



**Agenda Item B.5**  
**CONSENT CALENDAR**  
**Meeting Date: March 20, 2018**

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**TO:** Mayor and Councilmembers

**FROM:** Masoud Mahmoud and Robert Woodward, Interim Public Works Director

**SUBJECT:** Award of Contracts with GHD Inc., for Professional Services to Complete a Development Impact Fee Study and to provide On-Call Traffic Modeling Services

**RECOMMENDATION:**

- A. Approve and authorize the City Manager to execute a Professional Services Agreement with GHD Inc., for On-Call Traffic Modeling Services in an amount not to exceed \$60,000 and a termination date of June 30, 2019.
- B. Approve and authorize the City Manager to execute a Professional Services Agreement with GHD Inc., to complete the 2018 Development Impact Fee Nexus Study in an amount of \$30,000 and a termination date of June 30, 2019.
- C. Approve budget appropriations totaling an additional \$30,000 from various DIF funds to the accounts identified in the Fiscal Impact section below

**BACKGROUND:**

In June 2016, the Council awarded Agreement 2016-076 to Kimley-Horn and Associates (Kimley-Horn) to conduct on-call traffic modeling services in an amount not to exceed \$140,000, with a term to expire on June 30, 2017. In June 2017, Council approved Amendment No. 1 to Agreement 2016-076 with Kimley-Horn for additional compensation of \$140,000 for a total not to exceed amount of \$280,000, and to extend the term for an additional year to expire on June 30, 2018. This work effort has been led by Mr. Jim Damkowitch, a senior project manager with the Kimley-Horn Team. Mr. Damkowitch's expertise in traffic modeling and related traffic engineering disciplines was a primary basis for the City's selection of Kimley-Horn for this work, and has contributed to the success of contractual work to date.

In October 2016, the Council awarded Agreement 2016-141 with Kimley-Horn to conduct a Development Impact Fee Study (DIF Nexus Study) in an amount not to exceed \$72,000 with a term to expire on October 31, 2017. On September 19, 2017, the City Council approved Amendment No. 1 which extended the term to December 31, 2017. On December 19, 2017, the City Council approved Amendment No. 2 to extend

the term to June 30, 2018. The purpose of this project is to complete a study of the City's current Development Impact Fee program in compliance with Government Code section 66000 et seq., and to make recommendations for updates to those fees. This work effort has also been led by Mr. Damkowitch, whose efforts have contributed to the success of Development Impact Fee program work to date.

On March 8, 2018, the City was informed that Kimley-Horn's Senior Project Manager, Mr. Damkowitch, had departed the firm and joined a new firm, GHD Inc. Given the expertise of Mr. Damkowitch in the context of these two assigned City projects, and consistent with Section 13 of the City's contracts with Kimley-Horn, the City terminated these two contracts with Kimley-Horn and is recommending execution of new contracts with GHD Inc., the new employer of Mr. Damkowitch.

### **On-Call Traffic Modeling**

This contract is for on-call traffic modeling services in conjunction with the Goleta Transportation Improvement Program and CIP projects. The effort includes a variety of traffic modeling services, including private traffic impact project alternative analyses, model forecasts, and transportation engineering and planning in addition to providing traffic modeling services for City CIP projects.

### **Development Impact Fee Nexus Study 2018**

The scope of work for the DIF Nexus Study is to prepare a new nexus study for the City's Development Impact Fees, including all the analysis and modeling associated with this effort.

### **DISCUSSION:**

#### **On-Call Traffic Modeling**

The agreement with GHD Inc. is consistent with the same on-call scope previously provided by Kimley-Horn. Mr. Jim Damkowitch will serve as the Project Manager, allowing for continuity of on-going on-call activities. Staff is recommending a not to exceed budget of \$60,000 for this work with a termination date of June 30, 2019.

