



August 31, 2020

Mr. Brian Stinson
Mr. Scott Sampson
Town of Ashland City, Tennessee
7218 Ashland City Road
Ashland City, Tennessee 37135

**RE: *Professional Services Agreement
Cumberland River Bicentennial Trail Extension
Ashland City, Tennessee***

Dear Mr. Stinson and Mr. Sampson:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to the Town of Ashland City (the "Client" or the "Town") for professional consulting services for the above referenced project.

SCOPE OF SERVICES

Based on the information provided, we understand that the Town of Ashland City wishes to extend the Cumberland River Bicentennial Trail from the existing trailhead located along Chapmansboro Road to Tennessee Waltz Parkway (SR 455). The project will consist of pedestrian facilities, asphalt trail, pedestrian bridge, boardwalk, drainage improvements, parking, signage, and pavement markings. The project limits are approximately 2,700 linear feet. It is understood that the project, in its entirety, will be located within the existing railroad right-of-way (ROW) or Chapmansboro Road ROW. The project limits are attached to this agreement in Exhibit A.

The scope provided below is for Project Coordination, Survey, Preliminary Engineering, and NEPA Documentation. Upon completion of these tasks we will provide the Town with an amendment to this agreement that will outline the scope and fee for the remaining tasks through the end of design. A final amendment will be submitted for Construction Engineering Inspection.

Our Scope of Services, Fee, and Schedule are as follows:

Task 1 – Project Coordination Services

This task will consist of general project management, administrative, and accounting activities for the project. It will further consist of project status updates and reviews, conference calls, preparing and distributing reports and memos, scheduling of review meetings and activities, monthly project status reporting, and discussion of any project issues during the project. In addition, this task will consist of

monthly work planning efforts and will comprise the initial schedule development and monthly maintenance of the scope of services and project milestones.

Task 1.1 – Project Meetings

Kimley-Horn will coordinate and facilitate periodic project meetings, up to three, at a location in the Town of Ashland City (to be determined by Town staff) or at the Tennessee Department of Transportation's (TDOT) offices. Each meeting will consist of project status updates, schedule review, and discussion of upcoming milestones for both the project team and Town of Ashland City staff. Kimley-Horn will prepare and distribute both meeting agendas and meeting minutes for each meeting. These meetings are as follows:

- Project Kickoff Meeting
 - The team will facilitate a kick-off meeting with representatives of Town Administration, Parks Department, Public Works, Police, and other departments involved with design, development, and operations to review and discuss potential areas of improvement, modification, or additions. At this initial meeting, team members will review the project schedule, coordination procedures, and duties required of both the consultant and Town staff.
- Project kickoff meeting with TDOT Local Programs Staff
- Project Status Meeting (following completion of Preliminary Plans)

Task 1.2 – Early Utility Coordination

Kimley-Horn will submit early coordination letters to utilities companies in Cheatham County. The submittal to each utility owner will consist of letter by certified mail requesting that the utility company review the potential impacts of the proposed project to their facilities. The letter will request a written response from each utility provider. If no response is made within sixty (60) days, a follow up letter by certified mail will be submitted giving ten (10) days to respond. All documentation will be used for Utility Certification.

Task 2 – Field Survey and Data Collection

Kimley-Horn, through our sub-consultant, will provide land surveying services for the project under the supervision of a Professional Land Surveyor licensed in the State of Tennessee. We will perform the Field Surveying using conventional ground surveying methods, static LiDAR or other acceptable methods as determined by the surveyor and field conditions. All survey information gathered for the project shall adhere to generally accepted surveying practices and shall be tied to the State Plane Coordinate System using the Tennessee Geodetic Reference Network (TGRN).

The survey area will consist of full railroad right of way width along the project corridor, a portion of Chapmansboro Road where the proposed pedestrian bridge will cross, and a small area located adjacent to SR 455 for a proposed parking area. The survey limits begin where the existing railroad ROW intersects SR 455, just southwest of the N Main Street and SR 455 intersection. The survey will

extend northwest approximately 2,100 linear feet, following the existing railroad ROW before reaching Mark's Creek. The survey data will identify features of the existing bridge structure that was previously used by the railroad to cross Mark's Creek. Once crossing over Mark's Creek, the survey will capture remaining features of the railroad bridge crossing over Chapmansboro Road. Road grade data will also be identified. Once crossing over Chapmansboro Road, the survey will extend approximately 450 linear feet where it will intersect the existing Bicentennial Trail and trailhead.

