**Tommie C. Martin, District I**
610 E. Highway 260, Payson, AZ. 85547
(928) 474-2029

**Michael A. Pastor, District II**
1400 E. Ash St. Globe, AZ. 85501
(928) 425-3231 Ext. 8753

**John D. Marcanti, District III**
1400 E. Ash St. Globe, AZ. 85501
(928) 425-3231 Ext. 8753

**GILA COUNTY**

www.gilacountyaz.gov

**Don E. McDaniel, Jr., County Manager**
Phone (928) 425-3231

**Jeff Hessenius, Finance Director**
Phone (928) 425-3231 Ext. 8743

FAX (928) 425-0319
TTY: 7-1-1

## PROFESSIONAL SERVICES CONTRACT NO. 032814

## GILA COUNTY TRANSPORTATION STUDY OUTREACH SERVICES

**THIS AGREEMENT,** made and entered into this ___ day of _____, **2014**, by and between Gila County, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY,** and Kimley-Horn and Associates, Inc. of the City of Phoenix, County of Maricopa, State of Arizona, hereinafter designated the **ENGINEER**.

**WITNESSETH:** That the Engineer, for and in consideration of the sum to be paid him by the County, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

**ARTICLE I – SCOPE OF SERVICES:** The Engineer will provide transportation study outreach services, as requested by Gila County, to various organizations in Gila County, as a follow-up to the Gila County Transportation Study. The scope of services provided will be as identified in Attachment "A" to Professional Services Contract No. 032814, by mention made a binding part of this Contract to the same extent as if set forth herein in full.

**ARTICLE II – INDEMNIFICATION CLAUSE:** Engineer shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, in whole or in part, by the negligent or willful wrongful acts or omissions of Engineer or any of its owners, officers, directors, agents,

employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Engineer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Engineer from and against any and all claims arising from its services under this Contract. It is agreed that the Engineer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable and that Engineer shall defend the claims that appear to fall within the scope of the indemnification, even though Engineer is subsequently found not liable under this Indemnification. In consideration of the award of this contract, the Engineer agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Engineer for the County.

**ARTICLE III - INSURANCE REQUIREMENTS:** Engineer and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Engineer, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Engineer from liabilities that might arise out of the performance of the work under this contract by the Engineer, his agents, representatives, employees or subcontractors and Engineer is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Engineer shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

   Policy shall include bodily injury, property damage and broad form contractual liability coverage.

   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed to include the following additional insured language: **"The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Engineer".**

2. **Worker's Compensation and Employers' Liability**

| | |
|---|---|
| Workers' Compensation | Statutory |
| Employers' Liability | |
| Each Accident | $100,000 |
| Disease – Each Employee | $100,000 |
| Disease – Policy Limit | $500,000 |

a. Policy shall contain a **waiver of subrogation** against the County of Gila.

3. **Professional Liability (Errors and Omissions Liability)**

| | |
|---|---|
| Each Claim | $1,000,000 |
| Annual Aggregate | $2,000,000 |

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Engineer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Engineer even if those limits of liability are in excess of those required by this Contract.

2 The Engineer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

3. Coverage provided by the Engineer shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to Jeannie Sgroi, 1400 E. Ash St., Globe, AZ 85501 and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Engineer from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Engineer shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to Jeannie Sgroi, 1400 E. Ash St., Globe, AZ 85501. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Engineers' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Engineer shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

**ARTICLE IV – LEGAL ARIZONA WORKERS ACT COMPLIANCE:** Engineer hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Engineer's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Engineer shall further ensure that each subcontractor who performs any work for Engineer under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Engineer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Engineer's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Engineer to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Engineer shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

Engineer shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Engineer. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Engineer's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Engineer shall be entitled to an extension of time, but not costs.

**ARTICLE V – SCHEDULE & FEES:** Refer to Attachment "A" to Professional Consulting Services Contract No. 032814, by mention made a binding part of this contract as set forth herein. To the extent that the terms and conditions of this Professional Consulting Services contract conflict with the Terms and Conditions of Attachment "A" to Professional Consulting Services Contract No. 032814, the terms and conditions of this contract will prevail and govern the contractual relationship between the parties.

