

THE STATE OF TEXAS §

**ENGINEERING SERVICES CONTRACT**

COUNTY OF JOHNSON §

THIS CONTRACT is made and entered into this 16<sup>th</sup> day of June, 2020 by and between the CITY OF BURLESON, Texas, a home-rule municipality, hereinafter called "City," and Kimley-Horn and Associates, Inc, hereinafter called "Engineer," whose address is 801 Cherry Street Suite 1300, Fort Worth, TX, 76102.

**W I T N E S S E T H :**

That in consideration of the terms and conditions contained herein the parties do mutually agree as follows:

**I. EMPLOYMENT OF ENGINEER**

Engineer shall perform all services under this contract to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. Engineer shall provide services necessary for the construction of improvements to the City's Infrastructure, the location and extent of which is as follows:

SH 174 FINAL DESIGN (Hulen Street to Elk Drive)

City of Burleson Project No. 187398, being located within the City of Burleson, Texas, and hereinafter referred to as "Project."

Actually 197405

**I. COMPENSATION TO ENGINEER****A. City agrees to pay Engineer for all services outlined in Section III in accordance with the following:**

1. Basic Design Fee	\$ 688,000
2. Additional Services Fee (not to exceed)	\$ 187,500
3. Direct Cost Fee (not to exceed)	\$ 10,000
Total Fee	\$885,500

**B. Payment for services rendered shall be paid upon written request and as follows:**

1. Basic Design Fee
  - a. Upon completion of the preliminary design construction plans as set forth in Section III.B.1, and City shall pay to Engineer an amount not to exceed fifty five percent (55%) of the basic design fee.
  - b. Upon completion of the final design construction plans and specifications as set forth in Section III.B.2. City shall pay to Engineer an amount which when combined with previous basic design fee payments shall not exceed ninety-five percent (95%) of the basic design fee.
  - c. Upon receipt and approval by the City of two (2) half-size hard copy sets of and one (1) set in pdf format to the City of the "as-constructed" plans, City shall pay Engineer an amount which when combined with previous basic design fee payments shall equal One-Hundred percent (100%) of the basic design fee.

- d. For payment purposes of this contract, work items associated with III.A General Requirements shall be considered subsidiary to the basic design fee.
2. Additional Services Fee – Fees for additional services as set forth in Section III.C shall be billed monthly based upon the percentage of work complete. Evidence of completion shall be submitted with each billing. Evidence of work completed shall be submitted with each billing. No more than seventy-five percent (75%) of the maximum fee for an additional service shall be paid prior to completion of the work and approval by City.
3. Direct Cost Fees – Direct costs shall be paid by City to Engineer as shown on Attachment A. Direct costs may be charged for printing and reproduction expenses; travel, transportation and subsistence out of Johnson, Tarrant, and Dallas Counties; and laboratory analysis and testing. Evidence of cost incurred for direct expenses shall be submitted with each billing.
4. No interest shall be due on any payments.

## **II. SERVICES**

The work to be performed by the Engineer shall consist of providing engineering services required for the preparation of plans, specifications and estimates (PS&E) and related documents for SH 174 widening from Elk Drive to Hulen Street. SH 174 will be widened to six lanes, the widening will be within the median. Turn lanes will be added at key intersections as determined by the Traffic Study previously performed. Sidewalks will be added within the right-of-way in various locations.

