherwise as may be necessary for the conduct by County, and more specifically the Department, of its business;
- 14.2.4. To archive and make sufficient numbers of copies of the System Software as is necessary for County to enjoy and exercise fully its rights under this License and this Agreement;
- 14.2.5. To use, modify, copy, and display the Documentation, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License;
- 14.2.6. To use, modify, copy, translate, compile, and create derivative works from the County-Owned Customizations and the County-Owned Customizations Source Code;
- 14.2.7. To permit third party access to the System Software, the Documentation, the System Software Source Code, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of Maintenance Services, Additional Services or other support of the System Software; provided, however, without limiting County's rights pursuant to Paragraph 14.2.3 or Paragraph 14.2.6, County covenants and agrees that it shall not exercise any of the rights contained in this Paragraph 14.2.7 unless and until the occurrence of any act that causes or results

in, or entitles County to, a release of the Source Code from escrow pursuant to Paragraph 15 (Source Code).

- 14.3 Fully-Paid Software License. Notwithstanding anything herein to the contrary, upon (i) the Final Acceptance Date, and (ii) County's payment to KHA of all approved invoiced amounts for said Work, this License is and shall be a fully paid, irrevocable License to the System Software and System Software Source Code, as modified by the Work performed under this Agreement, which License survives the termination or expiration of this Agreement for any reason.

15. SOURCE CODE.

- 15.1 County-Owned Customizations Source Code. KHA shall deliver to County, in an electronic format specified by County Project Manager and in accordance with the Statement of Work, a copy of the County-Owned Customizations Source Code, and KHA further covenants and agrees that during the Term it shall promptly notify County of any changes, modifications, amendments, or Updates to the County-Owned Customizations Source Code and shall promptly deliver to County a copy of such changed, modified, updated, or amended source code.
- 15.2 Self Escrow. KHA shall deposit with County the System Software Source Code (other than County-Owned Customizations Source Code and Third Party Software Source Code). Such escrow deposits shall be made concurrent with the delivery to County of Tasks, subtasks, and Deliverables, as applicable, pursuant to the SOW. KHA's duty to deposit the System Software Source Code with County shall continue throughout the Term. Except as provided in Paragraph 15.2.1 (County's Right to Verify Source Code), County shall hold the System Software Source Code in strict confidence and not use it for any purpose unless one of the conditions described in Paragraph 15.2.2 (Conditions for Release) has occurred which would permit County to use the System Software Source Code as provided in Paragraphs 15.2.3 (Release of System Software Source Code) and 15.2.4 (Use and Possession of System Software Source Code). The parties acknowledge that as a result of the passage of time alone, the deposited System Software Source Code may be susceptible to loss of quality ("Natural Degeneration"). For the purpose of reducing the risk of Natural Degeneration, during the Term, KHA shall deliver to County a new copy of all deposited System Software Source Code at least once every three (3) years. In the event the System Software Source Code or any part of it is destroyed or corrupted, upon County Project Director's request, KHA shall provide a replacement copy of the System Software Source Code. KHA shall deliver the replacement copy of the System Software Source Code within thirty (30) days of receipt of County Project Director's written request.
- 15.2.1. County's Right to Verify Source Code. Regardless of whether one of the Release Conditions occurs, County shall have the right to verify the relevance, completeness, currency, accuracy, and functionality of the System Software Source Code by, among other things, compiling the System Software Source

Code and performing test runs for comparison with the System Software other than System Software which constitutes Third Party Software.

