

**TRI-VALLEY TRANSPORTATION COUNCIL  
RESOLUTION NO. 2020-03**

**A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE TRI-VALLEY TRANSPORTATION COUNCIL AND  
KIMLEY-HORN AND ASSOCIATES FOR  
TRI-VALLEY FEE NEXUS STUDY**

**WHEREAS**, in April 2020, the Tri-Valley Transportation Council (TVTC) and Kimley Horn and Associates (Consultant) prepared that certain Professional Services Agreement ("Agreement"), attached hereto and incorporated herein as Attachment 1, whereby Consultants agrees to provide professional services for the preparation of a new Tri-Valley Fee Nexus Study for TVTC; and

**WHEREAS**, the nature of the professional services for the preparation of the Tri-Valley Fee Nexus Study are more fully described in Exhibit A to the Agreement; and

**WHEREAS**, the term of the Agreement shall begin upon approval of TVTC and execution of the parties and shall end on April 30, 2021 after the work has been completed; and

**WHEREAS**, the Agreement provides that TVTC will pay Consultant a not to exceed amount of \$172,930 for the full and satisfactory completion of the Tri-Valley Fee Nexus Study; and

**NOW THEREFORE BE IT RESOLVED THAT** the Tri-Valley Transportation Council approves of the Agreement attached hereto as Attachment 1 and authorizes the TVTC Chair to execute the Agreement on behalf of the TVTC, subject to review and approval as to form by the General Counsel.


**PASSED, APPROVED, AND ADOPTED** at the meeting of April 20, 2020 by the following votes:

**AYES:** Narum, Perkins, Josey, Munro, Arnerich, Haggerty, Andersen

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

DocuSigned by:  
  
A100A06E2C3B409...  
Kathy Narum, Chair  
Tri-Valley Transportation Council

**ATTEST:**

DocuSigned by:  
  
D2487FB83B00422...  
Cedric Novenario, IUTC Administrative Staff

**ATTACHMENT 1**

**PROFESSIONAL SERVICES AGREEMENT**

3504635.1

## TRI-VALLEY FEE NEXUS STUDY CONSULTANT SERVICES AGREEMENT

This agreement ("Agreement") is entered into between the Tri-Valley Transportation Council, a joint powers authority formed under the Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) ("TVTC") and Kimley-Horn, a professional engineering, planning and environmental services firm, ("Consultant"), referred to herein collectively as "Parties. Pursuant to this Agreement, the Parties hereby agree as follows:

**1. Scope of Work:** Consultant shall provide transportation planning services for the development of a new Tri-Valley Fee Nexus Study, such services will include professional guidance, technical analysis, and drafting of the Study for the TVTC ("Work"). The scope of the work for Consultant is more specifically described in **Exhibit A** of this Agreement, **attached hereto and by this reference made a part hereof**. Consultant will begin working on this Work within one (1) day after Consultant receives a signed copy of this Agreement. If the scope of work changes after signing this Agreement, TVTC and Consultant agree to negotiate and sign an amendment to this Agreement with a revised **Exhibit A**.

**2. Term:** The term of this Agreement shall begin on \_\_\_\_\_, 2020, the date upon which both Parties have fully executed this Agreement ("Effective Date") and shall continue until February 28, 2021, unless otherwise extended in a writing signed by both Parties.

**3. Compensation :** The Parties have agreed that TVTC shall pay Consultant an amount "Not to Exceed" One Hundred Seventy Two Thousand Nine Hundred Thirty Dollars (\$172,930) for the full and satisfactory completion of the Tri-Valley Nexus Fee Study as described in **Exhibit A**. In the event of a conflict or inconsistency between the text of the main body of this Agreement and Exhibit A, the text of the main body of this Agreement shall prevail. Amounts approved for any additional length of time beyond this Agreement are subject to the limits of Paragraph H, subpart 3 of the Tri-Valley Transportation Council Bylaws.

