



# Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Nicole Benyamin, Assistant Civil Engineer

Reviewed by: Robert DuBoux, Public Works Director/City Engineer

Approved by: Reva Feldman, City Manager

Date prepared: May 15, 2020 Meeting date: June 8, 2020

Subject: Amendment to Professional Services Agreement with Kimley-Horn and Associates, Inc.

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**RECOMMENDED ACTION:** Authorize the City Manager to execute Amendment No. 2 to the Professional Services Agreement with Kimley-Horn and Associates, Inc. in the amount of \$40,000 for a total not to exceed \$561,840 and extend the term of the agreement for additional engineering design services for the Civic Center Way Improvements Project.

**FISCAL IMPACT:** Funding for this amendment was included in the Adopted Budget for Fiscal Year 2019-2020 in Account No. 310-9061-5100 (Civic Center Way Improvements). This project is fully funded through Los Angeles County Measure R funds with the Los Angeles County Metropolitan Transportation Authority. There are sufficient funds available for this additional work.

**WORK PLAN:** This item was included as item 8j in the Adopted Work Plan for Fiscal Year 2019-2020.

**DISCUSSION:** On September 12, 2016, the City entered into an agreement with Kimley-Horn and Associates, Inc. to provide engineering design services for the Civic Center Way Improvements Project.

On July 8, 2019, City Council approved an amendment to the agreement with Kimley-Horn and Associates, Inc. in order to accomplish project design revisions requested by City Council, the Public Works Commission, and members of the community.

On November 21, 2019, the project was advertised in solicitation of bids and on March 5, 2020 sealed bids were publicly opened. The construction bids are currently being held and waiting for final acceptance from the Council. The City Council approved the project's Coastal Development Permit on February 10, 2020. However, the Coastal Development Permit was subsequently appealed to the California Coastal Commission. The appeal has been delayed due to COVID-19 and is anticipated to be scheduled in July 2020. The City will move forward the award of the construction upon the outcome of the California Coastal Commission appeal hearing.

This amendment with Kimley-Horn and Associates, Inc. will provide engineering support services during the construction phase of the project. Portions of the work associated with this amendment needs to be started prior to construction of the project. Staff recommends authorizing the City Manager to execute Amendment No. 2 to the professional services agreement with Kimley-Horn and Associates, Inc.

ATTACHMENT: Amendment No. 2 to Agreement with Kimley-Horn and Associates.

## AMENDMENT NO. 2 TO AGREEMENT

THIS AMENDMENT NO. 2 TO AGREEMENT is made and entered in the City of Malibu on June 8, 2020, by and between the CITY OF MALIBU, hereinafter referred to as City, and Kimley-Horn and Associates, Inc., hereinafter referred to as Consultant.

The City and the Consultant agree as follows:

### RECITALS

A. On September 12, 2016, the City entered into an Agreement with Consultant for engineering design services for the Civic Center Way Improvements (the "Agreement").

B. The City desires to amend the Agreement to modify the scope of work to include engineering services support during the construction phase of the project.

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

1. Section 1.0 – Scope of the Consultant's Services, of the Agreement, is hereby amended to add this additional scope of work as set forth in Exhibit A attached hereto.
2. Section 2.0 – Term of Agreement, of the Agreement, is hereby extended to March 31, 2021.
3. Section 4.0 – Compensation for Services, of the Agreement, is hereby amended to add the additional scope of work as set forth in Exhibit B attached hereto.
4. All terms and conditions of the Agreement not amended by this Amendment No. 2 remain in full force and effect.

This Agreement is executed on \_\_\_\_\_, 2020, at Malibu, California, and effective as of June 8, 2020.

CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

CONSULTANT:

\_\_\_\_\_  
By: Robert D Blume, P.E.  
Title: Vice President CA PE 39419

## **EXHIBIT A - SCOPE OF SERVICES:**

Consultant will provide these services on an as-needed basis during the construction phase. Typical construction phase services may include:

***Pre-Construction Conference.*** Attend a Pre-Construction Conference prior to commencement of construction activity.

***Limited Site Visits and Observation of Construction.*** Site visits as requested by Client in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the work. Consultant will not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Consultant does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

***Recommendations with Respect to Defective Work.*** Recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

***Clarifications and Interpretations.*** Respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by Client.

***Change Orders.*** Recommend Change Orders to the Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

***Shop Drawings and Samples.*** Will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.



***Substitutes and "or-equal."*** Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.

***Inspections and Tests.*** Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate, and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws or the Contract Documents. Consultant's review of certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests.

***Disagreements between Client and Contractor.*** If requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith.

***Applications for Payment.*** Based on its observations and on review of applications for payment and supporting documentation, determine amounts that Consultant recommends Contractor be paid. Such recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

***Substantial Completion.*** After notice from Contractor that it considers the Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.

**ASSUMPTIONS:**

1. Preparation of As-Builts or record plans shall be performed upon completion of construction once level of efforts are known. It is assumed that the contractor shall provide clear legible red line markups of the as-built conditions or field changes. Kimley-Horn will submit a separate amendment for City's review and approval.
2. Fee and number of hours stated are initial budgetary estimates provided by the City. If more time is required, additional budget will be requested.
3. Major redesign or permitting requested by the City or required due to conflicting field conditions with utility or permitting agencies may require additional budget.

## EXHIBIT B – COMPENSATION SCHEDULE

### FEE AND BILLING:

Kimley-Horn will provide these services on a time and materials basis with an initial estimated budget of \$40,000 or up to 224 hours of effort, as requested by the City.

<u>Description</u>	<u>Maximum Hours</u>	<u>Estimated Fee</u>
Construction Phase Services	224	\$40,000

Expenses, including subconsultant efforts, will be billed as per the terms and conditions contained in our original agreement.