### **General Requirements**

1. Each time Engineer submits plans and specifications to City, four (4) copies of each (1 full size, 2 half size, 1 electronic in PDF format) shall be submitted. These shall be reviewed and checked by City and returned to Engineer for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
2. Each set of plans shall be stamped "Review," and each sheet of the plans shall be signed and dated with license number of the responsible engineer and Firm Registration Number until approval of the final design construction plans by City. Upon approval of the final plans the word "Review" shall be omitted and the plans shall be stamped "Final" on the cover sheet. Each sheet of the final plans shall be sealed, signed, and dated by Engineer.
3. Engineer shall coordinate with utility companies, including, but not limited to franchised utilities, City of Burleson Public Works and Engineering Services Departments, pipeline companies, railroad companies, telecommunication companies, or any other entity which has facilities within Project, any and all exposure, removal, and/or relocation work necessary for implementation of the Project. This shall also include aiding City in obtaining any permits required by any of these entities. Engineer shall supply construction plans for all design phases of the Project to all utility companies or other entities that have facilities within the limits of the Project via certified mail. Engineer shall also attend preliminary and final utility coordination meetings for Project.
4. Engineer shall coordinate with all utility companies, franchise companies and other entities for any proposed improvements they may have planned, either on the surface, below or above the surface, that may be affected by the Project and indicate on the final plans said proposed improvements in both plan and profile, if available.

5. Engineer shall determine the type of existing pavement on Project, including all intersecting streets, driveways, and alleys, accurately showing this information on the plans.
6. Engineer shall establish the scope of and arrange for test borings and other subsurface investigations using a geotechnical firm acceptable to the City. The Engineer shall furnish specifications, coordinate and designate the locations for the making and recording of such borings or excavations included in the additional services fee being paid for by the City. Engineer shall stake such locations and record the results.
7. Upon completion of the final design construction plans, special provisions and specifications, and contract documents, Engineer shall submit a letter of notification to City stating completion of design of Project.
8. Review by City does not relieve Engineer of responsibility to prepare construction plans and specifications in accordance with prevailing engineering standards.
9. Engineer shall prepare and provide City with a Stormwater Pollution Prevention Plan (SWPPP) including erosion control plans for improvements associated with the Project. Engineer shall assist the City in obtaining any necessary permitting through the Texas Commission on Environmental Quality (TCEQ).

## **B. Preliminary and Final Design**

Engineer shall coordinate and design the street and drainage system and perform the following:

1. Preliminary Design Construction Plans (30% and 60%) – Preliminary plans shall be prepared at a horizontal scale of 1"= 100' and a vertical scale of 1"= 10' on 11" x 17" sheets and shall include the following:
  - a. Pavement edges for all improvements (mainlanes, cross streets, and driveways if applicable).
  - b. Sidewalk, retaining walls, and curb ramps.
  - c. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using GEOPAK.
  - d. Lane and pavement width dimensions.
  - e. Proposed structure locations, lengths, and widths.
  - f. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
  - g. ROW lines and easements.
  - h. Begin and end superelevation transitions and cross slope changes.
  - i. Limits of rip-rap, block sod, and seeding.
  - j. Existing utilities and structures.
  - k. All existing improvements on property within twenty feet (20') of the proposed right-of-way or easement line on construction plans.
  - l. Benchmark information.
  - m. Radii call outs, curb location, Concrete Traffic Barrier (CTB), guard fence, crash safety items and Texas Accessibility Standards (TAS) compliance items.