**4. Project Schedule:** Consultant and TVTC have agreed that Consultant will work on this project and such Work will be completed by February 28, 2021 as shown in the Project Schedule outlined in Exhibit A. If the Project Schedule changes after Consultant and TVTC sign this Agreement, such changes must be memorialized in an amendment to this Agreement.

**5. Final Deliverables:** Consultant will deliver to TVTC, within seven (7) calendar days after TVTC approves the final deliverable(s) as identified by Task in Exhibit A, digital files containing Consultant work for TVTC under this Agreement. Specifically, Consultant will provide TVTC with the following:

- a. On or before February 28, 2021 Consultant agrees to provide to TVTC a full Tri-Valley Fee Nexus Study based upon the specifications provided by TVTC (See **Exhibit A**).

**6. Original Work/Conflicts/Confidentiality:** Consultant promises that the Work does not and will not violate the patent, copyright, trade secrets or other property right of any person, firm or entity. Consultant will fully indemnify TVTC pursuant to Section 12 below in the event that a claim for such infringement is made. Consultant also promises that this Agreement does not conflict with any other contract, agreement or understanding to which Consultant is a



party. Finally, Consultant promises to hold and maintain in strict confidence any confidential information that TVTC provides (such as proprietary technical or business information), and Consultant will not disclose such information to any third party except as may be required by a court or governmental authority.

**7. Invoicing/Billing:** Consultant will bill TVTC monthly based upon the overall percentage of services performed. The billing statements must detail each person performing service and a brief description of the work performed and the hours charged per person. Payment will be made using check, cashier's check, or wire transfer. All billing statements should be directed to the TVTC Administrator for review and approval.

**8. Additional Services:** Consultant agrees that the total Not to Exceed amount of \$172,930 (U.S. Dollars) will cover, in full, all of the work listed in **Exhibit A** and specified in this Agreement. If TVTC asks Consultant to provide additional work beyond what is provided for by this Agreement, TVTC will pay an amount for these supplemental services that is agreed upon in a written amendment to this Agreement and signed by both parties prior to commencement of these additional services. Payment for supplemental services shall be in addition to all other amounts TVTC owes Consultant under this Agreement.

**9. Feedback and Acceptance:** TVTC agrees to give Consultant timely feedback so that Consultant can understand and incorporate TVTC concerns, objections or corrections, and TVTC promises not to unreasonably withhold acceptance of the deliverables Consultant will provide TVTC at each milestone.

Consultant and TVTC agree to the acceptance process outlined in **Exhibit A**. In turn, TVTC promises to evaluate the contract deliverables in a timely manner. If TVTC rejects a deliverable, Consultant will correct any errors and ask TVTC to accept or reject the corrected deliverable – which TVTC promises to do within reasonably timely manner after TVTC receives the corrected deliverable.

When Consultant delivers the final product to TVTC and completes work for TVTC under this Agreement, TVTC agrees to review the Agreement in its entirety to determine if Consultant completed the Work per **Exhibit A**. TVTC promises to inform Consultant in a reasonably timely manner after Consultant delivers the final product whether TVTC accepts or rejects the final product. If TVTC rejects the final product, Consultant will correct any errors and again ask TVTC to accept or reject the corrected deliverable – which TVTC promises to do within reasonably timely manner after TVTC receives the corrected deliverable. This process shall continue until TVTC accepts the deliverable. Finally, TVTC agrees that Consultant's work on this project will be complete after TVTC has approved the final product.

**10. Rights To The TVTC Content:** TVTC promises that: (a) Consultant has the right to use anything TVTC gives Consultant ("TVTC Content") for purposes of the Work as part of this Agreement; and (b) using such TVTC Content does not violate the patent, copyright, trade secret or other property right of any person, firm or entity. TVTC grants Consultant a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the TVTC Content solely in connection with Consultant's work for TVTC under this Agreement. TVTC also affirms and represents that this Agreement does not conflict with any other contract, agreement or understanding to which TVTC is a party.