Our team will provide a survey within the corridor locating the topographic features, the physical features, visible evidence of utilities along with any markings by TN One Call. This data will consist of existing features, such as edge of pavements, pavement markings, curbs, utilities, top of banks, toe of slopes, grade changes, wood lines, fences, mailboxes, drainage features (ditches, pipes, structures), right-of-way limits, and any easements along the proposed trail route. We will establish the right of way lines of Chapmansboro Road and Waltz Parkway (SR 455). We will produce a planimetric AutoCAD drawing and a surface model. From the surface model we will produce contours at 1-foot intervals. The drawing will show the information as designated above.

In addition to the existing topographic features and property lines, both above and below ground utilities will be located based upon available mapping and as marked by TN One Call.

We will base our horizontal data on the State Plane Coordinate System of 1983 and the vertical data will be based on NVGD 88. This data will be collected under the supervision of a Tennessee Registered Land Surveyor.

In addition, one field visit will be performed by Kimley-Horn staff to review the survey data.

Task 3 – Geotechnical Investigation

Kimley-Horn, through the use of a subconsultant, will perform a limited geotechnical investigation for the proposed bridge abutments. Up to four borings will be performed and samples will be obtained in the upper 10 feet of each boring and at intervals of 5 feet thereafter. Upon encountering bedrock or refusal-to-drilling conditions, rock coring will be performing at the bridge abutment. The boring samples will be tested in a laboratory for soil properties and the engineer will recommend foundation design parameters for the use of the pedestrian bridge.

This task is intended to compensate Kimley-Horn for the effort expended in administering the work of the geotechnical engineering subconsultant as described below. Kimley-Horn is providing this effort solely for the administrative convenience of the Client. Kimley-Horn will endeavor to coordinate the geotechnical engineer's scope of work, schedules, and provide only a cursory review of their deliverables on behalf of the Client. Kimley-Horn will review sub-consultant invoices and, when Kimley-Horn is paid the invoice amount plus a mark-up by the Client, Kimley-Horn will in turn pay the sub-consultants. Ultimate responsibility for payment of the sub-consultant rests with the Client as the services are being provided for their benefit. Client acknowledges that Kimley-Horn will not be

reviewing the work product of the Subconsultant in detail and will not be liable for it. If the Client has any future claim related to these services, Client will pursue the Subconsultant directly and not Kimley-Horn.

Task 4 – Preliminary Design

Kimley-Horn will prepare preliminary design of the trail extension and pedestrian crossings along the project limits.

These project limits consist of approximately 2,800 linear feet of trail extension that will consist of retrofitting boardwalk on a portion of the existing railroad structure over Mark's Creek and a new pedestrian bridge spanning over Chapmansboro Road. The design will also incorporate elements such as storm drainage improvements, pedestrian handrail, and a parking area located at the SR 455 side of the extension.

Task 4.1 – Preliminary Design (50 Percent Design Submittal)

Preliminary Design plans (approximately 50 percent complete) will be provided to the Client for review and comment. Construction plans will conform to TDOT's current standards, TDOT Multi-modal design guidelines, Public Rights of Way Guidelines (PROWAG) and TDOT's *Roadway Design Guidelines*. The plans will be prepared for a construction cost review stage and will consist of the following preliminary sheets.

- Cover Sheet
- Estimated Quantities sheets
- Layout Sheets
- Grading and Drainage Sheets
- Pedestrian Bridge Sheets
- Details Sheet

Task 4.2 – Preliminary Engineer's Opinion of Probable Construction Cost

Kimley-Horn staff will prepare an engineer's opinion of the probable construction cost to accompany the 50% preliminary design plans. The opinion of probable construction cost will be based on actual bid prices for recent projects which involved similar equipment and construction, to the extent that such information is available. This cost will be based on preliminary construction quantities developed from the preliminary construction plans.

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.

Kimley-Horn staff will meet with Town officials following the submittal and to review the 50% Preliminary design plans and Engineer's Opinion of Probable Construction Cost. The 50% design plans and engineer's opinion of probable construction cost will be based on Kimley-Horn's recommended trail routing.

