



PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATIONS, INC.

(MV edited 2-5-2024)

This AGREEMENT (“Agreement”) is entered by and between **Kimley-Horn and Associates, Inc.** (the “Professional”), located at **11700 Katy Fwy #800, Houston, Texas 77079** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Newport Park Redevelopment**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **February 19, 2024** and shall expire on **June 30, 2025** City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in **Exhibit A**, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
3. **Compensation:** Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$113,300** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Professional, City shall give Professional specific reasons for disapproval in writing.
4. **Insurance:** Professional **is** required during the Contract Term to maintain insurance as set forth below: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per claim; and (c) If at any point during the Contract Term it is foreseeable that Professional will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain

a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Liquidated damages **are not** applicable to this transaction. Professional acknowledges that time is of the essence in performing this Agreement. City and Professional (collectively, the “Parties”) agree that if Professional is late in performing any service designated as **Time Critical** on the Scope of Services attached to this Agreement, City will suffer loss, damages, or other harm from Professional’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred as a result of Professional’s delay is incapable or difficult to precisely estimate, and therefore the Parties desire to stipulate the amount of such loss, damages, or harm. Accordingly, Professional shall have deducted from any amounts owed under this Agreement liquidated damages equal to the number of calendar days of the delay(s) times the daily rate, which rate shall be one-tenth of one percent (0.1%) times the compensation shown in the Scope of Services for such Time Critical service. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Professional’s delay; (ii) one of the reasons for City and Professional to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Professional are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City to the extent the City has made payment for Professional’s services. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, upon payment of all monies owed to Professional, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional’s behalf Professional’s moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.

8. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional's possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.
9. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations exercising its professional standard of care to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all applicable and published City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license.
12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: PROFESSIONAL SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR**

RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, INTENTIONAL TORT, BREACH OF CONTRACT OR VIOLATION OF LAW SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE SECTION 271.904.

14. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.

21. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** All work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work will be Professional's responsibility.
25. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.

29. **Authority:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. Professional warrants and represents that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Profession (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

(signature block on next page)

Executed on _____ . *(date to be filled in by City Secretary)*

KIMLEY-HORN AND ASSOCIATES, INC. - "Professional"



Michael Lucas, Regional Contract Lead

CITY OF LEAGUE CITY - "City"

John Baumgartner, P.E., City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(14 pages, including this page)

See Next Page

January 29, 2024

Mr. Chein Wei
Director of Parks and Cultural Services
City of League City
500 West Walker Street
League City, Texas 77573

**RE: *City of League City – Newport Park Redevelopment
Professional Services Proposal***

Dear Mr. Wei,

We are pleased to submit this scope of services and fee schedule to the City of League City for the Newport Park Redevelopment. Our project understanding, scope of services, and fee are below.

We look forward to working with you on this project. If you have any further questions regarding this scope or fee, please don't hesitate to contact me.

Sincerely yours,



Shannon Mundy, P.L.A.
Project Manager



Michael Lucas
Regional Contract Lead

**CITY OF LEAGUE CITY
NEWPORT PARK REDEVELOPMENT**

Kimley-Horn and Associates, Inc. (Kimley-Horn or Consultant) is pleased to submit this scope and fee proposal to the City of League City (the City) for professional engineering and landscape architecture services, which include preparation of survey, construction documents, bidding, and construction phase services for the Newport Park Redevelopment. Our project understanding, scope of services and fees are presented below.

INFORMATION PROVIDED BY CITY

The City of League City will provide the following:

1. Record drawings / plats for the surrounding project area, if available.
2. Permission to enter subject properties.
3. Copies of any previous studies, assessments, audits, inspections or activities of any kind at the property known to the City, and past property owners and operators.

Kimley-Horn shall be entitled to rely on the completeness and accuracy of materials supplied by others in the completion of their services under this agreement.

PROJECT UNDERSTANDING

The project area is located within the existing Newport Park in League City, Texas. It is our understanding the City desires to engage Kimley-Horn for the design, community engagement, bidding and construction phase services related to the addition of quality amenities to the park. These include the addition of a 6' wide concrete trail system, improvement to the existing parking lot lighting, regrading of the open practice field, adding new play features and shade structure to the existing playground, and adding a volleyball court. A detention pond or feature will be located onsite, roughly on the western half of the park.