#### **Development Impact Fee Nexus Study 2018**

Due to delays in the execution of a parallel contract to prepare development impact project cost estimates for the identified mitigation improvements, the DIF update effort performed previously by Kimley-Horn did not commence until spring of 2017. While work has progressed well, it is not complete and supplemental efforts not originally anticipated have been requested by City Staff. Consequently, the new scope of work with GHD Inc., will facilitate completion of the DIF Nexus Study, which will be brought to Council for approval. As with the on-call traffic modeling work, the GHD Inc. Project Manager for the completion of the Development Impact Fee Study will be Mr. Jim Damkowitch, which will allow for a seamless continuity on this important project.

Staff is requesting an additional appropriation of \$30,000 for completion of the DIF Nexus Study under the new contract because the DIF update effort has generated additional services not anticipated when this effort began. It should be noted that this "DIF Update" is a major undertaking and is not truly an "update" to any previous nexus study. More issues and questions are involved in the current effort than a typical nexus study update. Variations of the fees have been explored at staff's request to fully vet the appropriate type and amount of the fees that would be appropriate for the City to charge. Multiple departments have collaborated to review the draft work product and provide feedback to the consultant. The additional services were anticipated a few weeks ago and a contract amendment agenda item was going to be brought to Council at the last meeting to amend the original contract with Kimley-Horn, but that item was pulled in light of news that Mr. Damkowitz was moving firms. Therefore, staff consolidated the additional contract appropriation and contract with Mr. Damkowitz's new employer into this item.

### FISCAL IMPACTS:

A total appropriation of \$30,000 from various Development Impact Fee (DIF) fund balances will be required to fund the new DIF Nexus Study contract with GHD Inc., totaling \$30,000. Funding for the new On-Call Traffic Modeling contract of \$60,000 with GHD, Inc. will be supported by salary savings this fiscal year, and existing allocations in the FY 18/19 budget of \$50,000. Approximately \$30,000 from salary savings will be needed through the end of this fiscal year to address the 6100/6210 Hollister Fair Share Analysis, which was not provided under the previous Kimley-Horn Agreement.

There is sufficient fund balance from DIF funds provided in the table below for the new scope of work described above:

<b>Fiscal Year 2017-18</b>					
<b>Fund</b>	<b>GL Account</b>	<b>Adopted Budget</b>	<b>YTD Actual/ Encumbrance</b>	<b>Additional Appropriation</b>	<b>Adjusted Balance</b>
GTIP	220-5-8100-500	27,709	27,709	17,680	21,691
Park DIF	221-5-8100-500	12,282	12,282	7,680	6,450
Public Admin DIF	222-5-8100-500	3,626	3,626	0	0
Library Facilities DIF	223-5-8100-500	1,258	1,258	0	0
Sheriff Facilities DIF	224-5-8100-500	2,997	2,997	2,140	1,800
Housing In-Lieu	225-5-8100-500	3,626	3,626	2,500	2,100
Fire Facilities DIF	229-5-8100-500	3,626	3,626	0	0
<b>Total</b>		<b>\$55,124</b>	<b>\$55,124</b>	<b>\$30,000</b>	<b>\$32,041</b>

**ALTERNATIVES:**

**On-Call Traffic Modeling**

The Council could choose to not execute the new On-Call Traffic Modeling agreements with GHD Inc., which would require the City to secure alternative traffic modeling expertise. Such an effort would take many months and would jeopardize critical projects and efforts currently underway by the City.

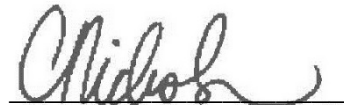
**Development Impact Fee Study 2018**

The Council could choose to not execute the new Development Impact Fee Study 2018 agreement with GHD Inc., which would delay the completion of the study and the update of the current fees in accordance with the requirements of the Mitigation Fee Act (AB 1600). As a result, the funds collected through the current fee structure may not adequately reflect the City's needs to meet future improvements based on new development.