Task 5 – Structure Design

The proposed Ashland City Bicentennial Greenway Trail Extension project consists of a proposed pedestrian bridge that crosses Chapmansboro Road. It is anticipated that the bridge will be made up of a premanufactured truss for the road crossing and then approach timber boardwalk on the south approach. There is an existing railroad structure along the proposed corridor of the south approach that contains timber piles, pile caps, and stringers. During the preliminary phase, the Engineer will investigate incorporating portions of the old structure into the new boardwalk approach structure.

The structural design of the pedestrian bridge and low-level boardwalk approach will be performed in accordance with the AASHTO Guide Specification for the Design of Pedestrian Bridges and the AASHTO LRFD Bridge Design Manual. In addition, the design will be based on the foundation recommendations, provided by the project geotechnical engineer. It is assumed that the pedestrian bridge will consist of a prefabricated superstructure designed by others, supported by cast-in-place concrete substructure designed by others. It is assumed that the timber boardwalks will be of timber construction designed by others.

Engineer will develop Preliminary Bridge Plans, which will consist of plan/elevations of the proposed bridge as well as typical sections of the pedestrian bridge and boardwalk. Preliminary Bridge Plans will be submitted to the Town for review at the 50% plan phase. The pedestrian bridge and boardwalk basis of design will include the following items.

- Bridge length, span options, and height above road shall be based on roadway and hydraulic requirements (if necessary).
- The maximum walkway (clear) width for the pedestrian bridge and boardwalk shall be ten (10) feet.
- The maximum vehicular live load on the pedestrian bridge and boardwalk shall be H-5.
- The boardwalks shall be of timber construction with typical spans of approximately ten (10) feet.
- Pedestrian bridge superstructure will be prefabricated structures designed by others, based on the details and performance specification in the Contract Documents.
- Pedestrian bridge substructure will be designed by others, based on the details and performance specifications in the Contract Documents.
- Timber boardwalk will be designed by others, based on the details and performance specification in the Contract Documents.
- Signed and sealed shop drawings and calculations for all pedestrian bridge and timber boardwalk components will be submitted by the Contractor, based on the Final Structure Performance Plans and Specifications in the Contract Documents.

Task 6 - NEPA Documentation

Given the nature of the proposed project, the environmental document is a likely candidate for classification either as a Programmatic Categorical Exclusion (PCE) or as a Documented Categorical Exclusion (D-List CE). This determination can only be made, however, by TDOT in cooperation with the Federal Highway Administration (FHWA). Kimley-Horn will prepare a project location map and description of the proposed improvements for submittal to TDOT. Based on this information, TDOT and the FHWA will determine the level of documentation and the environmental technical studies required for this project.

Based on the assumption that TDOT and the FHWA will determine that either a PCE or D-List CE is appropriate for this project, Kimley-Horn will prepare the CE document as described in the sub-tasks below in accordance with the *Tennessee Environmental Procedures Manual* (June 2011 edition) and FHWA guidance as outlined in FHWA Technical Advisory T6640.8A, *Guidance for Preparing and Processing Environmental and Section 4(f) Documents* as well as *TDOT's Local Government Guidelines for the Management of Federal and State-Funded Transportation Projects* (March 2018).

One Build Alternative will be studied and will be based on functional plans or on preliminary plans (20-30 percent complete) as defined on Page 4-5 of *TDOT's Local Government Guidelines for the Management of Federal and State-Funded Transportation Projects* (March 2018). In addition, the No-Build Alternative will be examined to document what would happen if the proposed project was not constructed and to serve as a baseline to compare the Build Alternative against.

Task 1 – TDOT Environmental Division Coordination

The purpose of this task is to plan, organize, and implement tasks stipulated in this scope of services in a timely manner. In this task, Kimley-Horn will maintain direct contact and continuous liaison with the designated representative of the TDOT Environmental Division's Local Programs Office.

Task 2 - Development of Purpose and Need

Kimley-Horn will prepare a "Purpose and Need" statement for inclusion in the environmental document. The statement will clearly describe the need that exists for the proposed improvements and will describe the problems that the proposed action is intended to correct.