- a. The location, size, and species of all trees and shrubs within the limits of proposed street Right-of-Way, drainage, slope or temporary construction easements. If due to the density of the growth it is impractical to show all trees and shrubs, the limits of dense stands of trees and shrubs will be shown. In any case, all trees six inches (6") in diameter, or larger, shall be shown, unless directed otherwise Engineer shall indicate on the plans those trees that are to be removed, and those trees to be preserved.
  - b. Typical sections for all proposed and existing roadways and cross streets. Typical sections to include width of travel lanes, shoulders, outer separations, border widths, curb offsets, sidewalk and ROW.
  - c. Cross-sections of existing ground surface line and proposed ground surface lines.
  - d. Overall drainage areas, sub-drainage areas, existing and proposed drainage facilities, discharges, times of concentration, and drainage area acreage for proposed structures (including the existing drainage system).
  - e. All drainage computations such as inlet and pipe calculations. Unless directed otherwise in writing by City, the design of these systems shall be in accordance with the latest revision of the City of Burleson's Design Standards Manual.
  - f. Hydraulic analysis and modeling of the impact of proposed structures within a designated 100-year floodplain or as determined by City.
  - g. Storm sewer plan and profile sheets, including hydraulic grade lines.
  - h. Culvert layout for each bridge class culvert.
  - i. Bridge layout plan sheet for bridge expansion over Booger Creek.
  - j. Traffic signal design. Traffic Signal modification plans for the intersections of SH 174 and the following cross streets: Elk Drive, John Jones Drive, Commons Drive, and Hulen Street.
  - k. Items associated with Section II.C.
  - l. Pavement markings, striping and/or traffic button plans.
  - m. A "Time of Relocation" schedule containing the estimated time for each utility company with facilities impacted by Project to relocate their facilities.
  - n. Plans to comply with TxDOT PS&E Checklists
  - o. An opinion of probable cost of Project.
2. Final Design Construction Plans -Upon acceptance of preliminary plans by City, Engineer shall prepare final plans at a horizontal scale of 1" = 100' and a vertical scale of 1" = 10' on 11" x 17" sheets. Final plans shall contain all information and requirements of the preliminary plans and shall incorporate comments from City and utility companies. Engineer shall also prepare contract documents, specifications, and special provisions. In addition, the following shall be submitted:
- a. Standard City title page with location map and revision block in the lower right corner showing date of revision, description of revision and initials of the engineer authorizing the revision.
  - b. All requirements of Section II.B.1
  - c. Storm sewer improvement plan and profile sheets (as needed).
  - d. Detail and standard sheets for all elements of the Project.
  - e. Special provisions and specifications.
  - f. Final right-of-way plans or easements as required in Section III.D.

- g. An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate shall be based on current unit prices bid on similar projects.
  - h. A utility "Time for Relocation" report stating the status of utility relocations and time required for each utility company to clear its facilities for the project.
  - i. Street addresses of all properties adjacent to the Project.
  - j. Plan sheets for traffic signals, and signs and pavement markings as required by this contract.
  - k. Water and/or sanitary sewer adjustment sheets (as needed).
  - l. The Engineer shall use Geopak to generate preliminary cross-sections every 100 feet and at culvert locations in conjunction with the Geometric Schematic. The Engineer shall determine earthwork volumes for use in the cost estimate and shall prepare 11"x17" or roll plots of the cross-sections.
  - m. Bridge Design. The Engineer shall prepare each structural design and develop detailed structural drawings of all required details in compliance with above-listed manuals and guidelines. The Engineer shall assemble and complete all applicable State Standard Details sheets. Additionally:
    - Perform calculations for design of bridge abutments.
    - Perform calculations for bridge slab design.
    - Perform calculations to determine elevations of bridge substructure and super structure elements.
    - Perform calculations for bridge box beam design.
    - Prepare necessary foundation details and plan sheets.
    - Prepare plan sheets for abutment design.
    - Prepare plan sheets for additional abutment details.
    - Prepare framing plan and slab plan sheets.
    - Compute and prepare tables for slab and bearing seat elevations, dead load deflections, etc.
    - Design beams and prepare beam design tables.
    - Prepare special provisions and special specifications in accordance to the above-listed manuals and guidelines.
  - n. Plans to comply with TxDOT PS&E Checklists.
3. Environmental Documentation as listed in Section III.C.
  4. TxDOT Requirements and Coordination
    - a. Prepare a Design Summary Report (DSR) to reflect discussion and decisions at the kickoff meeting. DSR will be updated throughout project development as design progresses.
    - b. Prepare Page 3 of TxDOT Form 1002
    - c. The Engineer shall schedule, participate in mail out, and pay for meeting notices, and facilitate a Meeting with Affected Property Owners (MAPO) located within or near the project's study area.