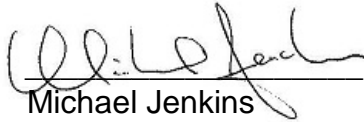
**Reviewed By:**

**Legal Review By:**

**Approved By:**



Carmen Nichols  
Deputy City Manager



Michael Jenkins  
City Attorney



Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Agreement for Professional Services for On-Call Traffic Modeling between the City of Goleta and the GHD Inc.
2. Agreement for Professional Services for completion of the Development Impact Fee Study 2018 between the City of Goleta and the GHD Inc.

## **ATTACHMENT 1**

Agreement for Professional Services for On-Call Traffic Modeling between the City of Goleta and the GHD Inc.

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
GHD INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 20<sup>th</sup> day of March, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **GHD INC.**, (a California Corporation herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional On-Call Traffic Modeling services; and

**WHEREAS**, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

**WHEREAS**, the CITY noticed a request for proposals and/or qualifications for professional traffic engineering services through a competitive Request For Qualifications (RFQ) process based on ongoing experience and familiarity with City projects and On-Call Traffic Demand Modeling Services; and

**WHEREAS**, based on the RFQ, the City selected traffic planner Jim Damkowitch to provide these services at the planning and engineering firm of Kimley-Horn;

**WHEREAS**, Mr. Damkowitch has departed Kimley-Horn and begun employment with CONSULTANT;

**WHEREAS**, the City desires to continue to obtain Mr. Damkowitch's services on the Traffic Modeling services by entering into contract with CONSULTANT; and

**WHEREAS**, the City Council, on this 20th day of March, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

## **2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional traffic engineering services in conjunction with Traffic Demand Modeling Services (TDMS) shall generally include providing TDMS, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

## **3. COMPENSATION AND PAYMENT**

**(a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$60,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

**(b) Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

## **4. EXTRA SERVICES**

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

## **5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Public Works Director. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

## **6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to June 30, 2019, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the term of the contract following the notice to proceed.

## **7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

## **8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. Jim Damkowitch is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate the AGREEMENT. This AGREEMENT is not assignable by CONSULTANT without the City Manager's prior written consent. Except as specified in this section or approved in writing by the City Manager, no contract work shall be subcontracted except the following:

- Robert Shull of Eco Resources Management Systems, Inc.



## **9. HOLD HARMLESS AND INDEMNITY**

**(a) Indemnification and Defense for Professional Service.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

**(b) For All Other Liabilities.** Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with

minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided,

canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.

- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

## **11. RELATIONSHIP OF CONSULTANT TO CITY**

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

## **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

### **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 10 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other

period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

#### **17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

#### **18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

#### **19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

#### **20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

#### **21. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

#### **22. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

**23. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

**24. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

**25. PERMITS AND LICENSES**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

**26. CAPTIONS**

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

**27. AUTHORIZATION**

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

**28. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

**29. PARTIAL INVALIDITY**

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**30. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:                      Attention: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

TO CONSULTANT:          Jim Damkowitch  
GHD Inc.  
943 Reserve Drive, Suite 100  
Roseville, CA 95678  
(916) 782-8688

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
By: Kamesh Vedula PE, TE,  
Title: Principal

**ATTEST**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
By: \_\_\_\_\_,  
Title

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

## **EXHIBIT A SCOPE OF WORK**

### **ON-CALL MODELING SERVICES PROTOCOL**

The following steps shall be performed by CONSULTANT when providing modeling information for development services work (Development Account) or working on behalf of the City with subconsultants preparing Traffic Impact Analysis (TIA) for developers.