Task 3 – Agency Coordination

Kimley-Horn will prepare and send initial coordination letters as well as associated project mapping to TDOT for coordination with the following federal and state agencies. This initial coordination will request a review of the proposed project's impacts to threatened and endangered species, wetlands, and/or streams.

- Tennessee Department of Environment and Conservation (TDEC)
- U.S. Fish and Wildlife Service (USFWS)
- Tennessee Wildlife Resources Agency (TWRA)

Task 4 – Technical Studies

The project mapping and plans, as developed under Task 2, will serve as the study area limits for the environmental technical studies as outlined below. It is assumed that the proposed project would be constructed fully within existing railroad right-of-way. No additional easements or right-of-way will be acquired.

If further design details become available during preparation of the environmental document and if right-of-way or easements are determined necessary, then the environmental technical studies will need to be updated to reflect the latest design plans. Updates to the environmental technical studies can be completed in accordance with the Additional Services clause of this agreement.

Relocation Impacts

No business, residential or non-profit organization displacements are anticipated with the construction of the proposed project. If a relocation study is deemed necessary for this project, this service can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Ecology / Natural Resources

It is not anticipated that a stand-alone Ecology Report or Protected Bat Survey will be required for this project. If an Ecology Report or Protected Bat Survey are deemed necessary by TDOT, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Floodplains

Floodplains and floodways in the project area will be identified, as part of the environmental screening, through the review of National Flood Insurance Rate Maps (FIRMs). This information will be part of the environmental document including the preparation of a FIRM map specific for the project area.

Air Quality

TDOT's Environmental Division will be responsible for updating the air quality analysis to meet the requirements of the Clean Air Act Amendment and TDOT's Air Quality Evaluation Policy. The air quality analysis will be updated to determine and compare the potential impacts of the project's alternatives on regional and local air quality. TDOT will provide the results of the air quality analysis to Kimley-Horn and Kimley-Horn will incorporate TDOT's findings into the environmental document. If TDOT or any other agency determines that an air quality analysis is required for this project, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Noise

Given the current scope of work, this project is understood to classify as a Type III project under FHWA and TDOT guidelines. Type III projects do not require a noise analysis.

Kimley-Horn will coordinate with TDOT for the appropriate language to be provided in the environmental document. If TDOT or any other agency determines that an additional noise analysis is required for this project, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Farmland

Given the project is located within the urban growth boundary, it is assumed that coordination with the Natural Resource and Conservation Service (NRCS) will not be required. If farmland resources are identified and coordination with the NRCS is deemed necessary by either the Client or TDOT, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Section 4(f) – Recreational Resource

With the identification of a Section 4(f) resource within the project area, Cumberland River Bicentennial Trail, a Section 4(f) De Minimis Finding Checklist developed by TDOT will need to be completed for the proposed project. Kimley-Horn will prepare the Section 4(f) De Minimis Finding Checklist for the project and submit it to Town of Ashland City/TDOT for initial review. Once the initial review has been completed by Town of Ashland City/TDOT, the Section 4(f) De Minimis Finding Checklist will be submitted to the Federal Highway Administration (FHWA) for final approval.

In order for the proposed project to receive a De Minimis Finding the following criteria must be met:

- Complete the Section 4(f) De Minimis Finding Checklist for a recreational resource.
- Inform the Official with Jurisdiction (OWJ) of the intent to make a De Minimis impact finding. In the case of this project, it is assumed that the OWJ is Town of Ashland City.
- Obtain written concurrence from the OWJ of the De Minimis finding.
- Provide the public with the opportunity to review and comment on the effects of the project on the Section 4(f) property via a legal announcement and map in the local newspaper.

Assumptions:

- A “will not adversely affect the activities, features, or attributes” determination from Town of Ashland City is anticipated for this project as well as a Section 4(f) De Minimis Determination from the FHWA. If TDOT, FHWA or the OWJ request the preparation of either a Programmatic Section 4(f) Evaluation or an Individual Section 4(f) Evaluation, an addendum to this scope of services and cost estimate will be required.
- The Town of Ashland City will be responsible for the coordination and fees associated with the publication of the public notice and map in the local newspaper and any additional websites.

Deliverables by the Consultant:

- Section 4(f) De Minimis Finding Checklist.