- d. Compile public comments received and responses to comments during the MAPO, public meeting into a summary of public meeting and the public meeting into a summary of public meeting and the public hearing into a Public Hearing Summary Report.
5. Meetings
  - a. The Engineer will prepare for and attend Project Kickoff Meeting with City and TxDOT.
  - b. The Engineer will attend up to three (3) plan review meetings with the City and TxDOT staff at 30%, 60% and 90% level.
  - c. The Engineer will attend a constructability site visit with City and TxDOT after 60% Submittal.
  - d. The Engineer will attend up to ten (10) meetings with the City and/or TxDOT staff during this task to discuss progress, design and/or coordination items. (meeting may be conference call if requested by TxDOT).
  - e. Public Meetings. The Engineer shall assist in conducting one (1) public meeting and one (1) public hearing during the project development process. The public meetings are required for the environmental process and documentation for TxDOT requirements.
  - f. The Engineer will prepare an agenda and meeting notes for all meetings.

#### **C. Additional Services**

Engineer will also perform the following additional services. For each individual service, the maximum fee is indicated in parenthesis. The fee shall be on an hourly basis, as shown in Attachment "A".

1. Engineer shall perform geotechnical investigations and analyses necessary to complete the design. Engineer shall prepare a geotechnical report describing existing geotechnical conditions and considerations necessary for design and construction of the project for City's review and approval. The report will include up to ten (10) pavement borings in the outside shoulder. (maximum fee not to exceed \$17,500.)
2. Environmental Services. The Engineer shall prepare Environmental Documentation in accordance with TxDOT Requirements. Prepare the Environmental Technical Report Meeting TxDOT requirements. It is assumed that the proposed project may be Environmentally Cleared as a C-list or Open-Ended D-list Categorical Exclusion. If the project is elevated to an Environmental Assessment (EA) an addition scope and fee may be required. (maximum fee not to exceed \$65,000)
3. Provide Subsurface Utility Engineering (SUE) to Quality Level D, C, B, and A. SUE level A shall be performed on any utilities where conflicts with proposed improvements are suspected based on level B SUE. The SUE shall be performed in accordance with CI/ASCE 38-02. (maximum fee not to exceed \$80,000)
  - a. Expose and locate utilities at up to 30 specific locations (Level A).
  - b. Perform Level B SUE for the Level A locations (up to 6,000 linear feet).
4. Construction Phase Services (maximum fee not to exceed \$25,000)
  - a. Review and approve shop drawings, samples and other data which contractor(s) are required to submit.
  - b. Evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s).
  - c. Attend pre-construction conference with the Contractor.

- d. Make one visit per month to the site for observation, and interpretation of plans and specifications as requested by the City period of time specified for construction in the project manual. A total of twelve (12) site visits by the Engineer is anticipated during the construction phase.
- e. Preparation of change orders and associated plans, specifications or other revisions if due to improper design, plan preparation, specifications, quantities, materials, or other fault of the Engineer shall be prepared by the Engineer and included in the basic Design fee.
- f. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the project made during construction.

### **III. TIME FOR COMPLETION**

Engineer agrees to complete and submit all work required by City as follows:

#### **A. Final design construction plans and specifications to be completed by February 22, 2022.**

- 1. No extensions of time shall be granted unless a written request is submitted by Engineer, and such request is approved in writing by City.

### **IV. REVISIONS OF PLANS AND SPECIFICATIONS**

If revisions of the final plans, special provisions, and specifications, or drawings are required by reason of Engineer's error or omission, then such revisions shall be made by Engineer without additional compensation to the fees herein specified, and in a time frame as directed by City.

City reserves the right to direct substantial revision of the plans, special provisions, and specifications after acceptance by City as City may deem necessary, but when the revision is not due to Engineer's error or omission, City shall pay Engineer equitable compensation for services rendered in making such revisions. In any event, when Engineer is directed to make substantial revisions under this Section of the contract, Engineer shall provide to City a written proposal for the entire cost involved in providing City a completed set of plans, specifications and special provisions and the completion time involved in the revisions. Prior to Engineer undertaking any substantial revisions as directed by City, City must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

It is expressly understood and agreed by Engineer that any compensation not specified in Section II., "Compensation to Engineer," may require additional Burleson City Council approval and is subject to funding limitations.