**11. Termination.** TVTC may terminate or suspend this Agreement at any time and without cause upon written notification to Consultant. Upon receipt of notice of termination or suspension, Consultant shall immediately stop all work in progress under this Agreement. TVTC's right of termination shall be in addition to all other remedies available under law to the TVTC.

**12. Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify, defend (with counsel acceptable to TVTC), and hold harmless the TVTC and its elected and appointed officers, officials, employees, agents, contractors and consultants (collectively, the "TVTC Indemnitees") from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorneys' fees and costs of litigation) (collectively, "Liability") of every nature to the extent arising out of or in connection with Consultant's negligent performance of the Work, Consultant's infringement of any intellectual property rights, or Consultant's failure to comply with this Agreement, except such Liability caused by the gross negligence or willful misconduct of the TVTC Indemnitees.

**13. Rights After Payment Made In Full:** After TVTC pays Consultant in full for the Work, Consultant will assign to TVTC the Consultant's right, title and interest in the final product that Consultant creates for TVTC under this Agreement. If TVTC needs additional documentation, Consultant will sign any further documents reasonably necessary to make sure that the rights Consultant is granting TVTC under this Agreement are properly assigned to TVTC. TVTC agrees that Consultant may use TVTC's name/company name and trademarks as a reference in Consultant's promotional materials. TVTC also agrees that Consultant may include, when referencing Consultant's work for TVTC, a general description of the work under this Agreement.

**14. Right To Make Changes:** Consultant agrees that after TVTC pays Consultant in full for the Work, TVTC may make any changes or additions to the Work that TVTC deems necessary. TVTC may engage others to make any changes or additions, without further payments to Consultant. TVTC agrees that if TVTC asks Consultant to make changes or additions to the Work after TVTC approves the final product, TVTC and Consultant will negotiate and agree in writing for a separate additional payment for Consultant's time to make such changes.

**15. Insurance.** Prior to beginning the Work and continuing throughout the term of this Agreement, Consultant (and any subcontractors) shall, at Consultant's (or subcontractor's) sole cost and expense, furnish TVTC with certificates of insurance evidencing that Consultant has obtained and maintains insurance in the following amounts:

A. Workers' Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any TVTC-owned or TVTC-furnished equipment used or operated by the Consultant, its personnel, agents or subcontractors.



C. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on an occurrence basis and shall name the TVTC Indemnitees as additional insureds with any TVTC insurance shall be secondary and in excess to Consultant's insurance. If the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall contain a statement of obligation on the part of the carrier to notify TVTC of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. TVTC's Risk Manager may waive or modify any of the insurance requirements of this section.

**16. Compliance with all Applicable Laws; Nondiscrimination.** Consultant shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Consultant shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

**17. Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**18. Entire Agreement:** This Agreement constitutes the complete and exclusive agreement between TVTC and Consultant concerning the work on this project, and it supersedes all other prior agreements, proposals, and representations, whether stated orally or in writing. Consultant and TVTC can modify this agreement in writing, if both TVTC and Consultant sign that modification.

**19. Independent Contractor:** TVTC agrees that Consultant is an independent contractor and not TVTC's employee. Although TVTC will provide general direction to Consultant, Consultant will determine, in Consultant's sole discretion, the manner and ways in which Consultant will perform the Work for TVTC. The Work that Consultant creates for TVTC under this Agreement will not be deemed a "work-for-hire," as that term is defined under U.S. Copyright Law. Whatever rights Consultant grants TVTC are contained in this Agreement.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the day and year first written below.