**ARTICLE VI – LAWS AND ORDINANCES:** This contract shall be enforced under the laws of the State of Arizona. Engineer shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Engineer. The Engineer shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**ARTICLE VII – CANCELLATION:** This contract is subject to cancellation pursuant to A.R.S. § 38-511. If the Contract is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination. The Engineer shall be considered in default of this contract and such default will be considered as cause to terminate the contract for any of the following reasons if the Engineer:

a. Fails to perform the work under the contract within the time specified in the "Notice to Proceed"; or
b. Fails to perform the work or fails to provide sufficient workers, equipment or data to assure completion of work in accordance with the terms of the contract; or
c. Performs the work unsuitably or neglects or refuses to follow the Scope of Work; or
d. Discontinues the prosecution of the work; or
e. Fails to resume work which as been discontinued within a reasonable time after notice to do so; or
f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
g. Makes assignment for the benefit or creditors.
h. If it is found that gratuities were offered or given by the Engineer or any agent or representative of the Engineer, to any officer or employee of the County.

**ARTICLE VIII – PAYMENT:** The Scope of Services as outlined above will be performed on a time and materials basis per the mutually agreed upon fee schedule found in Attachment "A" to Professional Services Contract No. 032814, in an amount up to **$18,000.00** .

Compensation shall follow guidelines for A.R.S. §34-221. Each invoice must include itemized task and dollar figure for each task completed. Each invoice must show a signature by the county representative confirming services rendered and authorizing payment.

**ARTICLE IX – CONTRACT PERIOD:** Contract shall be in effect from the date signed by the Board of Supervisors through October 31, 2014.

**IN WITNESS WHEREOF,** three (3) identical counterparts of this contract, each which shall include original signatures and for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

In return for the performance of the Contract by the Engineer the County agrees to pay an amount of not more than **$18,000.00** for Transportation Study Outreach Services. Such amount will include all applicable taxes. Any modifications shall be approved in writing by the County in advance by written change order.

**PROFESSIONAL CONSULTING SERVICES CONTRACT NO. 032814**
**GILA COUNTY TRANSPORTATION STUDY OUTREACH SERVICES**

**GILA COUNTY**

Michael A. Pastor,
Chairman of the Board of Supervisors

**ATTEST:**

Marian Sheppard, Clerk of the Board

**APPROVED AS TO FORM:**

Bryan B. Chambers, Deputy Attorney Principal
*for* Bradley D. Beauchamp, County Attorney

**KIMLEY-HORN AND ASSOCIATES, INC.**

Signature

John R. Conrad
Print Name

Senior Vice President

Kimley-Horn and Associates, Inc.
1855 W. Baseline Rd., Suite 200
Mesa, AZ 85202

March 28, 2014

Steve Sanders
Gila County Public Works Division
745 N. Rose Mofford Way
Globe, AZ 85501

Re: Gila County Transportation Study Outreach Services

Dear Steve:

As requested, here are the proposed scope and hourly rates for providing outreach services as a follow-up to the Gila County Transportation Study.

Outreach services could include, but are not limited to, the following tasks:

- Preparation of presentation materials such as boards or PowerPoint slides;
- Scheduling of oral presentations;
- Oral presentations to various entities or organizations (10-12 estimated);
- Coordination with Gila County staff; and
- Other services mutually agreed upon by Gila County and Kimley-Horn.

Outreach services will be billed on a time and materials basis using the fully loaded rates below. Direct expenses will be billed at cost.

- Principal - $200;
- Project Manager - $170;
- Senior Engineer - $150;
- Engineer - $130;
- Analyst - $100; and
- Administrative Support - $75.

Effort will not exceed $18,000 without the written authorization of Gila County. Outreach services are expected to be needed between April and November 2014.

If you have any questions about the proposed services, please contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Michael Grandy

Michael Grandy, P.E.
Project Manager