### **V. ENGINEER'S COORDINATION WITH OWNER**

Engineer shall be available for conferences with City so that Project can be designed with the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. City shall make available to Engineer all existing plans, maps, field notes, and other data in its possession relative to the Project. Engineer may show justification to City for changes in design from City standards due to the judgment of said Engineer. Engineer shall accompany City representatives on Project observation visits during construction of Project when design issues arise. City shall make the final decision as to any changes after appropriate request by Engineer.

Engineer shall accompany City representatives on Project observation visits during construction of Project when design issues arise.

## **VI. CONTRACT TERMINATION PROVISION**

This contract may be terminated at any time by City for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by City, Engineer shall immediately discontinue all services and Engineer shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed but not paid for under this contract to the date of termination. City shall then pay Engineer promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by City.

This contract may be terminated by Engineer with mutual consent of City at any time for any cause without penalty or liability except as may otherwise be specified herein. Engineer shall submit written notice to terminate contract and shall submit to City all plans and documents relative to the design of Project. City shall then ascertain cost to complete the balance of the work under this contract. If the cost to complete the balance of the work is greater than the unpaid contract amount, City shall retain all unpaid balances and, in addition, Engineer shall pay directly to City the difference in the unpaid balance and the cost to complete the work. In no case shall City pay Engineer any additional monies other than those previously paid under the contract.

## **VII. OWNERSHIP OF DOCUMENTS**

All drawings and specifications prepared or assembled by Engineer under this contract shall become the sole property of City and shall be delivered to City, without restriction on future use. Engineer shall retain in their files all original drawings, specifications and all other pertinent information for the work for a period of at least 3 years after completion of the work. Engineer shall have no liability for changes made to the drawings, specifications, and other documents by other engineers subsequent to the completion of the contract. City shall require that any such change be sealed, dated, and signed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

## **VIII. INSURANCE**

### **A. Requirements**

Engineer shall at Engineer's own expense, purchase, maintain and keep in force during the term of this contract such insurance as set forth below. Engineer shall not commence work under this contract until Engineer has obtained all the insurance required under this contract and such insurance has been approved by City, nor shall Engineer allow any subcontractor to commence work on his or her own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this contract shall be written on an "occurrence" basis, except for professional liability. The insurance requirements shall remain in effect throughout the term of this contract. Professional liability insurance shall also be maintained for one year after completion of the project.

1. Worker's Compensation as required by law, Employers Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit.

2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this contract, fully insuring Engineer's liability for injury to or death of employees of City and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000.00 per occurrence.
3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.
4. Professional Liability Insurance: Standard comprehensive professional liability coverage in an amount of at least \$1,000,000.00 aggregate per year, covering the services provided under this contract.

#### **B. Conditions**

Each insurance policy to be furnished by Engineer shall include the following conditions by endorsement to the policy:

1. Except for Worker's Compensation and professional liability insurance, the policy shall name City as an additional insured as to all applicable coverage;
2. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to City by certified mail to: Director of Engineering Services, City of Burleson, 141 West Renfro Street, Burleson, Texas 76028-4261. If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to City is required;
3. The term "Owner" or "City" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of City and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of City.
4. The policy phrase "other insurance" shall not apply to City where City is an additional insured on the policy; and
5. All provisions of the contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

#### **C. Concerning insurance to be furnished by Engineer, it is a condition precedent to acceptability thereof that:**

1. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
2. Insurance is to be placed with carriers with a Best rating of A:VII, or as otherwise acceptable to City.

#### **D. Engineer agrees to the following:**

1. Except for professional liability, Engineer hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies.

2. Companies issuing the insurance policies and Engineer shall have no recourse against City for payment of any premiums or assessments for any deductible, as all such premiums and deductibles are the sole responsibility and risk of Engineer.
3. Approval, disapproval or failure to act by City regarding any insurance supplied by Engineer (or any subcontractors) shall not relieve Engineer of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Engineer from liability.
4. Engineer shall provide Certificates of Insurance completed on the ACORD form only and endorsements effecting coverage required by this section to City by forwarding to: City of Burleson, Director of Engineering Services, 141 West Renfro, Burleson, Texas 76028-4261.

