

CONTRACT

A Contract For Professional Engineering Services

A Contract Between
City of Fernley
595 Silver Lace Blvd
Fernley NV 89408

and

Kimley-Horn and Associates, Inc.
5370 Kietzke LN, Suite 100
Reno, NV 89511

WHEREAS, Nevada Revised Statutes (“NRS”) chapter 266 authorizes the City of Fernley, Nevada (the “City”) to engage services of persons as independent contractors; and

WHEREAS, it is deemed that the services of Kimley-Horn and Associates, Inc., (the “Contractor”) are both necessary and in the best interests of the City; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract for Services of Independent Contractor (this “Contract”) is contingent upon Fernley City Council approval.
2. **DEFINITIONS.**
 - a. “City” means City of Fernley, County of Lyon, State of Nevada.
 - b. “Independent Contractor” means a person or entity that performs services and/or provides goods for the City under the terms and conditions set forth in this Contract.
 - c. “Fiscal Year” is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective from the 5th day of August, 2020, to the 30th day of June, 2021, subject to appropriation.
4. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, or by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

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Notice for the City shall be sent to:

Derek Starkey, P.E., City Engineer
City of Fernley
595 Silverlace BLVD
Fernley, NV 89408

Notice for the Contractor shall be sent to:

Devin Moore, P.E., Project Manager
Kimley-Horn and Associates, Inc.
6671 Las Vegas BLVD South, Suite 320
Las Vegas, NV 89119

5. SCOPE OF SERVICES. Scope of Services shall be set forth in Attachment A.

Contractor shall not commence work until the Contract is fully executed by City and Contractor and a Notice to Proceed (NTP) has been issued to the Contractor by the City.

The City shall have the right to exercise its option(s) for all or any part of the OPTIONAL tasks or subtasks identified in Attachment B Fee Schedule, (and further described in Attachment A Scope of Services). The Contractor shall not commence work on any OPTIONAL task prior to issuance of a NTP for the OPTIONAL task by the City.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a Fee Schedule outlined in Attachment B.

The maximum amount payable to Contractor to complete each task is equal to the not-to-exceed amounts identified in Attachment B. Contractor may submit a written request to the City's Project Manager to reallocate not-to-exceed amounts between Tasks. The request to reallocate must be accompanied by a revised fee schedule with associated revised not-to-exceed amounts, and must be approved in writing by the City's Project Manager prior to performance of the work. Contractor shall not be compensated in excess of the Total not-to-exceed Contract amount:

Service A: (Task 1 through Task 5)	\$22,675
Service B: (Task 1 through Task 5)	\$10,705
<u>Kimley-Horn Expenses</u>	<u>\$400</u>
Total NTE Amount (Including OPTIONAL Services)	\$33,780

7. ATTACHMENTS. This Contract also incorporates the following attachments (the "Attachments"):

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ATTACHMENT C:

Schedule of Services

Tasks and subtasks shall be completed in accordance with the schedule in Attachment C. Any change(s) to the schedule must be approved in writing by the City's Project Manager.

Project Team

Contractor will perform the work using the project team identified in Attachment D. Any changes to the project team must be approved in writing by the City's Project Manager.

Should a conflict arise between the terms of the attachment(s) and this contract, the contract term(s) prevails unless specifically addressed in a document separate from the contract and attachments and signed by all parties.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to this Contract and recognize that the City is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the City no later than the first Friday in August of the same year. If Contractor submits billing in a timely fashion, the City agrees to pay the Contractor within 30 days of receipt of the invoice. Should City not pay within this agreed upon time frame, the City agrees to pay a ten dollar per month fee until such time as the unresolved invoice becomes paid in full. Any dispute regarding payment must be raised in writing to the City within 30 days.

9. INSPECTION & AUDIT.

- a. **Books and Records.** Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, the State of Nevada or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes. Contractor agrees to provide a copy of the file within a reasonable time upon being requested by the City.
- b. **Inspection & Audit.** Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the City, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the

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Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this paragraph.