- Schedule kickoff meeting to exchange the following requisite project information:
  - Proposed project description including all existing land uses on site and proposed land uses and demolitions
  - Proposed project Institute of Transportation Engineers (ITE) trip generation
  - Project site plan map (shall show all project access driveways, prohibited turn movements, and any existing roadway realignments)
  - Confirmation on traffic counts to be used
  - Confirmation on applicable CITY Cumulative Project list
  - Review of County Existing Plus Approved Project (EPAP) List
- Analysis Set Up Memo (submittal to the CITY and project applicant/consultant). Begins after all information is received and generally takes five working days to complete.
  - Cumulative land use comparison for project Traffic Analysis Zone (TAZ) - including the general plan
  - AM/PM model vs. ITE trip generation check
  - Network coding description check
  - Zone loading description check
  - Project trip origin and destination plots check
  - Project model trip distribution (origin and destination) check
- Approval of preliminary modeling



- Concurrence of preliminary modeling of project by applicant
- Concurrence of preliminary modeling of project by CITY
- CONSULTANT shall develop turn movement forecasts upon approval by both the applicant and CITY
  - Furness process for generating future turn movement volumes
  - Unbalanced turn movements
  - Balancing adjustments
  - Quality control checks including:
    - No future volume less than count (unless justified by a new roadway or access)
    - No future approach volume at a study intersection more than general plan forecast
    - Volumes checks with recent cumulative TIA turn movements (differences should be anticipated given different cumulative project lists)
    - Submittal of turn movement forecasts to the applicant/ consultant and the CITY
    - Perform operational assessments (i.e., signalized and non-signalized intersections, roadways and freeway system facilities)
    - CONSULTANT shall develop draft TIA upon approval by both the CITY and applicant/consultant
    - Circulation of draft TIA to CITY and

### **GOLETA TRAVEL MODEL UPDATE SERVICES:**

CONSULTANT shall provide Goleta Traffic Modeling Updating services including, but not limited to, the following tasks:

#### **Task 1. Full upgrade to VISUM Version 15**

The following sub-tasks will be completed as part of Task 1.

- The City of Goleta Model shall be imported to VISUM Version 15.

- The City's GP-1 and GP-7 General Plan Model scenarios and latest Cumulative Model shall be executed using VISUM Version 15.
- For each of these model scenarios, volume difference plots shall be generated comparing the Version 15 vs. Version 9.52 model assignments. These volume difference plots will isolate any differences attributable to the change in software version for review and consideration by the City.
- Develop a technical memorandum which shall assess the implications of any discrepancies between legacy model results and those generated using VISUM 15.

**Task 2. Update Signal Timing Plans**

- The Consultant shall incorporate the County of Santa Barbara's signal timing inputs for those signalized intersections within the City's modeling domain but which are operated by the County. ERMSI is currently working with the County of Santa Barbara's VISUM model covering the unincorporated areas of the Goleta Valley.
- After receipt of all signal timing plans or VISUM signal plan files (from County's model) - all Goleta Travel Model intersection signal timing inputs will be updated.

**Task 3. Add Zone and Network Detail**

- The Consultant shall review the shape file of the existing model zone structure.
- The Consultant shall identify potential issues related to the contiguity of access for identified TAZs. These issues occur wherever road access does not support connectivity between all zone connectors and all the physical areas represented by the TAZ.
- The Consultant shall check City and County General Plans to verify that the geographic location of the TAZ boundaries still matches existing and planned community boundaries and land uses.
- The Consultant shall work with the City to refine TAZ boundaries where appropriate.
- The Consultant shall work with City staff to generate a correspondence table representing the relationship between zones under the previous structure and zones under the new structure.
- The Consultant shall retain the zone numbering system convention resident in the current model.