**E. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.**

**IX. MONIES WITHHELD**

When City has reasonable grounds for believing that:

- A. Engineer will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or**
- B. A claim exists or will exist against Engineer or City arising out of the negligence of Engineer or Engineer's breach of any provision of this contract; then**

City may withhold payment of any amount otherwise due and payable to Engineer under this contract. Any amount so withheld may be retained by City for that period of time as it may deem advisable to protect City against any loss and may, after written notice to Engineer, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of City, and no other person or entity shall have any right or claim against City by reason of City's failure or refusal to withhold monies. No interest shall be payable by City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of City.

**X. PROCUREMENT OF GOODS AND SERVICES FROM BURLESON BUSINESSES**

In performing this contract, Engineer agrees to use diligent efforts to purchase all goods and services from Burleson businesses whenever such goods and services comparable in availability, quality and price.

**XI. NO DAMAGES FOR DELAYS**

Notwithstanding any other provision of this contract, Engineer shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

**XII. RIGHT TO INSPECT RECORDS**

Engineer agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Engineer involving transactions relating to this contract. Engineer agrees that City shall have access during normal working hours to all necessary Engineer facilities and shall be

provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Engineer reasonable advance notice of intended audits.

Engineer further agrees to include in subcontract(s), if any, a provision that any subcontractor or consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subcontractor involving transactions to the subcontract, and further, that City shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the consultant or subcontractor reasonable advance notice of intended audits.

### **XIII. NO THIRD PARTY BENEFICIARY**

For purposes of this contract, including its intended operation and effect, the parties (City and Engineer) specifically agree and contract that: (1) the contract only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Engineer or both; and (2) the terms of this contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Engineer.

### **XIV. SUCCESSORS AND ASSIGNS**

City and Engineer each binds himself and his successors, executors, administrators and assigns to the other party of this contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither City nor Engineer shall assign or transfer its interest herein without the prior written consent of the other.

### **XV. ENGINEER'S LIABILITY**

Acceptance of the final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications, or other documents and work prepared by said Engineer, its employees, subcontractor, agents and consultants.

### **XVI. INDEMNIFICATION**

Engineer shall indemnify and hold City and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expenses, on account of damage to property or injury, including death, to any and all persons, including but not limited to officers, agents, or employees of City or Engineer and all other persons performing any act pursuant to this contract, to the extent caused by a negligent act, error, or omission by Engineer, its officers, agents, employees, invitees, or other persons for whom it is legally liable, with regard to the performance of this contract; Engineer shall defend at its own expense any suits or other proceedings brought against City or its officers, agents, servants, employees and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against City, its officers, agents, servants or employees or any of them, in connection with the foregoing described negligent act, error, or omission by Engineer or which Engineer is found to be legally liable. The Engineer is not obligated to indemnify the City in any manner whatsoever for City's own negligence.

**XVII. SEVERABILITY**

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**XVIII. INDEPENDENT CONTRACTOR**

Engineer covenants and agrees that he/she is an independent contractor, and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

**XIX. DISCLOSURE**

By signing this contract, Engineer acknowledges to City that he/she has made a full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships with abutting property owners. Engineer further agrees that he shall make disclosure in writing of any conflicts of interests which develop subsequent to the signing of this contract and prior to final payment under the contract.

**XX. VENUE**

The parties to this contract agree and covenant that this contract shall be enforceable in Burleson, Texas; and that if legal action is necessary to enforce this contract, exclusive venue shall lie in Johnson County, Texas.

**XXI. ENTIRE AGREEMENT**

This contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties.

**XXII. APPLICABLE LAW**

This contract is entered into subject to the Charter and ordinances of City, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. Situs of this contract is agreed to be Johnson County, Texas, for all purposes, including performance and execution.

**XXIII. HEADINGS**

The headings of this contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XXIV. REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this contract.