It is assumed no additional utility service is required, and no easement coordination is required. It is assumed that the scope of work does not include any work within a public Right-of-Way, including but not to limited to, a flood control district channel or drainage district facility. Kimley-Horn design will meet or exceed all local, state, and federal requirements including ADA and building code requirements.

PROJECT LOCATION



SCOPE OF SERVICES

The scope of services includes the following tasks:

TASK 1: TOPOGRAPHIC SURVEY

Kimley-Horn will research current deeds and plats, and locate property corners to determine the existing boundary lines of the site shown on the attached exhibit. A Boundary Survey, ALTA/NSPS Land Title Survey or TSPS Category 1B, Condition II, Standard Land Survey is not included in this task.

Kimley-Horn will conduct field surveying and prepare a topographic base map for the site shown on the attached exhibit to be used for site planning and civil engineering design purposes. The topographic base map is to be used in-house and will not be issued as a stand-alone survey document. The base map will consist of: Elevations around the immediate perimeter of the site; Contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; Limits of all existing features; Size, type, and location of existing trees over 6" caliper; As shown on City's record drawings, if available, and observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances; Texas811 markings of subsurface utilities that are in place at the time our field work is being done.

TASK 2: GEOTECHNICAL INVESTIGATION

The Professional will engage a geotechnical sub-consultant (Samoo Engineering, LLC or Sub-Consultant) to perform geotechnical investigations for the project. Sub-consultant will access bore locations with a buggy-mounted rig and assume that bore locations are not covered by concrete and do

not require vegetation clearing. Sub-consultant will contact TX811 to locate public underground utilities prior to drilling.

Field Investigation

The proposed geotechnical field investigation includes:

Number of Borings	Depth of Boring (feet)	Location
1	20	In the area of the proposed pavilion
1	20	In the area of the proposed light poles
1	8	In the area of the proposed pond

Sub-consultant field personnel will drill the borings, obtain cohesive and non-cohesive soil samples with three-inch diameter Shelby tube samplers (ASTM D-1587) and two-inch diameter standard split-spoon samplers (ASTM D-1586), respectively.

An engineering geologist or soils technician will extrude samples in the field, check the samples for consistency with a hand penetrometer, wrap to preserve condition, and return to the laboratory for testing. Sub-consultant will prepare a log of each boring to document field activities and results. Sub-consultant will stake the boring locations using normal taping procedures. Locations will be shown on the boring plan exhibit. At completion of drilling operations, sub-consultant will backfill and plug bore hole with soil cuttings.

Laboratory Investigation

Sub-consultant will perform laboratory tests on bore samples required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation and swell properties of the material. Testing, in accordance with standard procedures, will include moisture content, soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

Geotechnical Engineering Report

Sub-consultant will prepare a geotechnical engineering report, sealed by a professional engineer, which will present the results of the field and laboratory data together with analysis of the results and recommendations. Sub-consultant will provide a digitally signed and sealed report in electronic (Adobe PDF) format. The report will address:

- soil and groundwater conditions encountered at the boring locations;
- foundation design recommendations including foundation type, identification of bearing strata, allowable bearing pressure, and estimated settlement;
- recommendations for floor slab support, including evaluation of swell characteristics of subgrade soils;
- recommendations for horizontal and lateral earth pressures related to buried and retaining structures;
- paving recommendations;
- detention pond recommendations;
- earthwork recommendations, including material and compaction requirements; and
- construction considerations related to soil and groundwater conditions at the borings.

TASK 3: PRELIMINARY DESIGN (30% SUBMITTAL)

The Consultant will prepare and submit for review a preliminary layout for the site improvements. The plans will illustrate the general scope, scale, theme, and relationship of various design components.

Prepare the Preliminary Opinion of Probable Construction Cost (OPCC). The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

Based on the revised layout addressing City comments, Kimley-Horn will move from Preliminary Design into Construction Documents (Task 4). It is understood that minor revisions will be incorporated into the Construction Documents without additional review.

- A. Deliverables will be prepared per the City's PSA Exhibit B document with the following exceptions: Traffic Impact Analysis, Draft H&H Study and/or Preliminary Engineering Report, Preliminary Land Acquisition Information, Preliminary Geotechnical findings, and Exhibits for Public Meetings.

