August 1, 2024

Adriana Robles, P.E., CFM
City Engineer
City of Salinas Engineering Division
200 Lincoln Avenue
Salinas, CA 93901

Re: ***Scope of Services and Fee***
Salinas ATP – Amendment 1

Scope of Services

Project Understanding

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") entered into an agreement with the City of Salinas ("City" or "Client"), dated 3/24/2023 to develop an Active Transportation Plan (ATP) focused on implementable projects for which the City can pursue design-phase funding.

This amendment is intended to define the out-of-scope effort already provided or requested to be provided by the City, and request compensation for the additional scope of work.

Task 1 – Existing Conditions

During the existing conditions phase, it was assumed that the GIS data provided by the City would allow for Kimley-Horn to cut back fee on **Task 1.2 – GIS Mapping**, from the original Scope of Services. The GIS data provided was incomplete which accounted for the task taking more effort than anticipated. This task accounts for the additional amount of budget spent to clean up the City's GIS files and get them in working condition for creating the existing conditions and future recommendations maps for the ATP.

Task 2 – Project Prioritization

The Kimley-Horn team exceeded the anticipated budget for the project prioritization task due to additional unanticipated rounds of revisions of the prioritization methodology, criteria, and weighting system for prioritizing the full list of projects recommended in the ATP. This task accounts for the additional amount of budget spent on rounds of revisions.

TASK 3 – Additional Meetings

Subtask 3.1 Meeting with TTC Members

In coordination with City staff, Kimley-Horn will attend and present an overview of the draft ATP to TTC members. We will solicit feedback about the draft ATP and incorporate comments in the final ATP. In advance of the meeting, Kimley-Horn will prepare materials for the presentation. This scope of work assumes one (1) meeting with up to one (1) one Kimley-Horn staff in attendance.

Subtask 3.2 Meeting with SWG

In coordination with City staff, Kimley-Horn will attend and facilitate an overview of the draft ATP to SWG members. We will solicit feedback about the draft ATP and incorporate comments in the final ATP. In advance of the meeting, Kimley-Horn will prepare materials for the presentation. This scope of work assumes one (1) meeting with up to two (2) Kimley-Horn staff in attendance.

Subtask 3.3 Meeting with City Staff and TAMC

During the project management phase, **Task 0.2 – Project Team Meetings** assumed up to eight (8) project meetings from the original Scope of Services. Kimley-Horn has completed a total of 11 project team meetings while staying within budget. Kimley-Horn will meet and coordinate with City and TAMC staff to solicit feedback about the draft ATP and incorporate comments in the final ATP. In advance of each meeting, Kimley-Horn will prepare an agenda; after each meeting, Kimley-Horn will send out meeting notes. This scope of work assumes up to three (3) additional one-hour meetings with up to two (2) Kimley-Horn staff in attendance.

Subtask 3.4 Meetings with City Council Members

In coordination with City staff, Kimley-Horn will attend and present an overview of the Final ATP to City Council members. In advance of the meeting, Kimley-Horn will prepare materials for the presentation. This scope of work assumes up to one (1) meeting over the course of the project and (1) one member from Kimley-Horn in attendance.

Schedule

We will provide our services as noted in the above Scope of Services and will complete the work within a schedule mutually agreed upon.

Fee and Billing

Tasks 1-2 account for the additional amount of budget spent for existing conditions and project prioritization. Labor fee spent shown below.

Task 1	Existing Conditions	$ 8,000
Task 2	Project Prioritization	$ 6,500

Kimley-Horn will perform the services in Task 3 on a time and materials basis, consistent with the original scope of service. Labor fee shown below.

Task 3	Additional Meetings	$ 20,570.66
Total Contract		$ 35,070.66

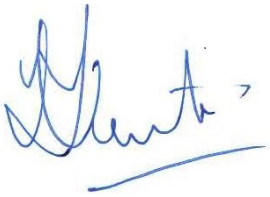
Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Kimley»Horn

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Sincerely,



KIMLEY-HORN AND ASSOCIATES, INC.