- c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used under this Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of this Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

- a. **Termination Without Cause.** Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated without cause by (1) written mutual consent of both parties, or (2) unilateral termination by either party after service of formal Thirty Day (30) written notice as specified in paragraph (4).
- b. **Termination for Non-Appropriation.** The continuation of this Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the City. The City may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- c. **Default or Breach.** A default or breach may be declared with or without termination. The following shall constitute a default or breach:
 - i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. For any other good or sufficient reason, including, but not limited to, dishonesty, fraud, ethical violations, bribery, or other similar acts.
- d. **For Cause Termination and Time to Correct.** This Contract may be terminated by the non-defaulting party upon a declared default or breach only after service of formal written notice as specified in paragraph (4), and the

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subsequent failure of the defaulting party within a reasonable time of receipt of that notice to provide evidence, satisfactory to the non-defaulting party, showing that the declared default or breach has been corrected or is being corrected as expeditiously as is prudent and practicable.

- e. **Winding Up Affairs Upon Termination.** In the event that this Contract is terminated for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the City;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the City; and
 - iv. Contractor shall preserve, protect and promptly deliver possession to the City of all proprietary information in accordance with paragraph (21).
 - v. In the event that dispute(s) arise during the winding up of affairs upon termination, the parties agree to meet and negotiate in good faith to resolve any such dispute(s).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages exclusive of lost profits.

12. ATTORNEYS' FEES, COSTS, AND EXPENSES. Unless otherwise stated herein, the Parties will bear their own attorneys' fees, costs, and expenses in connection with the negotiation, execution, and performance of this Agreement.

13. LIMITED LIABILITY. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the Attachments. Damages for any default or breach by the City shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the default or breach.

14. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds,

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or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

15. INDEMNIFICATION. The City does not require the Contractor to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the public body.

The City does require the Contractor to indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor in the performance of the contract.

The City does not require the Contractor to defend the public body and the employees, officers and agents of the public body with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor which are based upon or arising out of the professional services of the Contractor. If the Contractor is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the public body, as reimbursement for the attorney's fees and costs incurred by the public body in defending the action, by the Contractor in an amount which is proportionate to the liability of the Contractor.

The City does require the Contractor to defend the public body and the employees, officers and agents of the public body with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or the employees or agents of the Contractor which are not based upon or arising out of the professional services of the Contractor.

16. INDEPENDENT CONTRACTOR. Contractor is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the City shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2)

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industrial insurance coverage; (3) participation in any group insurance plans available to employees of the City; (4) participation or contributions by either Contractor or the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the City. Contractor shall indemnify and hold the City harmless from, and defend the City against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the City.

17. INSURANCE Unless expressly waived in writing by the City, Contractor, as an independent contractor and not an employee of the City, must carry those policies of insurance which have been agreed to by the parties as evidenced by the parties initials in the signature spaces provided in the amounts specified below and pay all taxes and fees incident hereunto. The City shall have no liability except as specifically provided in this Contract. Contractor shall not commence work before:

- a. Contractor has provided the required evidence of insurance to the City, and
- b. The City has approved the insurance policies provided by Contractor. Prior approval of the insurance policies by the City shall be a condition precedent to any payment of consideration under this Contract and the City's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the City to timely approve the insurance policies or any changes to the insurance coverage shall not constitute a waiver of the condition.

Insurance Coverage: Contractor shall, at Contractor's sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specified herein or otherwise agreed to by the City, the required insurance shall be in effect prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:

- 1) Final acceptance by the City of the completion of this Contract;
or
- 2) Such time as the insurance is no longer required by the City under the terms of this Contract.

Any insurance or self-insurance available to the City shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance or bond with an insurer meeting the requirements.