#### **XXV. EQUAL EMPLOYMENT OPPORTUNITY**

Engineer shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Engineer shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include, but not be limited to: employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

#### **XXVI. CONSTRUCTION OF CONTRACT**

Both parties have participated fully in the review and revision of this contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this contract.

#### **XXVII. NOTICES**

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

if intended for City, to:

Paul Mitchell, P.E.  
Assistant Director of Public Works, Capital Improvements  
City of Burleson  
225 West Renfro Street  
Burleson, Texas 76028  
Phone: 817.426.9610  
E-mail: [pmitchell@burlesontx.com](mailto:pmitchell@burlesontx.com)

A. If intended for Engineer, to:

Mrs. Dana Shumard  
Project Manager  
Kimley-Horn and Associates, Inc.  
801 Cherry Street, Unit 11  
Suite 1300  
Fort Worth, Texas 76102  
817-335-6511 (phone)  
[Dana.Shumard@kimley-horn.com](mailto:Dana.Shumard@kimley-horn.com)

IN WITNESS WHEREOF, the parties enter into this contract for the \_\_\_\_ on the date first written above.

WITNESS:

BY: Dana Shumard

Dana Shumard, P.E.  
Printed or Typed Name

Project Manager  
Printed or Typed Title

ATTEST:

BY: \_\_\_\_\_  
AMANDA McCrory  
CITY SECRETARY

ENGINEER:

BY: Scott R. Arnold

Scott R. Arnold, P.E.  
Printed or Typed Name

Vice President  
Printed or Typed Title

56-0885615  
Tax Identification No.

CITY OF BURLESON, TEXAS

BY: \_\_\_\_\_  
BRYAN LANGLEY  
CITY MANAGER

IN WITNESS WHEREOF, the parties enter into this contract for the \_\_\_\_ on the date first written above.

WITNESS:

ENGINEER:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Dana Shumard, P.E.  
Printed or Typed Name

Scott R. Arnold, P.E.  
Printed or Typed Name

Project Manager  
Printed or Typed Title

Vice President  
Printed or Typed Title

56-0885615  
Tax Identification No.

ATTEST:

CITY OF BURLESON, TEXAS

BY:   
AMANDA MCCRORY  
CITY SECRETARY

BY:   
BRYAN LANGLEY  
CITY MANAGER

THE STATE OF TEXAS       §

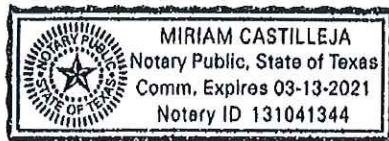
COUNTY OF Dallas       §

**ENGINEER ACKNOWLEDGMENT**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Scott R. Arnold, who is known to me or who was proved to me on the oath of \_\_\_\_\_ (name of person identifying the acknowledging person) or who was proved to me through his driver's license (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 4th day  
of June, 2020.

Notary Public In and For The State of Texas



A handwritten signature in dark ink, appearing to be 'M Castilleja', written over a horizontal line.

Notary Public In and For the State of Texas

My Commission Expires: 03-13-2021

Miriam Castilleja  
Notary's Printed Name

THE STATE OF TEXAS       §

COUNTY OF JOHNSON       §

**CITY ACKNOWLEDGEMENT**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, known to me to be a person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act of the City of Burleson, Texas, a Texas municipal corporation, and as \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public In and For The State of Texas

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

ENGINEER ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who is known to me or who was proved to me on the oath of \_\_\_\_\_ (name of person identifying the acknowledging person) or who was proved to me through \_\_\_\_\_ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public In and For The State of Texas

\_\_\_\_\_  
Notary Public In and For the State of Texas

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

CITY ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Bryan Langley, known to me to be a person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act of the City of Burleson, Texas, a Texas municipal corporation, and as City Manager thereof, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15 day of June, 2020.

My Commission Expires: 9/19/21

\_\_\_\_\_  
Notary Public In and For The State of Texas

JESSE ELIZONDO  
Notary's Printed Name