- The Consultant shall review all model network attribute information. This includes: link type, directionality, number of lanes, capacity, length, design speed and link delay coefficients. Node attributes will also be reviewed including intersection type, node capacity factors, node capacity, special delay links, turn penalties, node delay coefficients, base delay, intersection geometry and signal timing (see Task 2). Link and node attributes will be systematically checked against ground truth information and current Goleta Model coding conventions for consistency.
- The need for additional network detail i.e., coding minor new development access roadways and/or collector and local streets currently not reflected in the model network, shall be determined. Several network modifications have already been coded by the Consultant as part of the normal upkeep and updating of the Cumulative Model network. These coded roadways will be included in the baseline model if constructed since 2005.
- The Consultant shall review the TAZ zone connectors. The number of zone connectors and the zone loading percentages (multi-point assignment) shall be reviewed relative to actual development driveway and network access characteristics. As part of the Consultant's upkeep of the Cumulative Travel Model - new access via **TAZ** connectors have been incrementally added to the model network since 2005. For those developments that are now part of the built environment - their TAZ zone connectors and load percentages shall now be included as part of the updated baseline model.
- The Consultant shall develop a detailed log of modifications. **Task 4. Update**

#### Baseline Land Use

- The Consultant shall update the Goleta Model's current 2005 baseline land-use to reflect a 2012-13 baseline. This will entail working closely with the City to confirm what pending and approved development projects have been constructed and occupied since 2005. The complete Existing Plus Approved and Pending (EPAP or Cumulative) development list has been tracked since 2008 by KAI.
- The Consultant shall coordinate with the County of Santa Barbara and the City of Santa Barbara to update the non-City TAZ baseline land use in a similar fashion. It is not anticipated that any new land use categories beyond the current 29 will be added to the model.
- The Consultant shall also reassess the external assumptions of the baseline model. Although driven by land use growth, external assumptions (model domain gateways) are reflected as vehicle trips. The most recent traffic count data recorded at the model external stations will be reviewed and considered relative to the 2004/05 external traffic counts currently

resident in the baseline model.

#### **Task 5. Development of 2013 AM/PM Peak Hour Assignment Baseline Model**

- The Consultant shall develop an AM peak hour model based on AM peak hour ITE (9th Edition) trip generation rates. The existing PM peak hour model will be updated based on PM peak hour ITE (9th Edition) trip generation rates. Factors used to separate trips by trip purpose and by origin and destination (ins and outs) will be checked relative to NCHRP 365/735 (the update to NCHRP 187 used to factor the current model). The need to adjust the ITE rates will be based on an iterative calibration procedure. Numerous model runs will be executed to test rate adjustments that yield the best model fit. Based on these updated trip generation rates, the AM and PM peak hour productions and attractions will be balanced. Disaggregation of external trips by trip purpose will be checked and added to the internal trips origin and destination sums by trip purpose for balancing during calibration.

#### **Task 7. AM/PM Peak Hour Baseline Model Validation**

- The Consultant shall perform a full AM and PM peak hour validation for the City of Goleta VISUM Travel Model. The proposed validation methods shall include:
  - Static Validation
    - Screenline Analysis Validation
    - Functional Class (Road Type) Validation
    - Correlation Statistics
  - Dynamic Validation
- These methods provide valuable feedback into the accuracy and consistency of the travel model and its behavior. Each of the validation methods shall be based on the AM and PM peak hour validation counts provided by the City. For non-City roadways, AM and PM peak hour counts shall be harvested from the County's traffic count data base and/or from the Goleta Valley Model.
- The static validation for the AM and PM Peak Hour Travel Model shall include screenline validation, link based validation by functional class, and correlation statistics. Each of these validation checks are described below.
  - Screenline Validation

Nine validation screenlines were established for the current model's validation. These nine screenlines shall be retained for the baseline model update. In coordination with the City, the need for establishing additional screenlines shall be considered. State and federal model validation guidelines suggest that total model- estimated traffic across a

screenline to be no more than ten percent different from the total traffic counts.

- Link Based Validation

The standard FHWA and Caltrans travel forecasting guidelines recommend validation criteria based on a comparison of total model volumes and traffic counts on various facility types, including:

- Freeways
- Principal Arterials
- Collectors
- Frontage Roads
- Local Roads

- Model network links shall be stratified by functional classification, along with a detailed inventory of the number of links, how many of these links have associated validation counts, and the percent error between the actual counts and model predictions. The state guidelines dictate that each functional class should achieve below the desired % error.