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Workers' Compensation and Employer's Liability Insurance:

INDUSTRIAL INSURANCE. Contractor further agrees, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the City to make payment under this Contract, to provide the City with a work certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor agrees, prior to commencing any work under this Contract, to complete and to provide the following written request to the qualified insurer:

_____ has entered into a contract with Owner to perform work from _____ to _____ and requests that an industrial insurance provider qualified and licensed to offer such insurance within the State of Nevada, provide to The City of Fernley, Nevada 1) a certificate of coverage issued pursuant to NRS 616B.627 and 2) notice of any lapse in coverage or nonpayment of coverage that Contractor is required to maintain. The certificate and notice should be mailed to:

City of Fernley
595 Silver Lace Blvd
Fernley, NV 89408

Contractor agrees to maintain required workers compensation coverage throughout the entire term of this Contract. If Contractor does not maintain coverage throughout the entire term of this Contract, Contractor agrees that the City may, at any time the coverage is not maintained by Contractor, order Contractor stop work, suspend this Contract, or terminate this Contract.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Contractor is a sole proprietor and that:

- 1) In accordance with the provisions of NRS 616B.659, Contractor has not elected to be included within the terms, conditions, and provisions of NRS chapters 616A to 616D, inclusive; and
- 2) Contractor is otherwise in compliance with those terms, conditions and provisions.

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Commercial General Liability Insurance:

- 1) Minimum Limits required:
 - \$1,000,000** General Aggregate
 - \$1,000,000** Products & Completed Operations Aggregate
 - \$1,000,000** Personal and Advertising Injury
 - \$1,000,000** Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed

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operations, personal injury, products, civil lawsuits, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

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Business Automobile Liability Insurance:

Minimum Limit required: **\$100,000** Each Occurrence for bodily injury and property damage. Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).

The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

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Professional Liability Insurance:

- 3) Minimum Limit required: \$1,000,000 Each Claim, \$2,000,000 Aggregate.
- 4) Retroactive date: Prior to commencement of the performance of this Contract
- 5) Discovery period: Three (3) years after the termination date of this Contract.
- 6) A certified copy of this policy may be required.

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Umbrella or Excess Liability Insurance:

- 1) May be used to achieve the above minimum liability limits.

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Commercial Crime Insurance:

- 1) Minimum Limit required: **\$10,000** Per Loss for Employee Dishonesty
- 2) This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

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Performance Security:

- 1) Amount required: \$ **0.00**
- 2) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the City only.
- 3) The security shall be deposited with the City no later than ten (10) working days following award of this Contract to Contractor.
- 4) Upon successful completion of this Contract, the security and all interest earned, if any, shall be returned to Contractor.

General Requirements:

- 1) Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, ***The City of Fernley, its officers, employees***

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and immune contractors shall be named as additional insureds for all liability arising from this Contract.

- 2) Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- 3) Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- 4) Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the City. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the City.
- 5) Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the City, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address shown below.
- 6) Approved Insurer: Each insurance policy shall be:
 - a. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the City and having agents in the State of Nevada upon whom service of process may be made, and
 - b. Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance: Prior to the start of any work, Contractor must provide the following documents to the City:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the City to evidence the insurance policies and coverages required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, **must** be submitted to the City to evidence the endorsement of the City as an additional insured per General Requirements, Subsection 1) above.
- 3) Schedule of Underlying Insurance Policies: If an Umbrella or Excess insurance policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the City prior to the commencement of work by Contractor. Neither approval by the City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit

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the liability of Contractor or its sub-contractors, employees or agents to the City or others, and shall be in addition to and not in lieu of any other remedy available to the City under this Contract or otherwise. The City reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Required Mailing: Contractor will mail all required insurance documents to the City at the address identified in section 4 of this Contract.

18. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

19. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other default or breach.

20. SEVERABILITY OF PARTS. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by any court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement, and such determination or adjudication shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

21. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the City.

22. CITY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into

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the possession of the City by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the City. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection. Any modifications made by the City to any of the Contractor's document, or any use, partial use, or reuse of the document without the written authorization or adaption by the Contractor will be at the City's sole risk and without liability to the contractor, and the City shall indemnify, defend and hold the Contractor harmless from all claims, damages, losses and expenses, including but not limited to attorney's fees, resulting therefrom.

23. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The City will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential," provided that Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

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25. LOBBYING. The parties agree, whether expressly prohibited by federal, state or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

Any federal, state, county or local agency, legislature, commission, counsel or board;

Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. GENERAL WARRANTY: Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be of good quality, with no material defects.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective upon signing and only for the period of time specified in this Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; VENUE. This Agreement will be interpreted, and the rights and liabilities of the Parties determined, in accordance with the laws of the State of Nevada, excluding its conflict of laws rules. In any action or proceeding arising under this Agreement, each Party to this Agreement hereby (a) consents to the jurisdiction of Nevada Courts, and of the pertinent appellate courts, and consents to the venue of such action or proceeding in Lyon County, Nevada courts, (b) irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts, and (c) consents to personal jurisdiction within Lyon County, Nevada. Each Party to this Agreement accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any defense of lack of personal jurisdiction, improper venue or inconvenient forum or any similar defense, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with this Agreement.

29. INTEGRATED AGREEMENT. This Agreement contains the entire agreement and understanding among the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings regarding such matters. The Parties acknowledge and represent that they have not relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein. The terms of this Agreement are contractual and not a mere recital.

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30. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

31. ADVICE OF COUNSEL. Each Party hereto represents and agrees that it has had the opportunity to seek and has sought from attorneys any such advice as it deems appropriate with respect to signing this Agreement or the meaning of it. Each party has undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Agreement in reliance on that and not in reliance on any advice, disclosure, representation or information provided by or expected from any other Party or Party's attorneys. This is an agreement of settlement and compromise, made in recognition that the Parties may have different, disputed or incorrect understandings, information and contentions, as to facts and law, and with each Party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to the facts, law, claims, duties, disclosures and conduct occurring before or during the entry into this Agreement. No conduct, failure, misunderstanding or misinformation and no claim of fraud or fraudulent inducement occurring prior to or in connection with the execution hereof shall be a ground for rescission hereof or for recovery of damages, except as otherwise expressly provided herein.

32. MODIFICATION; NO WAIVER. The provisions of this Agreement, including this paragraph, may be modified or waived only in writing signed by all Parties. No waiver with respect to any portion of this Agreement shall apply to any other portion of the Agreement, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. No course of dealing by any Party, and no failure, omission, delay, or forbearance by any Party in exercising such Party's rights or remedies shall be deemed a waiver of any such rights or remedies or a modification of this Agreement.

33. INTERPRETATION OF AGREEMENT. This Agreement shall be construed without regard to the Party or Parties responsible for its preparation, and shall be deemed to have been prepared collectively by the Parties. Any ambiguity or uncertainty arising herein shall not be interpreted or construed against any Party hereto on the basis that a Party prepared or drafted a particular provision of this Agreement.

34. COOPERATION OF PARTIES. The Parties agree to cooperate to accomplish the purpose of this Agreement and to execute any and all supplementary documents and to take all additional actions not inconsistent with the terms set forth in this Agreement that are necessary and appropriate to give full force and effect to the terms and intent of this Agreement.

35. NON-DISCRIMINATION. In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment,

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upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

36. CERTIFICATION REQUIRED BY NEVADA SENATE BILL 26 (2017). By signing this Agreement, the Contractor provides a written certification, as a material part of this Agreement, that the Contractor is not currently engaged in, and during the Term shall not engage in, a boycott of Israel. The term "boycott of Israel" has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017). The Contractor shall be responsible for fines, penalties, and repayment of any State of Nevada or federal funds that may arise (including those that the CITY pays, becomes liable to pay, or becomes liable to repay) as a direct result of the Contractor's non-compliance with this Section. If, at any time during the formation or duration of this Agreement, Contractor is engaged or engages in a boycott of Israel, it will constitute a material breach of this Agreement.

37. ACKNOWLEDGMENT AND EXECUTION. In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby:

CITY MANAGER

City of Fernley
Daphne Hooper
Telephone: 775-784-9900

DAPHNE HOOPER
DATED this ____ day of _____, 20__.

CITY ATTORNEY

City of Fernley
Brandi Jensen, Esq.
Telephone: 775-784-9861
Fax: 775-784-9868

I have reviewed this Contract and approve as to its legal form.