TRI-VALLEY TRANSPORTATION COUNCIL

DATED: 5/4/2020

By Cedric Novenario  
Cedric Novenario  
Administrator  
Tri-Valley Transportation Council

DATED: 4/22/2020

By   
Consultant  
Kimley-Horn and Associates, Inc.  
(Authorized Executive of Company)

3504578.1

Fredrick Venter PE # 64621  
Vice President



# **Exhibit A – Scope of Work/Project Schedule**

## Scope of Work Exhibit A-1

Task	Description	Deliverable
Task #1--Kick-Off Meeting and Finalize Scope and Schedule	<ul style="list-style-type: none"> <li>a) Consultant will hold kick-off meeting with TVTC Administrator and TAC members to introduce team, formalize communication protocols, review and discuss details of the scope of work, project approach, work plan, deliverables and submit initial request for information</li> <li>b) Consultant will coordinate with TVTC Administrator to review and provide recommendations on final details for scope of work and schedules.</li> <li>c) Consultant will attend TAC meeting and present details of final scope of work and schedule for approval.</li> <li>d) Consultant will revise scope of work and schedule in response to TAC member requests.</li> </ul>	<ul style="list-style-type: none"> <li>1. Final Detailed Scope of Work</li> <li>2. Final Detailed Project Schedule</li> <li>3. Initial Data Requests</li> <li>4. Kick-off meeting and TAC meeting minutes</li> </ul>
Task #2—Refine Growth Forecast	<ul style="list-style-type: none"> <li>a) Consultant will analyze and refine population and employment forecasts to calculate the increased traffic demand attributable forecast new growth within the Tri-Valley area.</li> <li>b) Consultant will coordinate with TVTC TAC to review the adequacy and accuracy of the zone level data and network, identify any issues and update data as necessary.</li> <li>c) Consultant will aggregate the growth forecast by jurisdiction and land use type. Project of employment will be translated into four non-residential land use types. The total growth forecast will be converted into land use types to ease administration of the fee at local level.</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 1.0: Refined Growth Forecast</li> <li>2. Final Technical Memorandum 1.0: Refined Growth Forecast</li> </ul>

	<ul style="list-style-type: none"> <li>d) Consultant will summarize results of the growth forecast analysis and submit the draft analysis for TAC review.</li> <li>e) Consultant will incorporate one set of TAC comments into a final technical memorandum.</li> </ul>	
Task #3—Confirm Project List	<ul style="list-style-type: none"> <li>a) Consultant will use CCTA Travel Demand Model to (i) refine the growth forecast developed in Task #2, and (ii) refine the list of TVTC projects included in the RFP</li> <li>b) Consultant will quantify the improvements in congestion resulting from the projects, as well as identify any remaining areas of congestion and recommend additional projects that could be funded with the fee to address future demand.</li> <li>c) Consultant will summarize the methodology, assumption, and results of Task 3 in a draft technical memorandum and submit to TAC for review.</li> <li>d) Consultant will incorporate one set of TAC comments into a final technical memorandum.</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 2.0: Existing and 2050 Tri-Valley Congestion Areas</li> <li>2. Final Technical Memorandum 2.0: Existing and 2050 Tri-Valley Congestion Areas</li> </ul>
Task #4—Refine Project List	<ul style="list-style-type: none"> <li>a) Consultant will coordinate with sponsor jurisdictions for each project to refine the project description, identify benefits, update cost estimates, identify available funding, and determine the project's likely construction date.</li> <li>b) Consultant will coordinate with each sponsor jurisdiction to prepare a matrix of project characteristics such as description, project status, benefit, estimated costs to assist Consultant in prioritizing projects.</li> <li>c) Consultant will summarize results of Task 4 in a draft technical memorandum and submit to TAC for review.</li> <li>d) Consultant will incorporate</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 3.0: Refined Project List</li> <li>2. Final Technical Memorandum 3.0: Refined Project List</li> </ul>



