

## **PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and **KIMLEY-HORN AND ASSOCIATES, INC.** (“Consultant”).

### **1. SCOPE OF SERVICES.**

Attached hereto and incorporated for all purposes incident to this Agreement is **Attachment A** more specifically describing the services to be provided hereunder.

### **2. TERM.**

This Agreement shall commence upon execution by the parties (the “Effective Date”) and terminate upon completion of the work specified in the scope of services unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

### **3. COMPENSATION.**

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed One Million Ninety Thousand Nine Hundred Fifteen Dollars (**\$1,090,915 and 0/100**) in accordance with the fee schedule incorporated herein as **Attachment A**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Attachment A, Scope of Work. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

### **4. TERMINATION.**

#### **4.1. Written Notice.**

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

**5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

**6. RIGHT TO AUDIT.**

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving

transactions related to the subcontract, and further that City shall have access during normal working hours to all 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 subcontractor reasonable notice of intended audits.

**7. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

**8. CHARACTER OF SERVICES AND INDEMNIFICATION.**

8.1 Character of Services.

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 Indemnification.

**CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR**

**OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.**

**CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.**

**THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.**

**9. ASSIGNMENT AND SUBCONTRACTING.**

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The

Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

**10. INSURANCE.**

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate
  
- (b) Automobile Liability  
\$1,000,000 Each accident on a combined single limit basis or  
\$250,000 Bodily injury per person  
\$500,000 Bodily injury per person per occurrence  
\$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

- (c) Worker's Compensation  
Statutory limits  
Employer's liability  
\$100,000 Each accident/occurrence  
\$100,000 Disease - per each employee  
\$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

- (d) Errors & Omissions (Professional Liability):  
  
\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

#### 10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

#### 10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

### **11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

### **12. NON-DISCRIMINATION COVENANT.**

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors

or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

**13. NOTICES.**

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson  
City Manager's Office  
Attn: Bryan Langley  
141 W. Renfro St.  
Burleson, TX 76028

To CONSULTANT:

Kimley-Horn and Associates, Inc.  
Attn: Dana Shumard  
801 Cherry Street, Unit 11  
Suite 1300  
Fort Worth, TX 76102

**14. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**15. NO WAIVER.**

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**16. GOVERNING LAW / VENUE.**

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

**17. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**18. FORCE MAJEURE.**

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in

performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**19. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**20. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

**21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.**

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

**22. ENTIRETY OF AGREEMENT.**

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**23. SIGNATURE AUTHORITY.**

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

**24. NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

**25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.**



Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

**26. MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.**

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**27. NON-EXCLUSIVITY.**

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

**28. NO THIRD-PARTY BENEFICIARIES.**

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

**29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.**

The Consultant shall apply basic safeguarding requirements and procedures to protect the

Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

**30. OWNERSHIP OF DOCUMENTS.**

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use. Any modifications made by the City to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the City's sole risk and without liability to the Consultant.

**31. COUNTERPARTS; PDF SIGNATURES.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

---

*The remainder of this page is left intentionally blank*

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

**KIMLEY-HORN AND ASSOCIATES, INC.:**

By: \_\_\_\_\_

By: Scott R. Arnold

Name: \_\_\_\_\_

Name: Scott R. Arnold

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: March 15, 2023

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney, Assistant City Attorney,  
or Deputy City Attorney

## ATTACHMENT A

### I. Scope of Services

The Consultant understands that the City wishes to prepare schematic and construction plans, specifications and estimates (PS&E) for improvements to FM 1902 (Lakewood Drive) from Chisholm Trail Parkway to the east to the connection to Lakewood Drive that is being designed with the Chisholm Summit Development. The scope will be to widen roadway from a 2 lane undivided roadway section with ditches to a 4 lane divided roadway with curb section to match the City Master Thoroughfare Plan. The plans will consist of roadway plan and profile, sidewalk, and storm drain plan improvements, street lighting, traffic signal, traffic control, signing and marking and utility adjustments. The project will also include a roadway connection from FM 1902 to Lakewood Drive. The project will need to adhere to TxDOT requirements as well as Federal Highway Administration (FHWA) guidelines with exceptions provided by the City of Burleson. The project will also consist of Environmental Documentation, Utility Clearance, Traffic Analysis, Bidding and Construction Phase Services.