Meetings:

- A. One (1) kick-off meeting with the City to discuss project scope and schedule.
- B. One (1) meeting with the City to discuss review comments related to preliminary design.

Deliverables:

- A. One (1) Concept Layout (plan view only at a scale of 1"=20'-0")
- B. One (1) Opinion of Probable Construction Costs.
- C. An electronic (PDF) of the Concepts Layouts and Opinion of Probable Construction Costs.
- D. One (1) Revised Concept Layout and Opinion of Probable Construction Costs that addresses City comments.

TASK 4: COMMUNITY ENGAGEMENT

Kimley-Horn will prepare for and lead up to one (1) in-person community engagement meeting to present the Preliminary Design and receive feedback from the public. The presentation will include opportunities and constraints within the existing park, the preliminary design exhibit and conceptual imagery reflecting the programming and materials. It is assumed the City will advertise and provide meeting space for the meeting. Feedback from the meeting will be incorporated into the 60% Construction Documents. No additional revisions to the Preliminary Design deliverables or additional meetings is included.

Meetings:

- A. One (1) meeting with the public to present the preliminary design.

Deliverables:

- A. One (1) powerpoint (.ppt) presentation.
- B. One (1) 22"x34" Preliminary Design printed to foam board.

TASK 5: CONSTRUCTION DOCUMENTS

Upon City approval of Preliminary Design (30% Submittal -Task 3) and completion of Community Engagement (Task 4), the Consultant will develop the Construction Document package for the project. The development of the construction document package includes the following:

- B. Cover Sheet
- C. Index
- D. General Notes The Consultant will prepare general construction notes and specifications for the project in addition to the City's standard general notes (provided by the City).
- E. Plan Sheets The Construction Documents package will include the plan sheets for the scope of work described. The design for the sheets will be created as part of the design tasks in this scope. This effort is for the creation of the sheets to communicate the design intent and illustrate the design to the contractor for construction.
 - a. Existing Conditions/Demolition Plan
 - b. Site Layout and Paving Plan (includes Trail Layout, volleyball court, and pre-fab shade structure)
 - c. Grading Plan
 - d. Erosion Control Plan and SWPPP
 - e. Drainage Plan and Drainage Area Map with calculations (Includes Detention pond layout and impervious calculations)
 - f. Landscape Plans
 - g. Irrigation Plans
 - h. Site Lighting Plans, including coordination with TNMP (Texas- New Mexico Power)
- F. Details The Consultant will include detail sheets showing elements included in the Plan Sheets, consisting of details, sections, and elevation views. Certain submittals, shop drawings, samples, cut sheets and mockups will be listed for approval.
- G. Project Manual The Consultant will prepare a bid form and technical specifications to be included in the project manual as part of this task and provide the bid form to the City to be included with the project manual. The City will provide the City's preferred front-end documents and procurement language to the Consultant to be included in the project manual. Kimley-Horn will compile the technical specifications, the bid form, and the City's front-end contract documents into the project manual for the project bid. The Consultant will provide the project manual as part of the 90% and 100% submittals to the City.
- H. Opinion of Probable Construction Cost The Consultant will prepare an opinion of probable construction cost for the 60%, 90%, and 100% submittals. Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and

- qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost.
- I. Revise per City Comment The Consultant will revise the Construction Documents after the 60%, 90%, and 100% submittals based on comments for each submittal, including comments from building and code requirements related to permit. Upon the 100% submittal, the City will submit plans for final signatures, and up to one round of minor revisions will be incorporated into the Bid Package. Based off Kimley-Horn's knowledge of the project, the task fee assumes customary and standard scope of services with associated level of effort computation.
 - J. Deliverables will be prepared per the City's PSA Exhibit B document with the following exceptions: Traffic Impact Analysis, Traffic Control Plan, Plan and profile drawings, Intersection Details, Traffic Signage/Marking Plans, Electrical Plans, Signal plans, Final ROW documents, Additional public meeting exhibits, Preliminary construction schedule, and SW3P Manual.