- Correlation Statistics

The standard FHWA and Caltrans travel forecasting guidelines recommend a correlation between model estimates and counts of 0.88 or more. State guidelines also include a correlation curve with a recommendation that 75 percent of daily link volume estimates compared to counts fall within the curve.

In addition to the typical link-based validation analysis, the Consultant shall perform several dynamic validation exercises to ensure that the model properly responds to changes in inputs, i.e., that the magnitude and direction of model behavior makes sense. Such exercises shall include:

- Add a link
- Delete a link
- Change link speeds
- Change link capacities
- Add 100 households to a TAZ
- Add 1,000 households to a TAZ
- Add 5,000 households to a TAZ
- Add 10,000 households to a TAZ
- For the City of Goleta Travel Model dynamic validation, the Consultant proposes the following dynamic validation exercises:
  - addition and deletion of housing units within highest populated areas of the City;

- addition and deletion of the number of employees at one or two high employment centers; and,
  - a hypothetical bypass will be coded.
- These dynamic validation tests shall be developed in consultation with the City.
  - Once the GP-1, GP-7 and Cumulative Model future forecasts is executed and results evaluated, the Consultant shall ensure that the model is functioning correctly and that the forecasts are reasonable.
  - The Consultant shall develop a technical memorandum which will describe the static and dynamic validation process and results.

#### **Task 8. Master Network Development**

- The Consultant shall develop a Master Network file that includes all Cumulative (i.e., programmed infrastructure improvements) scenario CIP improvements as well as General Plan (i.e., planned CIP improvements) scenario CIP improvements. This will allow the analyst to simply toggle on or off future year CIP improvements for a given analysis. This will greatly reduce the number of separate VISUM network version files.

#### **Task 9. Cumulative / General Plan Land Use**

- The Consultant shall develop the most current Cumulative Land Use file and the General Plan Land Use to conform to the updated baseline TAZ structure.

#### **Task 10. City of Goleta Model Update Report**

- The Consultant shall amalgamate all interim technical memorandums to develop a single unified model development report describing each step of the baseline model update process.
- The draft report shall be submitted to the City for comments.
- After receipt of a single round of unified comments from the City, the Consultant shall address the comments and modify the draft report as appropriate for final submittal to the City.

#### **GOLETA TRAVEL MODEL TRAINING:**

If requested by the City, the Consultant shall provide in person training to City staff on the requisite modeling steps to perform the modeling protocol for development services and other model applications and functions. Training specific to the VISUM software can be performed by GHD Inc. For scoping purposes — two training sessions not to exceed a total of \$8,000 (\$4,000 per session).

## EXHIBIT B SCHEDULE OF FEES

### Omni-Means/GHD Professional Staff Rates

Title	Range	Hourly Rates (2017-2018)
Project Manager	1 - 4	\$152 - \$258
Resident Engineer	1 - 3	152 - 224
Engineer	1 - 5	90 - 258
Traffic Engineer	1 - 5	90 - 258
Planner	1 - 4	64 - 201
Landscape Architect	1 - 4	77 - 203
Office Surveyor	1 - 4	64 - 201
Field Surveyor	1 - 4	64 - 201
Field Inspector	1 - 4	64 - 201
Graphic Artist	1 - 3	64 - 116
Designer	1 - 3	80 - 173
Technician	1 - 4	58 - 138
Clerical	1 - 3	40 - 103
Intern	1 - 3	40 - 70
1-Person Survey		172 - 201
2-Person Survey		141 - 281
3-Person Survey		\$179 - \$355

### Specific Project Personnel Rates:

- Jim Damkowitch \$195/hour
- Kamesh Vedula \$205/hour
- Martin Inouye \$225/hour
- Haytham Daas \$105/hour
- Rosanna Southern \$115/hour
- Kenneth Isenhower \$105/hour

### Reimbursable Charges

Reimbursable charges include, but are not limited to, in-house reproduction, travel subsistence, special consultants, outside purchases and services, and other subcontracts. These are charged at 1.10 x cost.