Frederik Venter, P.E.

P.E. No. 64621

City of Salinas
Active Transportation Plan (ATP) - Amendment #1
August 1, 2024

			Kimley-Horn and Associates, Inc.														
194.54%	Overhead%	Name	Whitney DiGiantommaso	Frederik Venter	Adam Dankberg	Sr. Professional II	Sr. Professional I	Professional II	Professional I	Analyst II	Analyst I	Sr. Project Support	Project Support				
194.38%	Overhead% w/o FCCM	Category/Title	Project Manager	Technical Advisor	QA/QC												
10%	Fee%	Direct Rate	$60.44	$124.04	$95.68	$104.29	$88.22	$73.36	$62.21	$55.67	$47.60	$49.05	$37.36				
		Billing Rate	$195.81	$401.86	$309.98	$337.88	$285.81	$237.67	$201.55	$180.36	$154.21	$158.91	$121.04				
Task 3	**Additional Meetings**		**3**	**30**	**0**	**0**	**0**	**3**	**0**	**40**	**0**	**0**	**0**	**76**	**$ 20,570.66**		**$ 20,570.66**
0.1	Meeting with TTC Members			10						20				30	$ 7,625.79		$ 7,625.79
0.2	Meeting with SWG Members		3	7										10	$ 3,400.47		$ 3,400.47
0.3	Meeting with City Staff and TAMC			5				3		12				20	$ 4,886.62		$ 4,886.62
0.4	Meeting with City Council Members			8						8				16	$ 4,657.77	$ -	$ 4,657.77
														0	$ -	$ -	$ -
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		TOTAL HOURS	**3**	**30**	**0**	**0**	**0**	**3**	**0**	**40**	**0**	**0**	**0**	**76**			
		Subtotal Labor:	**$ 587.44**	**$ 12,055.87**	**$ -**	**$ -**	**$ -**	**$ 713.01**	**$ -**	**$ 7,214.34**	**$ -**	**$ -**	**$ -**		**$ 20,570.66**	**$ -**	**$ 20,570.66**
	Other Direct Costs														**$ -**		
	Labor Escalation																
	Mileage/Travel																$ -
	TOTAL COST:															**$ -**	**$ 20,570.66**

Kimley»Horn

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn'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 Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
   d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
   e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
   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 Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.

3) **Period of Services**. Unless otherwise stated herein, Kimley-Horn 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 Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.

4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
   a. Invoices will be submitted periodically for services performed and expenses incurred. Invoices are due and payable upon presentation. Client shall pay Kimley-Horn a time price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. If the Client fails to make any payment due under this or any other agreement within 30 days after presentation, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid, and may commence legal proceedings including filing liens to secure payment.
   b. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
   c. If the Client objects to an invoice, it must advise Kimley-Horn 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.
   d. If Kimley-Horn 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 Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
   e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn 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 Kimley-Horn to collect additional amounts from the Client.

5) **Use of Documents.** All documents and data prepared by Kimley-Horn 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 Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn 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 Kimley-Horn, the hardcopy shall govern.

6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at https://www.kimley-horn.com/khts-software-license-agreement ("the License Agreement") which terms are incorporated herein by reference.

7) **Opinions of Cost.** Because Kimley-Horn 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. Kimley-Horn 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. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

8) **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. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

9) **Standard of Care.** The standard of care applicable to Kimley-Horn'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 Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.

10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, 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 Kimley-Horn and Kimley-Horn'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 Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or $50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

11) **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.

12) **Construction Costs.** Under no circumstances shall Kimley-Horn 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. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn 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.

13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.

14) **Dispute Resolution.** All claims 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.

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

16) **Construction Phase Services.**

a. If Kimley-Horn prepares construction documents and Kimley-Horn 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 Kimley-Horn in any way connected thereto.
b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn'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 Kimley-Horn. Kimley-Horn 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. Kimley-Horn 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 Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. 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 Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn 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.

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

19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of California. 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 Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. 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.