- 15.2.2. Conditions for Release. The System Software Source Code on deposit with County shall be released from escrow upon the earlier to occur of: (a) termination of this Agreement pursuant to Paragraph 4 (Termination for Insolvency) of Exhibit A (Additional Terms and Conditions); (b) termination by County of Maintenance Services for KHA's breach of such Maintenance Service obligations; (c) termination by County pursuant to Paragraph 2 (KHA Responsibility and Debarment) of Exhibit A (Additional Terms and Conditions); or (d) KHA's determination to discontinue the provision of Maintenance Services for any reason other than County's nonpayment of any undisputed Maintenance Fees accrued hereunder, unless prior to KHA's discontinuation of Maintenance Services, KHA assigns such obligation to a third party approved in advance by County pursuant to Paragraph 38 (Assignment by KHA) of Exhibit A (Additional Terms and Conditions).
- 15.2.3. Release of System Software Source Code. In the event of a claim to the System Software Source Code under this Paragraph 15.2.3, then County shall provide KHA with a written notice outlining the facts upon which County bases its claim that a Release Condition has occurred. KHA may contest County's right to use the Source Code pursuant to the Dispute Resolution Procedures set forth in Paragraph 2 (Dispute Resolution Procedures) of Exhibit A (Additional Terms and Conditions). If the Dispute Resolution Procedures result in disagreement between the president of KHA and County as to whether a basis exists for any claim by County to the Source Code, and County continues to believe that such a basis does exist, then County may, in its sole discretion, give notice of such belief to KHA, in which event County may, at any time on or after a date that is seven (7) days after the giving of such notice, utilize any or all of the System Software Source Code in the manner set forth in Paragraph 15.2.4 (Use and Possession of System Software Source Code) below.
- 15.2.4. Use and Possession of System Software Source Code. Subject to the provisions of Paragraph 14.2, System Software Source Code obtained by County under the provisions of this Agreement shall remain subject to every License restriction, proprietary rights protection, and other County obligation specified in this Agreement. County may use System Software Source Code for the sole purpose as it is Licensed hereunder. When System Software Source Code is not in use, County agrees to keep such System Software Source Code in a locked, secure place. When System Software Source Code resides in a central processing unit, County shall limit access to its authorized employees and consultants who have a need to know in order to support the Integrated System.

16. THIRD PARTY SOFTWARE.

- 16.1. KHA hereby represents and warrants that none of the System Software other than the third party software as specified in Exhibit F (Third Party Software), is owned by third parties (the “Third Party Software”). KHA represents and warrants that it has not modified and shall not modify, nor does KHA have any need to modify, Third Party Software in order for the System Software to fully perform in accordance with all requirements of this Agreement. KHA represents and warrants that all Third Party Software is provided to County in the same unmodified form as received by KHA from the applicable third party. KHA represents and warrants that Third Party Software shall, together with the remainder of the System Software, fully satisfy all requirements of the Agreement without the need for any modification of Third Party Software by KHA or otherwise.
- 16.2. County acknowledges that it may have to execute certain third party license agreements in respect of such Third Party Software. These third party license agreements shall be at no additional cost to County. To the extent that any such third party license agreement conflicts with this Agreement or in any way restricts County’s full use and enjoyment of the System Software as contemplated herein, KHA shall take all necessary action and pay all sums required for County fully to enjoy all the rights and benefits in respect of the System Software granted under this Agreement. KHA shall promptly and at no cost to County, either: (1) obtain a license from the appropriate third party which shall enable KHA to modify such Third Party Software, and KHA shall provide all necessary modifications, or (2) to the extent that KHA is unable to obtain such a license, provide an Update or alternative solution, which is functionally equivalent, in the sole determination of KHA Project Manager and County Project Manager, in lieu of modifying such Third Party Software.

17. MINIMUM SYSTEM REQUIREMENTS; COMPATIBILITY. Appendix A (System Specifications) to Exhibit B (Statement of Work) sets forth the minimum requirements for System Hardware and operating system software that are Compatible (as defined below) with the Integrated System, including any Custom Programming Modifications and Updates thereto, and are required for County to enjoy and exercise fully its rights in respect of the Integrated System. Such matrixes shall specify version Compatibility and shall provide Specifications for installation of the System Hardware and operating system software in order to achieve Compatibility with the System Software, along with recommended System Hardware make and model numbers. KHA may request to inspect County’s installation of the System Hardware or operating system software, provided that any such inspection, or lack thereof, shall not relieve KHA of its obligations with respect to Paragraph 12 (Representations and Warranties) or Paragraph 13 (Maintenance, Support and Additional Services). As used herein, “Compatible” or “Compatibility” means that the applicable System Hardware and operating system software, as the case may be, as set forth in Appendix A (System Specifications) to Exhibit B (Statement of Work) are capable of supporting, operating and otherwise performing all such System Hardware or operating system software anticipated functions when used in conjunction with the System Software, including any Customizations, Interfaces, Updates, and Custom Programming Modifications thereto.