### Billing Rates

Billing rates include overhead, equipment, space rental, etc.

## **ATTACHMENT 2**

Agreement for Professional Services for completion of the Development Impact Fee  
Study 2018 between the City of Goleta and the GHD Inc..



**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
GHD INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 20<sup>th</sup> day of March, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **GHD INC.**, (a California Corporation herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional Development Impact Fee Study; and

**WHEREAS**, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

**WHEREAS**, the CITY noticed a request for proposals and/or qualifications for professional traffic engineering services through a competitive Request For Qualifications (RFQ) process based on ongoing experience and familiarity with City projects and Development Impact Fee Study Services; and

**WHEREAS**, based on the RFQ, the City selected traffic planner Jim Damkowitch to provide these services at the planning and engineering firm of Kimley-Horn;

**WHEREAS**, Mr. Damkowitch has departed Kimley-Horn and begun employment with CONSULTANT;

**WHEREAS**, the City desires to continue to obtain Mr. Damkowitch's services on the Development Impact Fee Study by entering into contract with CONSULTANT; and

**WHEREAS**, the City Council, on this 20th day of March, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

## **2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional analysis services in conjunction with Development Impact Fee (DIF) Study shall generally include data collection, review of programs and fee schedule, and nexus analysis, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein. CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

## **3. COMPENSATION AND PAYMENT**

**(a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$60,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

**(b) Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

## **4. EXTRA SERVICES**

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

## **5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Public Works Director. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

## **6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to June 30, 2019, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the term of the contract following the notice to proceed.

## **7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

## **8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. Jim Damkowitch is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate the AGREEMENT. This AGREEMENT is not assignable by CONSULTANT without the City Manager's prior written consent. Except as specified in this section or approved in writing by the City Manager, no contract work shall be subcontracted except the following:

- Robert Spencer of Urban Economics
- Robert Shull of Eco Resources Management Systems, Inc.

## **9. HOLD HARMLESS AND INDEMNITY**

**(a) Indemnification and Defense for Professional Service.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

**(b) For All Other Liabilities.** Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004

and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.

c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.

d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.

b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.

c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.

e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.

f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.

g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.

h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.

i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

## **11. RELATIONSHIP OF CONSULTANT TO CITY**

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

## **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

## **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under

this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

#### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTs for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

#### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation

of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

**21. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.



## **23. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

## **24. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

## **25. PERMITS AND LICENSES**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

## **26. CAPTIONS**

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

## **27. AUTHORIZATION**

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

## **28. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

## **29. PARTIAL INVALIDITY**

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**30. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

TO CONSULTANT: Jim Damkowitch  
GHD Inc.  
943 Reserve Drive, Suite 100  
Roseville, CA 95678  
(916) 782-8688

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager


\_\_\_\_\_  
By: Kamesh Vedula PE, TE,  
Principal Engineer

**ATTEST**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
By: ,  
Title

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

## EXHIBIT A SCOPE OF WORK

CONSULTANT shall conduct a Development Impact Fee Study make recommendations and provide deliverables as described through the following tasks and activities:

**Task 1: Initiate Project.** Consultant will review the City's existing Fee Program, relevant documentation, and the previous study performed by Willdan. The project scope will include all four development impact fees from Willdan's prior report and cover the following nine fee categories:

- Transportation Impact Mitigation Fee
- Park Development Impact Fee
- Quimby Park
- Park (Residential)
- Park (Commercial/Industrial)
- Library Facility Development Impact Fee
- Police Facility Development Impact Fee
- Public Administration Facilities Fee

Consultant will meet with staff to review operational/administrative inefficiencies or concerns, review and refine nexus analysis approach and methodology, and refine project schedule as needed.