Meetings:

- A. One (1) in-person meeting with the City to discuss review comments related to the 60% Plans.
- B. One (1) in-person meeting with the City to discuss review comments related to the 90% Plans.
- C. Monthly virtual status update meetings with the City Staff. Assumes seven meetings over 28 weeks of design.

Deliverables:

- A. An electronic (PDF) of the 60%, 90%, and 100% Construction Plans (Item A-E).
- B. An electronic (PDF) of the 60%, 90% and 100% opinion of probable construction cost (Item G).
- C. An electronic (PDF) of the 90%, and 100% Technical Specifications and Bid Form (Item F).
- D. An electronic (PDF) of the final Bid package (Item A-F).

TASK 6: BIDDING PHASE SERVICES

Kimley-Horn will provide the following bidding phase services.

- A. Upload all plans and contract documents onto CivCast (or similar website) for access to potential bidders. Contract documents shall be uploaded in .pdf files.
- B. Maintain a list of bidders to whom bidding documents have been issued.
- C. Prepare for and conduct a pre-bid meeting with prospective bidders.
- D. Issue addenda as appropriate to interpret, clarify, or expand the bidding documents.
- E. Tabulate the bids received and evaluate the compliance of the bids received with the bidding documents.
- F. Prepare a written summary of this tabulation and evaluation together with a letter addressing the award of the construction contract per City's A+B bidding.
- G. Prepare and submit 3 copies of Conformed Manual for execution between City and contractor.

This proposal assumes that there will be one (1) Construction Package and therefore one bid phase for the entire project as described above. If the City decides to bid the project in separate bid packages or the project needs to be re-bid, it will be considered an Additional Service. Based off Kimley-Horn's knowledge of the project, the task fee assumes customary and standard scope of services with associated level of effort computation.

TASK 7: CONSTRUCTION PHASE SERVICES

Kimley-Horn will provide the following construction phase services. Based off Kimley-Horn's knowledge of the project, the task fee assumes customary and standard scope of services with associated level of effort computation.

A. Pre-Construction Conference

Consultant will conduct a Pre-Construction Conference prior to commencement of work at the Site.

B. Conformance Plans

Prepare and submit five (5) half size copies of Conformed Plans and Manual for City and contractor's use. Submit one (1) copy of full size Conformed Plans and Manual to City's Engineering Department.

C. Project Meetings

Consultant will attend biweekly construction meetings. It is assumed construction will be 4 months long with every other meeting virtual (assumes four (4) in person and four (4) virtual meetings). Consultant to coordinate with City Project Manager to align the in-person Project Meetings with the monthly Site Visits described in Section D.

D. Visits to Site and Observation of Construction

Consultant will provide on-site construction observation services during the construction phase. Consultant will make monthly visits in order to observe the progress of the work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep City informed of the general progress of the work.

The purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide City a greater degree of confidence that the completed work will conform in general to the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any

failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

E. Recommendations with Respect to Defective Work

Consultant will recommend to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

F. Clarifications and Interpretations

Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by City.

G. Change Orders

Consultant may recommend Change Orders to City, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

H. Shop Drawings and Samples

Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

I. Substitutes and "or-equal"

Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

J. Inspections and Tests

Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

- K. Disagreements between City and Contractor
Consultant will, if requested by City, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- L. Substantial Completion
Consultant will, promptly after notice from Contractor that it considers the entire work ready for its intended use, in company with City and Contractor, conduct a site visit to determine if the work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of City, Consultant considers the work substantially complete, Consultant will notify City and Contractor.
- M. Final Notice of Acceptability of the Work
Consultant will conduct a final site visit to determine if the completed work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.
- N. Limitation of Responsibilities
Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.
- O. Record Drawings: Based upon contractor provided field notes, construction records, and as-built drawings, Kimley-Horn will prepare the required project record drawings for submittal to the City.

TASK 8: TDLR

Through a RAS (Registered Accessibility Consultant) subconsultant, Kimley-Horn will request TDLR approval:

- (1) Submission of Construction Documents to TDLR – The Consultant shall submit the Construction Documents to TDLR.