- 18. KHA'S OFFICES.** KHA's business offices are located at 7878 N. 16th Street, Suite 300, Phoenix, AZ 85020-4467. KHA shall notify County of any change in its business address at least ten (10) calendar days prior to the effective date thereof.
- 19. PRODUCTION USE OF THE SYSTEM.** Following installation by KHA and prior to Final Acceptance by County, County shall have the right to use, in production mode, any completed portion of the System Software without any additional cost to County where County determines that it is desirable or necessary for County operations. Such production use shall not restrict KHA's performance under this Agreement and shall not be deemed to be KHA's achievement of Go-Live or Final Acceptance.
- 20. NOTICES.** All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (1) by hand with signed receipt, (2) by first-class registered or certified mail, postage prepaid, (3) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid, or (4) by overnight commercial carrier, with signed receipt. Notices is deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing, or on the date of signature receipt by the receiving part of any overnight commercial carrier delivery. Addresses may be changed by either party giving ten (10) days prior notice in accordance with the procedures set forth above, to the other party.

To County:

Jane White
County of Los Angeles
Department of Public Works
Traffic and Lighting Division
P.O. Box 1460
Alhambra, CA 91802-1460
Telephone: (626) 300-2020
Fax: (626) 300-4736
E-mail: jwhite@ladpw.org

with a copy to:

County Counsel, Los Angeles County
500 West Temple Street
Los Angeles, CA 90012
Attention: Jose Silva, Esq.
Facsimile: (213) 617-7182

To KHA:

Kimley and Associates, Inc.
7878 N. 16th Street
Suite 300
Phoenix, AZ 85020-4467
Attention: Jason Castillo
Facsimile: (602) 944-7423

with a copy to:

Kimley-Horn and Associates, Inc.
7878 N. 16th Street
Suite 300
Phoenix, AZ 85020-4467
Attention: Pierre Pretorius
Facsimile: (602) 944-7423

County Project Director shall have the authority to issue all notices or demands, which are required or permitted by County under this Agreement.

21. **ARM'S LENGTH NEGOTIATIONS.** This Agreement is the product of an arm's length negotiation between KHA and County. Each party has had at all times the opportunity to receive advice from independent counsel of its own choosing. Accordingly, this Agreement is to be interpreted fairly as between the parties, and not strictly construed as against either party as drafter or creator.
22. **SURVIVAL.** The following Paragraphs of this Agreement shall survive its expiration or termination for any reason: 1, 2, 7, 8, 9, 10, 14, 15, 16, 20, 21, and 22, and all the terms and conditions set forth in Exhibit A (Additional Terms and Conditions).

[Intentionally Left Blank]

AGREEMENT
BETWEEN COUNTY OF LOS ANGELES
AND
KIMLEY-HORN AND ASSOCIATES, INC.

IN WITNESS WHEREOF, the Los Angeles County Board of Supervisors has caused this Agreement to be subscribed by its Chairman and the seal of such Board to be hereto affixed and attested by the Executive Officer thereof, and KHA has caused this Agreement to be subscribed in its behalf by its authorized officer, effective as of the date approved by such Board.

COUNTY OF LOS ANGELES

By _____
Chairman, Board of Supervisors

ATTEST:
VIOLET VARONA-LUKENS
Executive Officer-Clerk
of the Board of Supervisors

By _____
Deputy

KHA
Signed: _____
Printed: _____
Title: _____

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By _____
Jose Silva
Title: Principal Deputy County
Counsel