**Task 2: Data Collection and Analysis.** Consultant will utilize the City's General Plan build-out land use as the basis for land use assumptions and develop forecasts to estimate future facility needs and cost allocations. Consultant will provide draft and final land use assumptions and projections memoranda.

**Task 3: Conduct Nexus Analysis and Fee Schedule.** Consultant will perform a technical analysis to develop a fee schedule consistent with the Mitigation Fee Act (AB 1600). This task will include the following activities and deliverables:

- Transportation analysis to develop technical memorandum to support impact fee program update;
- Capital Improvement Program review and identify Facility Fee Program Projects and develop capital cost estimates and identify funding requirements and sources to develop technical memoranda;
- Cost allocation methodology applied to impact fees to develop draft and final cost allocation memoranda; and
- Preliminary fee calculation developed.

**Task 4:** Conduct a Comparative Fee Study. Consultant to perform a comparative analysis of fee schedule and provide City with graphics comparing the City's preliminary fee relative to like fees in other jurisdictions.

**Task 5:** Final Report and Presentations. Consultant will develop the final fee schedule consistent with the Mitigation Fee Act (AB 1600) and combined all technical memoranda to develop a draft and final document. Review and update the DIF Ordinance and/or Resolutions for legal review by City. Consultant will present a presentation of the final fee schedule to the City Council.

**Task 6:** Development of Accessory Dwelling Unit Land Use Increment to City's General Plan Buildout model land use.

**Task 7:** Analysis of the implications of an in-lieu housing fee.

**Task 8:** Analysis of a transportation fee for potential City zones (Old Town and the rest of the City), development of fair share analysis and development of separate transportation fee for each zone.

**Task 9.** Develop a detailed bifurcation of trips generated by the City of Goleta and neighboring jurisdictions.

**Task 10:** Sensitivity Analysis for Existing/Future Deficiency Assessment per 1999 GTIP Policy Option.

**Task 11:** Policy Feedback Questions per the City's Request to address use of DIF for transit O&M and Application of 100% I-X and X-I (correspondence with City)

**Task 12:** Greater need for coordination than originally scoped including multiple conference calls to present preliminary results and review and refine the nexus analysis approach and methodology.

**Task 13:** Advise on approaches to fund affordable housing and water conservation.

**Task 14:** Preparation of technical memoranda (one draft with potential to make one round of minor edits) to explain Goleta Transportation Impact Fees (GTIF)

## EXHIBIT B SCHEDULE OF FEES

### Omni-Means/GHD Professional Staff Rates

Title	Range	Hourly Rates (2017-2018)
Project Manager	1 - 4	152 - 258
Resident Engineer	1 - 3	152 - 224
Engineer	1 - 5	90 - 258
Traffic Engineer	1 - 5	90 - 258
Planner	1 - 4	64 - 201
Landscape Architect	1 - 4	77 - 203
Office Surveyor	1 - 4	64 - 201
Field Surveyor	1 - 4	64 - 201
Field Inspector	1 - 4	64 - 201
Graphic Artist	1 - 3	64 - 116
Designer	1 - 3	80 - 173
Technician	1 - 4	58 - 138
Clerical	1 - 3	40 - 103
Intern	1 - 3	40 - 70
1-Person Survey		172 - 201
2-Person Survey		141 - 281
3-Person Survey		179 - 355

### Specific Project Personnel Rates:

- Jim Damkowitz \$195/hour
- Kamesh Vedula \$205/hour
- Martin Inouye \$225/hour
- Haytham Daas \$105/hour
- Rosanna Southern \$115/hour
- Kenneth Isenhower \$105/hour

### Reimbursable Charges

Reimbursable charges include, but are not limited to, in-house reproduction, travel subsistence, special consultants, outside purchases and services, and other subcontracts. These are charged at 1.10 x cost.

### Billing Rates

Billing rates include overhead, equipment, space rental, etc.