BRANDI JENSEN
DATED this ____ day of _____, 20__.

CITY'S ORIGINATING DEPARTMENT:

City of Fernley Department: Engineering Department

DEREK STARKEY, P.E., CITY ENGINEER
DATED this ____ day of _____, 20__.

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CONTRACT ACCEPTANCE AND EXECUTION:

The City Council of Fernley, Nevada, at their publicly noticed meeting of _____, 20____, approved the acceptance of this Contract. Further, the City Council authorizes the Mayor of Fernley, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

FERNLEY:

ROY EDGINGTON, MAYOR
DATED this _____ day of _____, 20__.

ATTEST:

KIM SWANSON, CITY CLERK
DATED this _____ day of _____, 20__.

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_____, being first duly sworn, deposes and says: That _____ is the Contractor; that _____ has read the foregoing Contract; and that _____ understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY: _____
TITLE: _____
FIRM: _____
BUSINESS LICENSE #: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone: _____ / Fax #: _____
E-mail Address: _____

(Signature of Contractor)

DATED this _____ day of _____, 20__.

STATE OF _____)
County of _____) ss

On this _____ day of _____, in the year 20__, before me, _____ / Notary Public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

WITNESS my hand and official seal.

Notary's Signature

My Commission Expires: _____

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ATTACHMENT A SCOPE OF SERVICES

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ATTACHMENT A SCOPE OF SERVICES



To: *Jessica Dover, P.E., City of Fernley*

From: *Devin Moore, P.E., PTOE, RSP₂, Kimley-Horn*

Date: *July 16, 2020*

**Fernley Signal Participation Fee Development and
Operations Analysis Project
US 95A and Fremont Street/Chisholm Trail and
US 95A and Newlands Drive Intersections**

SCOPE OF SERVICES

Background

It is our understanding that the City of Fernley (City) desires two main services as part of this contract, a developer participation fee case study and an operations analysis. The City is interested in learning more about different approaches or methods used in Nevada to assess a developer's signal participation fees based on the development's traffic impact at an intersection. In particular, the City is interested in the signalized intersections of US 95A and Fremont Street/Chisolm Trail as well as US 95A and Newlands Road. The City also desires a review of the traffic signal and driveway operations along US 95A from Penny Lane to the I-80 eastbound ramps to determine capacity constraints and intersection operation improvements.

SERVICE A: Developer Participation Fee Case Study

Task 1: Project Management

Kimley-Horn (Consultant) will manage the project effort, schedule, and provide a monthly progress report and invoice. This task includes coordination with the City on the findings throughout the project.

Task 2: Participation Fee Case Studies Review

The Consultant will provide a review of up to five (5) traffic impact participation fee case studies. These case studies will be from cities, counties, or metropolitan planning organizations (MPOs) within the state of Nevada. The review will include the structure or method by which the developer's participation fees are assessed and collected along with the benefits and disadvantages to the method. It is anticipated that the follow case study locations will be reviewed:

- RTC Washoe

- Clark County
- City of Henderson
- City of Las Vegas
- City of North Las Vegas

Task 3: Traffic Impact Study Review

The Consultant will conduct a review up to five (5) previous Traffic Impact Studies with traffic impacting the intersections of US 95A and Fremont Street/Chisolm Trail and US 95A and Newlands Drive. The review will briefly summarize the traffic impacts to the intersection and calculate an estimated participation fee based on the participation fee methods identified in Task #2. The calculations will be summarized in a tabular format. This will be completed to help the City determine the impacts that the different participate fee methods would have if they were to be applied at these intersections.

Task 4: NDOT Coordination and Intersection Cost Estimate

The Consultant will coordinate with NDOT to determine the ultimate build-out of the intersections, possible alternative intersection configurations, construction phasing, and potential timing for the complete build-out of the intersection. This coordination will be used to help determine anticipated intersection improvements and their associated planning-level cost estimates. Understanding the cost associated with intersection improvements will allow the City to evaluate the magnitude of each participation fee and how that relates to the anticipated future intersection improvement costs.