- Section 4(f) language for incorporation by Kimley-Horn into the Categorical Exclusion.
- Public notice with project location map.
- Official with Jurisdiction notification letter and approval letter.

Section 6(f) – Parks and Recreational Resources

With the identification of a Section 6(f) resource within the project area, Cumberland River Bicentennial Trail*, coordination with the Tennessee Department of Environment and Conservation (TDEC) will need to be completed for the proposed project. On behalf of the Town of Ashland City, Kimley-Horn will prepare a coordination letter and associated mapping to be sent to TDEC, informing the agency of the scope of work involved with the Cumberland River Bicentennial Trail Extension Project and the expected construction timeframe.

Assumptions:

- If a Section 6(f) Temporary Non-Conforming Use Request or formal Section 6(f) Conversion Evaluation is determined necessary at any point in time by either FHWA, TDOT, the National Park Service (NPS), or TDEC, an addendum to this scope of services and cost estimate will be required.
- No consultation with the NPS is expected to be required.
- No public involvement activities will be required such as public meetings or the preparation of public notices.
- No site visits by the Consultant's staff are expected to be required.

Deliverables by the Consultant:

- Coordination Letter between the Town of Ashland City and the Tennessee Department of Environment and Conservation along with associated mapping.

**Section 6(f) resources are identified as recreational resources that receive grant funding through the Land and Water Conservation Fund Act which is administrated federally through the National Park Services and by the State of Tennessee through the Tennessee Department of Environment and Conservation.*

Cultural Resources / Section 106 Coordination

As part of the environmental review process, a Section 106 Assessment will be completed which will contain a review and search of the archaeological and architectural/historical records for the general project area. Kimley-Horn will submit the following items to TDOT:

- USGS topographic map of the project area;
- Photographs of the site, along with a key map; and
- Dates of construction for buildings in the project area where this information is readily available.

Kimley-Horn will submit the Section 106 Assessment to TDOT for approval. TDOT will then submit the Section 106 Assessment to the Tennessee State Historic Preservation Office (SHPO) requesting a Section 106 review of the proposed project area.

If a Phase I Archaeological Survey or Assessment of Effects for Historic Properties Report is deemed necessary by TDOT and/or the SHPO, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Native American Consultation will be completed by the TDOT Environmental Division, Archaeology Section and incorporated into the environmental document by Kimley-Horn.

Environmental Justice

An Environmental Justice (EJ) evaluation will be undertaken in conformance with Executive Order 12898 and FHWA Order 6640.23 (December 2, 1998). The analysis will consider the composition of the affected area, to determine whether minority or low-income populations are present in the area affected by the proposed action, and if so whether there may be disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Baseline data will be collected for low income and minority populations using U.S. Census data. The data will consist of race, color, national origin, age and level of income of overall population, as well as the existence of any minority or low-income populations or communities. Potential areas of EJ populations will be displayed on GIS mapping.

The EJ analysis will be limited to desk-top research only and will be incorporated directly into the environmental document. No field work will be completed. If a disproportionately high and adverse effect on a low-income population or minority population is revealed, the analysis will show how the effects are distributed within the affected community.

If potential mitigation measures or potential community outreach efforts are identified, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Hazardous Materials

Kimley-Horn will complete a desktop review of available hazardous materials databases to determine whether the proposed project area has the potential to contain hazardous materials that may be impacted by the project. We will review the Underground Storage Tank (UST) Data and Reports database provided by TDEC, the "EnviroMapper" database maintained by the Environmental Protection Agency (EPA), and the Public Data Viewer maintained by the TDEC Division of Water Resources.

Kimley-Horn will submit a summary of the desktop review to TDOT as part of the initial coordination efforts. Based on the data provided, the TDOT Hazardous Materials Section will recommend whether additional studies may be necessary. If additional studies such as a Phase I or Phase II Environmental Site Assessment are required, these services can be provided by Kimley-Horn in accordance with the Additional Services clause of this agreement.

Task 5 – Document Preparation and Approval

The purpose of this task is to develop the CE documentation, consistent with the requirements of the FHWA Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, the TDOT Environmental Procedures Manual (June 2011 edition), and the TDOT's Local Government Guidelines for the Management of Federal and State-Funded Transportation Projects (March 2018).