The Consultant will complete the following tasks:

#### **Task 1 – Design Survey**

The Consultant, through its subconsultant, Spooner & Associates, Inc. will provide topographic survey for the following limits: two hundred feet west of Chisholm Trail Parkway southbound frontage road to the approximately 3,500 linear feet east along FM 1902. The limits will also consist of two hundred feet each way at the frontage road along Chisholm Trail Parkway. Other subtasks for this task consist of:

##### A. Topographic Survey

- 1) Making a topographic survey of all existing features above ground level by using both Mobile LIDAR and on the ground survey. These features will consist of telephone poles, power poles, utilities, utility markers, fences, retaining walls, water meters, detector check valves, manholes, vaults, sprinkler heads, structures, culvert pipes and any other facilities in close proximity to the anticipated construction limits. Also, all buildings, trees, and other topographical features.
- 2) Determining horizontal and vertical location of all underground utilities or other underground structures where they cross any part of the proposed project.
- 3) Making of all surveys necessary to determine limits of any existing right-of-way or easements.
- 4) Tie all public improvements to existing City monument system.

#### **Task 2 – Right-of-Way and Easement Determination**

A. In conformance with TxDOT ROW Acquisition Manual, the Consultant, through subconsultant, will survey, render field notes, and prepare a right-of-way strip map and up to five (5) individual parcel exhibits for right-of-way documents and up to six (6) easement documents as needed. The right-of-way strip map will be contained on plan paper (11" x 17") at a scale of 1" = 100', will be sealed, dated, and signed by a Registered Professional Land Surveyor and will contain the following:

- 1) Title page including location map.

- 2) Summary sheet listing all parcels to be acquired, property owner, legal description of property, gross area of property, square footage and type of easements, net area of property after acquisition, a column for volume and page of filing, and current volume and page.
- 3) Corners of all parcels tied to the centerline.
- 4) Location of all existing property pins, including station and offset to centerline.
- 5) Location of all new property pins, including station and offset to centerline.
- 6) Parcel number.
- 7) Area required.

### **Task 3 – Schematic Design**

- A. Schematic Plans. Schematic plan and profile will be drawn at a scale no smaller than 1"= 100' and to such detail as is necessary to meet TxDOT requirements. The Consultant will prepare schematic plans which will consist of the following:
- 1) Roadway improvements (plan and profile) showing curb, median, turn lanes, median openings, sidewalk, existing and proposed right-of-way. The approximate location of all existing and proposed driveways within the limits of the project.
  - 2) Intersection improvements based on the findings of the traffic evaluation in Task 7. Up to two (2) options will be developed for each intersection, the Chisolm Trail Parkway intersection, and the connection to Lakewood Drive.
  - 3) Existing and proposed typical sections.
  - 4) Existing utilities and survey data collected in Task 1 and Task 12.
  - 5) A preliminary drainage study, consisting of drainage areas, location, and size of existing drainage facilities, the approximate size and alignment of proposed drainage facilities, and approximate discharges.
  - 6) Existing water and sanitary sewer mains and potential conflicts (if applicable).
  - 7) An opinion of probable construction 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 opinions as to the costs of construction and materials, will be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost.
  - 8) A 30%, 60% and Final Schematic Submittal is assumed.
  - 9) Address up to three (3) rounds of comments from the City, TxDOT and NTTA on the schematic submittal.
  - 10) Environmental documentation as listed in Task 6.
  - 11) Traffic evaluation as listed in Task 7.
  - 12) TxDOT documentation and coordination as listed in Task 8.
- B. Project Management - Perform general project management related tasks such as routine communication with the City, project status updates, quality control efforts, internal team meetings, project invoicing, project planning efforts, preparation of the project schedule and updates to the project schedule. Project invoicing for Task 6-11 will include time sheet and subconsultant invoices for backup.