Task 5: Participation Fee Summary Memorandum

The results of Service A Task 2 – Task 4 will be summarized in a draft technical memorandum and provided to the City. Included in the summary memorandum will be the Consultant's recommendations related to the approach or method for the City to consider in assessing developer participation fees related to traffic impacts at the intersections of US 95A and Fremont Street/Chisolm Trail and US 95A and Newlands Drive. One set of draft memorandum comments from the City will be incorporated into the final participation fee technical memorandum. A PDF of the final memorandum as well as one (1) hard copy will be provided.

SERVICE B: Intersection Operations Analysis

Task 1: Data Collection

Traffic data collected as part of the Fernley Transportation Master Plan will be utilized at the intersections of US 95A and Fremont Street/Chisolm Trail and US 95A and Newlands Drive. Peak hour driveway counts will be conducted at the three driveways between the subject intersections.

Task 2: Capacity Analysis

Data collected as part of Task 1 will be used to determine capacity constraints in the study area. The Synchro model developed as part of the Fernley Transportation Master Plan will be used to calculate intersection and driveway levels of service (LOS).

Task 3: Crash Data Review

The Consultant will provide a high-level review of the three most recent years of readily available crash data within the study area. A summary of the crashes will be provided and will inform recommendations developed in Task 4.

Task 4: Recommendations

Recommendations for roadway improvements and signal timing adjustments will be prepared as part of this task. Recommendations may include improvements such as right or left turn lanes, road widening, signal modifications, access control, etc.

Task 5: Operations Analysis Summary Memorandum

The findings of Service B Task 1 – Task 4 will be summarized into a draft technical memorandum and provided to the City. Included in the summary memorandum will be the Consultant's recommendations for the City to consider for the buildout of the intersections of US 95A and Fremont Street/Chisolm Trail and .US 95A and Newlands Drive. One set of draft memorandum comments from the City will be incorporated into the final operations analysis technical memorandum. A PDF of the final memorandum as well as one (1) hard copy will be provided.

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ATTACHMENT B

CONSIDERATION - FEE SCHEDULE

DATE: July 16, 2020
 PREPARED BY: D. Moore
 CHECKED BY: M. O'Brien



City of Fernley Signal Participation Fee Development and Operations Analysis

TASK DESCRIPTION	KIMLEY-HORN STAFF					Kimley-Horn Total Hours by Task	Kimley-Horn Labor Cost by Task
	Project Manager	Senior Technical Expert	Professional	Analyst	Senior Technician		
Hourly Billing Rates	\$ 190.00	\$ 225.00	\$ 160.00	\$ 125.00	\$ 125.00		
SERVICE A							
1.00 Project Management							
- Project set up	2				2	4	\$ 630
- Monthly invoices and progress reports	3				3	6	\$ 945
- Calls with City	4			4		8	\$ 1,260
Sub-Totals	9	0	0	4	5	18	\$ 2,835
2.00 Participation Fee Case Studies Review							
- Review existing policies	3			15		18	\$ 2,445
- Call with agency	5					5	\$ 950
- Summary	2	1	10			13	\$ 2,205
Sub-Totals	10	1	10	15	0	36	\$ 5,600
3.00 Review TIAs							
- Review existing studies	2			15		17	\$ 2,255
- Participation calcs per Task 2	5			15		20	\$ 2,825
Sub-Totals	7	0	0	30	0	37	\$ 5,080
4.00 NDOT Coordination and Intersection Cost Estimates							
- Call with NDOT	2			2		4	\$ 630
- Planning-level cost estimates	2	6		8		16	\$ 2,730
- Summary	1			2		3	\$ 440
Sub-Totals	5	6	0	12	0	23	\$ 3,800
5.00 Participation Fee Summary Memo							
- Draft	6		15			21	\$ 3,540
- QC		2				2	\$ 450
- Address City comments	2		5			7	\$ 1,180
- Submit final	1					1	\$ 190
Sub-Totals	9	2	20	0	0	31	\$ 5,360