- (2) Completion of Registration Form to TDLR – The Consultant shall complete an Elimination of Barriers Project Registration Form (“Form”) and submit the registration form to TDLR.
- (3) TDLR Approval of Construction Documents – After review of the Construction Documents by TDLR, The Consultant shall be notified in writing of the results. The Consultant shall address all comments that prevent TDLR approval of the Construction Documents, including comments relating to conditional approval that must be addressed in the design and construction of the Project. The Consultant shall resubmit Construction Documents to TDLR for review prior to the completion of construction of the Project.
- (4) TDLR Project Inspection – The Consultant shall request an inspection from TDLR after the completion of construction of the Project. The Consultant shall advise City in writing of the results of each Project inspection.
- (5) Corrective Modifications following TDLR Project Inspection – When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide the Consultant a list of deficiencies. The Consultant shall provide City with this list for communication to the contractor. When the corrective measures have been completed, the Consultant shall provide the RAS who completed the inspection and City with written verification of the corrective measures completed.

TASK 9: REIMBURSABLE EXPENSES

Direct reimbursable expenses such as express delivery services, fees, bond plots, and other direct expenses will be billed at 1.10 times cost. All permitting, application, and similar project fees will be paid directly by the City. Should the City request Kimley-Horn to advance any such project fees on the City’s behalf, an invoice for such fees, with a ten percent (10%) markup, will be immediately issued to and paid by the City.

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

OPTIONAL SERVICES

TASK A1: PRIVATE UTILITY LOCATOR FEE

If requested by the City, a third party private utility locator can be called in by the subconsultant geotechnical engineer to clear the boring locations prior to drilling work. It is not a guarantee that all utilities within the site will be identified. Private utility locator services can identify utility alignments that incorporate significant iron (ferrous) content in the conduit materials. But private utility locator conventional methods have a higher likelihood of not accurately identify non-ferrous utilities (such as sewer lines, copper or PVC lines, fiber optic lines, or sprinkler lines etc.).

FEE AND BILLING

Kimley-Horn will perform the services in Tasks 1 through 7 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the City unless otherwise stated.

Upon written authorization, Kimley-Horn will perform the scope of services under the Optional Services task.

Basic Services Fee:

Task 3: Preliminary Design.....	\$7,200 LS*
Task 5: Construction Documents	\$48,200 LS*
Task 6: Bidding Phase Services	\$8,000 LS
Task 7: Construction Phase Services	\$16,500 LS
Basic Services Subtotal	\$79,900 LS

Special Services Fee:

Task 1: Survey.....	\$16,700 LS*
Task 2: Geotechnical Investigation	\$5,900 LS*
Task 4: Community Engagement	\$3,500 LS*
Task 8: TDLR	\$3,500 LS
Task 9: Office Expenses & Reimbursables	\$2,000 LS
Special Services Subtotal.....	\$31,600 LS

Optional Services, Upon Authorization

Task A1: Private Utility Locator Fee.....	\$1,800 LS
Optional Services Fee	\$1,800

Total Fee **\$113,300**

* Time-critical tasks totaling \$81,500 to be completed within 196 calendar days from Notice to Proceed, excluding City review and approval periods.

Fees will be invoiced monthly upon the percentage of services completed or actual services performed. Payment will be due within 30 days of the receipt of the invoice.

SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting the attached schedule. Times for performance shall be extended as necessary for delays due to circumstances that Kimley-Horn does not control. Kimley-Horn shall not be liable for or be deemed in breach because of delays caused by any factor outside of its reasonable control.

To comply with Article 5 of the Professional Services Agreement related to time critical items, the Consultant will meet the following schedule:

- Preliminary Design & Public Engagement (30% Design)- 63 Days from NTP
- Survey, Geotech & 60% Design Submittal- 63 Days from approval of Preliminary Design (30% Design)
- 90% Design Submittal- 42 Days from receipt of 60% City comments
- 100% Design Submittal- 28 Days from receipt of 90% City comments
- Bid Phase- 75 days (Estimated) from Advertisement
- Construction Phase- 120 Days (Estimated) from Contractor's NTP (Construction subject to Fiscal Year 2025 release of funds)

Exhibit B

Applicable - See Next Pages

PSA Exhibit B

Submittal Requirements:

- **Design Phase Services should be broken down into submittal types with the following requirements:**
 - **30% Submittals should, at a minimum, include the following:**
 1. Plans that contain the following information:
 - Cover Sheet
 - Field Survey Plan Sheet
 - Design Plan Sheets that show Existing Conditions and proposed concepts with the existing and proposed work clearly identified
 - Demo Plan
 - Typical Cross-Sections
 2. List of preliminary Utility Conflicts and contact information for appropriate utilities.
 3. Updated Design Schedule
 4. Preliminary Opinion of Probable Costs (OPCC)
 5. Permitting recommendations/requirements
 - ~~6. Traffic Impact Analysis (if needed)~~
 - ~~7. Draft H&H Study and/or Preliminary Engineering Report (if needed)~~
 - ~~8. Preliminary Land Acquisition Information (if needed)~~
 - ~~9. Preliminary Geotechnical findings (if needed)~~
 10. Preparation of Exhibits and attendance at Public Meeting (if needed)
 - **60% Submittals should, at a minimum, include the following:**
 1. Plans that contain the following information:
 - Cover Sheet w/ index
 - General Notes
 - Sheet Layout
 - Typical Cross-Sections
 - Survey Control
 - Demo Plan
 - Grading Plan (if needed)
 - Tree Protection and/or Landscape Plan (if needed)
 - ~~• Traffic Control Plan (if needed)~~
 - Proposed Drainage Area Map and calculations
 - ~~• Plan and Profile drawings with Station Numbers for Water, Sewer, Storm, Street~~
 - ~~• Intersection Details~~
 - Sidewalks, Traffic Signage, & Pavement Marking Plans
 - ~~• SW3P Plan Sheet(s) and Details~~
 - Standard CoLC Details applicable for project
 - Project Specific Requirements/Details/Notes such as
 - ~~○ Electrical Plans/Details~~
 - Structural Plans/Details
 - ~~○ Signal Plans/Details~~

- ~~2. Final ROW Documents for Land Acquisition (if needed)~~
 - 3. Completed Geotechnical Report (if needed)
 - 4. List of Updated Utility Conflicts and contact information for appropriate utilities.
 - 5. List of needed Permits, draft applications for needed Permits
 - 6. List of Technical Specifications that are needed for Project
 - 7. Updated Design Schedule
 - ~~8. Preliminary Construction Schedule~~
 - 9. Updated Preliminary OPCC
 - ~~10. Preparation of Exhibits and attendance at Public Meeting (if needed)~~
- **90% Submittals should, at a minimum, include the following:**
 - 1. Updated Design Plans noted above
 - 2. Submittal Letter addressing previous comments made on 60% Review
 - 3. Project Manual – Spec Book, Bid forms, etc.
 - ~~4. SW3P Manual with appropriate documentations/signatures as applicable~~
 - 5. Updated OPCC
 - 6. Approved Permits
 - 7. Final List of Utility Conflicts and contact information for appropriate utilities.
 - 8. A resubmittal of the 90% Submittal should take place until all comments have been addressed and Plans are ready to be signed.
- **Bid Phase Services should, at a minimum, include the following:**
 - **100% Construction Plans submitted for final City signatures (a Digital Copy w/ signed cover sheet to be submitted prior to posting for bids).**
 - **Completed Project Manual**
 - ~~○ **Completed SW3P Manual**~~
 - **Final OPCC**
 - ~~○ **Updated Construction Schedule**~~
 - ~~○ **Preparation of Exhibits and attendance at Public Meeting (if needed)**~~
 - **Assist with the advertisement of the project (if needed)**
 - **Address any RFI during Bid process (if needed)**
 - **Attend and Assist in running a Pre-Bid Meeting (if needed)**
 - **Provide Addendums to Bid Documents (if needed)**
 - **Once Bids are opened, prepare Bid Evaluation, check references, and provide recommendation of award to City**
- **Construction Phase Services should, at a minimum, include the following:**
 - ~~○ **Preparation of Exhibits and attendance at Public Meeting (if needed) prior to Project Start**~~
 - **Attendance at Construction Progress Meetings (if needed)**
 - **Periodic Site Visits (minimum 1 visit per month of construction)**
 - **Review, Track, and make recommendations related to RFIS, Material Submittals, Change Orders, etc.**
 - **Address found Design Conflicts in the Field**
 - **Provide paper & digital copies of As-Builts**