Kimley-Horn will incorporate the Purpose and Need, a project description and results of the environmental technical studies into the environmental document. As a part of the environmental documentation, tables and figures will be developed to illustrate and explain the project area characteristics, alternatives, location of impacts and comparison of impacts.

Following completion of the document by Kimley-Horn, the environmental document will be submitted to Town of Ashland City for review and comment. Kimley-Horn will then revise the environmental document based on the Town of Ashland City's comments. Once the Town of Ashland City approves the environmental document, the document will be submitted to the TDOT Environmental Division/FHWA for initial review and subsequent approval.

Deliverables by the Consultant:

1. Copy of all correspondence and submittals to various regulatory agencies (electronic copy in Adobe PDF format)
2. Draft Categorical Exclusion document for the Town of Ashland City's review (electronic copy in Adobe PDF format)
3. Draft Categorical Exclusion document for TDOT/FHWA* review (electronic copy in Adobe PDF format)
4. Final Categorical Exclusion document for TDOT/FHWA* review and approval (electronic copy in Adobe PDF format)

**FHWA review required only if project is determined to be a D-List CE.*

Task 7 – Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered Additional Services and will be performed at our then current hourly rates. Additional Services Kimley-Horn can provide include, but are not limited to, the following:

- Final Design
- Extension of project limits
- Permitting
- Structural bridge detailed design
- Flood Study
- FEMA Letter of Map Revision (LOMR) or Certified Letter of Map Revision (CLOMR)
- Additional environmental technical studies outside of those describe above
- Additional environmental documentation beyond scope listed above
- Additional survey data

- Mark's Creek Cross section survey
- Re-survey of TDOT survey limits due to inaccuracy
- Utility Plans
- Environmental Permits
- Additional Geotechnical Investigation
- Bid phase and pre-construction services
- Multiple phased design
- Attendance at review meetings and / or public hearings
- Construction Engineering Inspection Services consisting of:
 - Pre-construction Conference
 - Progress Meetings
 - Utility Coordination
 - Change Orders
 - Shop Drawings/Submittals
 - Testing
 - Progress Payments
 - Inspection
 - Payrolls
 - Final Records
 - Others as requested by the Town

INFORMATION PROVIDED BY CLIENT

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

- Existing GIS and/or digital photography data for the project area
- Existing survey files of the project area.
- Existing plans for the sidewalk connecting to or adjacent to the proposed site
- Any as-built survey information within the project limits

SCHEDULE

Kimley-Horn will perform these services based on a mutually agreed upon schedule.

FEE AND BILLING

Kimley-Horn will perform the services described in Tasks 1 through 6 for the total lump sum fee below. Individual task amounts are for informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1 – Project Coordination Services	\$7,600
Task 2 – Field Survey and Data Collection	\$36,000
Task 3 – Geotechnical Investigation	\$8,000
Task 4 – Preliminary Design	\$11,500
Task 5 – Structural Design	\$15,000
Task 6 – NEPA Documentation	\$25,500
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	Total \$103,600

Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary (as allowed by the TDOT Local Government Guidelines for the Management of Federal and State Funded Transportation Projects).

Kimley-Horn will perform the services described in Task 7 (Additional Services) of the Scope of Services on a labor fee plus expense basis. Effort associated with Task 7 will not be performed without authorization from you.

Fees and expenses will be invoiced monthly based, as applicable, upon the percentage of services performed or actual services performed and expenses incurred as of the invoice date. Payment will be due within 25 days of your receipt of the invoice.

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CLOSURE

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

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

_____ Please email all invoices to _____

_____ Please copy _____

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

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

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

Sincerely,

Kimley-Horn AND ASSOCIATES, INC.



Zachary J. Dufour, P.E.
Vice President



William E. Spaulding Jr., P.E.
Project Manager

Attachment – Standard Provisions

Agreed to this _____ day of _____, 2020.

**Ashland City, Tennessee
A Town Government**

By: _____

(Date)

(Print or Type Name)

Title: _____

(Member or Manager, as authorized)

(Email Address)

_____, Witness

(Print or Type Name)

**Kimley-Horn AND ASSOCIATES, INC.
STANDARD PROVISIONS**

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

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

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

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

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

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

satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

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

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

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

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

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

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

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the

Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

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

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

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

(15) **Construction Phase Services.**

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

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

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

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

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

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes

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