

March 11, 2022

Mr. Eric Randall
City of Smyrna, GA – City Engineer
2190 Atlanta Road
Smyrna, GA 30080

Re: Professional Services Agreement
City of Smyrna Network Signal Timing Optimization in MaxTime
Smyrna, GA

Dear Mr. Randall:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Smyrna (“Client” or “City”) for providing professional engineering services. With new development and growth in the City, traffic volumes and patterns have changed. Kimley-Horn understands that the City of Smyrna is seeking to optimize traffic operations for signalized intersections in the City network. Our scope of services, schedule, and fee are below.

Scope of Services

Kimley-Horn will provide optimized signal timings at the locations listed in the **Table 1** as authorized by the City of Smyrna.

Table 1 – List of Signal Locations by Signal Group

#	Group	Primary Street	Secondary Street
1	Concord Rd	Concord Road	Hurt Road/Atkins Way
2		Concord Road	Old Concord Road
3		Concord Road	SR 280/South Cobb Drive
4		Concord Road	McLinden Avenue/Brown Road
5		Concord Road	Hollis Street/McCauley Road
6		Concord Road	Dunton Street/King Springs Road
7		Concord Road	King Street
8		Concord Road/Spring Road	Atlanta Road
9	Spring Rd	Spring Road	Jonquil Drive
10		Spring Road	Village Parkway
11		Spring Road	Glenroy Drive/Glenroy Place
12		Spring Road	Spring Creek Place/Countryside Place
13		Spring Road	Carolyn Drive/Campbell Road
14		Spring Road	Park Drive/Argyle Elementary Driveway
15		Spring Road	Bell Drive/RaceTrac Driveway

#	Group	Primary Street	Secondary Street
16	Spring Rd	Spring Road	Sports Avenue/Aldi Driveway
17		Spring Road	Cumberland Boulevard
18		Cumberland Boulevard	Spring Hill Parkway
19	Atlanta Rd	Atlanta Road	Campbell Road
20		Atlanta Road	Creatwood Trail
21		Atlanta Road	Collier Drive/Montclair Circle
22		Atlanta Road	Church Street
23		Atlanta Road	West Spring Street/Spring Street
24		Atlanta Road	Powder Springs Street
25		Atlanta Road	Fleming Street/Hawthorne Avenue
26		Atlanta Road	Belmont Boulevard
27		Atlanta Road	Windy Hill Road
28		Windy Hill Road	Belmont Place
29		Atlanta Road	Pat Mell Road
30	SR 280	SR 280/South Cobb Drive	The Crossings Entrance/Kroger
31		SR 280/South Cobb Drive	Church Road/Church Street
32		SR 280/South Cobb Drive	Powder Springs Street
33		SR 280/South Cobb Drive	Glendale Place
34		SR 280/South Cobb Drive	Windy Hill Road

With the exception of the traffic signals within the Spring Road Group, Kimley-Horn will provide the services specifically set forth in the tasks defined below. The Spring Road Group operates using an adaptive traffic control system. Kimley-Horn will provide base plans to the operators of the system for them to implement.

Task 1: Project Management

This task will consist of a project kick off meeting, general project management, administrative and accounting activities for the project, project oversight, and project coordination.

Task 2: Data Collection

This task will include the field verification of intersection geometry and timings, the compiling of intersection inventory sheets, the collection and summarizing of traffic count data necessary for this project, and obtaining signal databases for the City's use in upgrading signal firmware as desired. In addition, it will include the observation of existing field conditions and traffic patterns to be considered in timing development and potential system improvements.

Task 3: Timing Development

This task will consist of verifying the digital analysis network, verifying vehicular and pedestrian clearance

intervals, development of signal time of day schedules, evaluation and determination of optimal cycle lengths, and calculation and development of split and offset settings to optimize network progression.

Task 4: Database Development

This task will include modifying the existing MaxTime databases to include the proposed signal timings, and then testing the proposed databases to ensure accurate field operations for each time-of-day plan in a signal lab environment. In addition, this task includes a complete upload of all finalized databases at the end of field fine-tuning.

Task 5: Implementation & Fine-Tuning

This task will consist of loading proposed signal timings to signals, observing operations of each plan to ensure correct operations and functions, driving and observing each timing plan and noting beneficial changes to be made to the timings to increase efficiency and operations, making recommended changes in the field and observing impacts, noting any additional changes necessary based on comments from the City and implementing them. Additionally, upon request of the City, participate in a drive through of the network with City personnel during significant peak periods.

Task 6: Performance Analysis

This task will include utilizing and processing signal probe data through sources such as (RITIS or iPeMS) to analyze before and after conditions of timing development. This data can be used to develop a cost benefit analysis for the new timings.

Task 7: Reporting

This task will include the development of an existing conditions summary for field observations, field data collected, existing signal timings, and count data. It will also include creation of a field timing notebook compiling proposed time of day schedule, proposed timings, and as needed, additional information to support field fine-tuning. Additionally, a final timing report will be developed summarizing finalized signal improvements with a comparison to existing conditions, and cost benefit analysis.

Kimley-Horn has estimated hours associated with each task for each signal group in **Table 2** below. All estimated hours are for information purposes only and are subject to vary.

Table 2 – Hours Estimate by Signal Group

Signal Group	Concord Rd	Spring Rd	Atlanta Rd	SR 280
# Signals	8	10	11	5
Project Management	25	30	30	15
Data Collection	30	40	40	20
Timing Development	60	75	80	40
Database Development	45	0	60	30
Implementation & Fine-Tuning	115	10	155	70
Performance Analysis	20	25	25	15
Reporting	30	35	40	20
Total Hours	325	215	430	210

Additional Services

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

- Coordination support for signal conversions
- Support with MaxTime firmware upgrades and review
- Support with MaxView central server intersection configuration and review
- Configuration of signals for performance metrics
- Additional signal timing support

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Authorization for access to traffic signal cabinets
- Authorization for access to traffic control center as needed to access signal databases
- Existing as-built traffic models.
- Traffic signal plans or permits

Responsibilities of Client

In addition to other responsibilities set out in this Agreement, the Client shall:

- Notify Kimley-Horn of any additional traffic signal timing or improvement work being performed on signals listed in this agreement

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

Table 3 – Proposed Schedule

Schedule	
Data Collection & Observations	Apr/May 2022
Analysis & Timing Development	Jun 2022
Database Review & Updates	Jul 2022
Implementation & Fine-Tuning	Aug 2022
Performance Data Gathering	Sep 2022
Reporting	Oct 2022

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 7 as outlined above at the signal groups listed below for the total lump sum fee of **\$182,940**. Individual task and signal group amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Table 4 – Cost Estimate by Signal Group

Signal Group	Concord Rd	Spring Rd	Atlanta Rd	SR 280
# Signals	8	10	11	5
Group TMC Cost	\$4,100	\$5,000	\$5,950	\$2,750
Cost Per Signal	\$5,635	\$2,990	\$5,635	\$5,635
Total Cost	\$49,180	\$34,900	\$67,935	\$30,925
Total Project Cost	\$182,940			

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Smyrna.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

Please email all invoices to _____

Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

By: Kenneth Fink, PE
Senior Vice President

Andrew King, PE
Principal in Charge

Thomas Glueckert, PE
Project Manager

CITY OF SMYRNA

A Municipality

_____, Signature

(Date)

(Print or Type Name and Title)

(Email Address)

_____, Witness

(Print or Type Name)

Official Seal:

Client's Federal Tax ID: _____
Client's Business License No.: _____
Client's Street Address: _____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

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

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

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Georgia. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.