TASK DESCRIPTION		KIMLEY-HORN STAFF					Kimley-Horn Total Hours by Task	Kimley-Horn Labor Cost by Task
		Project Manager	Senior Technical Expert	Professional	Analyst	Senior Technician		
Hourly Billing Rates		\$ 190.00	\$ 225.00	\$ 160.00	\$ 125.00	\$ 125.00		
SERVICE B								
1.00	Data Collection							
	- Collect Data from TMP				2		2	\$ 250
	- Driveway Counts	1			4		5	\$ 690
	Sub-Totals	1	0	0	6	0	7	\$ 940
2.00	Capacity Analysis							
	- Add driveways to TMP Synchro model				2		2	\$ 250
	- Review Synchro model	2		4			6	\$ 1,020
	- LOS Analysis and Reports	2			4		6	\$ 880
	Sub-Totals	4	0	4	6	0	14	\$ 2,150
3.00	Crash Data Review							
	- Collect crash data from NDOT				1		1	\$ 125
	- Review crash data	2		2			4	\$ 700
	- Summarize				2		2	\$ 250
	Sub-Totals	2	0	2	3	0	7	\$ 1,075
4.00	Recommendations							
	- Develop recommendations	6	2	4			12	\$ 2,230
	- Summarize			2			2	\$ 320
	Sub-Totals	6	2	6	0	0	14	\$ 2,550
5.00	Operations Analysis Summary Memo							
	- Draft	3		10			13	\$ 2,170
	- QC		2				2	\$ 450
	- Address City comments	2		5			7	\$ 1,180
	- Submit final	1					1	\$ 190
	Sub-Totals	6	2	15	0	0	23	\$ 3,990
							Total Hours	Total Labor
Total hours by staff Service A - B		59	13	57	76	5	210	
Total labor cost Service A - B		\$11,210	\$2,925	\$9,120	\$9,500	\$625		\$ 33,380

TOTAL PROJECT COSTS			
Kimley-Horn Labor Fee	\$33,380	Kimley-Horn Expenses	\$400
Total Labor Fee	\$33,380	Total Expenses	\$400
TOTAL PROJECT COST			\$33,780

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ATTACHMENT C SCHEDULE OF SERVICES

Schedule		August	September	October	November
Notice to Proceed					
Service A					
TASK 1	Project Management				
	1.1 Invoicing and Progress Reports				
	1.2 Coordination				
TASK 2	Participation Fee Case Studies Review				
	2.1 Research				
	2.2 Review Case Studies				
TASK 3	Traffic Impact Study Review				
	3.1 Collect Existing Studies from City				
	3.2 Review Studies				
	3.3 Calculated Impact Fees from Task 2				
	3.4 Summarize Results				
TASK 4	NDOT Coordination and Intersection Cost Estimate				
	4.1 Coordinate with NDOT				
	4.2 Cost Estimation				
TASK 5	Participation Fee Summary Memorandum				
	5.1 Summarize Task 2 - Task 4				
	5.2 Develop Recommendations				
	5.3 Technical Memorandum #1			☆	★
City Review					
Service B					
TASK 1	Data Collection				
	1.1 Collect Data				
TASK 2	Capacity Analysis				
	2.1 Update Synchro Model				
	2.2 LOS Analysis				
	2.3 Summary				
TASK 3	Crash Data Review				
	3.1 Review Crash Data				
TASK 4	Recommendations				
	4.1 Develop Recommendations				
TASK 5	Operations Analysis Summary Memorandum				
	5.1 Summarize Task 2 - Task 4				
	5.2 Develop Recommendations				
	5.3 Technical Memorandum #2			☆	★
City Review					

Legend: ☆ Draft Tech Memo ★ Final Tech Memo

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ATTACHMENT D
PROJECT TEAM

Organizational Chart



Project Manager

Devin Moore, P.E., PTOE, RSP₂

Principal-in-Charge / QA/QC

Molly O'Brien, P.E., PTOE, RSP₂

Support Staff

Eric Sweat, P.E.

Emily Roberts, EIT