	one set of TAC comments into a final technical memorandum	
Task #5: Refine Non-Fee Funding Forecast	<ul style="list-style-type: none"> <li>a) Consultant will investigate existing and alternative sources of funding for the refined project list developed in Task 4.</li> <li>b) Consultant will summarize results of Task 5 in a draft technical memorandum and submit to TAC for review.</li> <li>c) Consultant will incorporate one set of TAC comments into a final technical memorandum</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 4.0: Non-Fee Funding Forecast</li> <li>2. Final Technical Memorandum 4.0: Non-Fee Funding Forecast</li> </ul>
Task #6: Fee Revenue Estimation	<ul style="list-style-type: none"> <li>a) Consultant will develop fee revenue estimation using information for growth forecast (Task 2), projected areas of congestion (Task 3), and refined project list (Task 4).</li> <li>b) Consultant will evaluate the feasibility of levying a regional impact fee on vested developments and consider factors such as previous development contributions and current development commitments toward transportation improvements.</li> <li>c) Consultant will summarize results of Task 6 in a draft technical memorandum and submit to TAC for review.</li> <li>d) Consultant will incorporate one set of TAC comments into a final technical memorandum</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 5.0: Fee Revenue Estimation</li> <li>2. Final Technical Memorandum 5.0: Fee Revenue Estimation</li> </ul>
Task #7: Nexus and Burden Analysis	<ul style="list-style-type: none"> <li>a) Consultant will conduct a nexus and burden analysis, which will allocate the expected unfunded cost of transportation improvement projects.</li> <li>b) Consultant will construct a preliminary trip based fee schedule by jurisdiction and land use type.</li> <li>c) Consultant will work with each jurisdiction's planning director and other staff to evaluate the preliminary fee schedule for relative economic burdens placed</li> </ul>	<ul style="list-style-type: none"> <li>1. Draft Technical Memorandum 6.0: Nexus and Burden Analysis</li> <li>2. Final Technical Memorandum 6.0: Nexus and Burden Analysis</li> </ul>

	<p>upon each jurisdiction's residential and commercial markets.</p> <p>d) Consultant will summarize methodology, assumptions, and results of Task 7 in a draft technical memorandum and submit to TAC for review.</p> <p>e) Consultant will incorporate one set of TAC comments into a final technical memorandum</p>	
Task #8: Final TVTC Nexus Update	<p>a) Consultant will produce a final nexus study report summarizing the efforts from all previous tasks and the updated strategic expenditure plan.</p> <p>b) Consultant will submit the draft report to TAC for review.</p> <p>c) Consultant will incorporate up to three (3) sets of TAC comments into a final nexus study report</p>	<ol style="list-style-type: none"> <li>1. Draft TVTC Nexus Study Update Report</li> <li>2. Final TVTC Nexus Study Update Report</li> </ol>
Task #9: Project Management	<p>a) Consultant will provide project management and oversight of Consultant's tasks and team and coordinate with TVTC throughout the project's duration.</p> <p>b) Consultant will supervise, coordinate, and monitor tasks and adhere to the Project Schedule</p> <p>c) In addition to the Kick-Off Meeting (Task 1), Consultant will attend up to four (4) TAC Meetings and up to two (2) TVTC Meetings, for a maximum of seven (7) meetings. The TVTC Administrator will advise Consultant which meetings Consultant should attend.</p>	<ol style="list-style-type: none"> <li>1. Monthly Invoices</li> <li>2. Meeting Notes/Minutes</li> <li>3. Status Updates when requested by TVTC Administrator</li> </ol>

**Project Schedule  
Exhibit A-2**

<b>Task</b>	<b>Work Month(s)</b>	<b>Completion Date</b>
Task 1	April and May	May 20, 2020
Task 2	May, June, and July	July 15, 2020
Task 3	July and August	August 30, 2020
Task 4	August, September, and October	October 15, 2020
Task 5	October and November	November 30, 2020
Task 6	November, December, and January	January 15, 2021
Task 7	January and February	February 28, 2021
Task 8	February, March, and April	April 30, 2021
Task 9	March 2020 through February 2021	April 30, 2021