### **Task 4 – Preliminary and Final Design**

It is understood that the PS&E phase will occur concurrently with the Preliminary (Schematic) phase of

the project, at risk. The PS&E phase will begin once the City authorizes the Consultant to begin the PS&E task.

Design associated with widening and intersection improvements at Chisholm Trail Parkway Intersection will be listed in a separate task, Task 9. The design improvements are not yet defined and dependent upon Task 7 Traffic Evaluation recommendations.

- A. Preliminary Design Construction Plans (30% and 60%) – Preliminary plans will consist of the following:
- 1) Edge of existing pavement, existing structures, mailboxes, water meters, utility poles, fire hydrants, existing driveways, existing utilities, existing and proposed rights-of-way and easements, proposed centerline, proposed curb line on plan and profile sheets, and existing ground elevation in profile at the proposed centerline and right-of-way lines.
  - 2) All existing improvements on property within twenty feet (20') of the proposed right-of-way or easement line on construction plans.
  - 3) The location, size, and species of all trees and shrubs within the limits of proposed street right-of-way (ROW), 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, will be shown, unless directed otherwise the Consultant will indicate on the plans those trees that are to be removed, and those trees to be preserved.
  - 4) Sidewalk, retaining walls (if applicable), and curb ramps.
  - 5) Lane and pavement width dimensions.
  - 6) Proposed structure locations, lengths, and widths.
  - 7) Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
  - 8) Begin and end superelevation transitions and cross slope changes.
  - 9) Limits of rip-rap, block sod, and seeding.
  - 10) Existing utilities and structures.
  - 11) Benchmark information.
  - 12) 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.
  - 13) Cross-sections of existing ground surface line and proposed ground surface lines.
  - 14) 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).
  - 15) All drainage computations such as inlet and pipe calculations within TxDOT ROW will be in accordance with TxDOT criteria.
  - 16) Hydraulic analysis and modeling of the impact of proposed structures within a designated 100-year floodplain or as determined by City or TxDOT.
  - 17) Storm sewer plan and profile sheets, including hydraulic grade lines.
  - 18) Culvert layout for each bridge class culvert.
  - 19) Erosion Control Plans
  - 20) Traffic Control Sequencing Plan
  - 21) Pavement markings, striping and/or traffic button plans.
  - 22) Plans to comply with TxDOT PS&E Checklists.
  - 23) An opinion of probable construction cost.

- B. Final Design Construction Plans -Upon acceptance of preliminary plans by City, the Consultant will prepare final plans. Final plans will contain all information and requirements of the preliminary plans and will incorporate comments from City, TxDOT, NTTA, and utility companies. The Consultant will also prepare contract documents, specifications, and special provisions. In addition, the following will be submitted:
- 1) 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 Consultant authorizing the revision.
  - 2) Storm sewer improvement plan and profile sheets (as needed).
  - 3) Detail and standard sheets for all elements of the Project.
  - 4) Special provisions and specifications.
  - 5) Final right-of-way plans or easements as required in Task 2.
  - 6) An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate will be based on current unit prices bid on similar projects.
  - 7) Street addresses of all properties adjacent to the Project.
  - 8) Plan sheets for traffic signals, and signs and pavement markings as required by this contract.
  - 9) Water and/or sanitary sewer adjustment sheets (as needed).
  - 10) Prepare street lighting conduit and foundation plan.
  - 11) Prepare proposed cross-sections every 50 feet and at culvert locations.
  - 12) Prepare Project Manual and Specifications.
- C. Project Management - Perform general project management related tasks such as routine communication with the City, project status updates, quality control efforts, internal team meetings, project invoicing, project planning efforts, preparation of the project schedule and updates to the project schedule. Project invoicing for Task 6-11 will include time sheet and subconsultant invoices for backup.
- D. The project will be registered with TDLR. Fees associated with the registration, review, and inspection are included in this scope. The Consultant will subcontract to Accessology to register, review, and inspect the project.

### **Task 5 – Geotechnical**

The Consultant, through its subconsultant (CMJ Engineering), will provide geotechnical services as follows:

- A. The Consultant will perform geotechnical investigations and analyses necessary to complete the design. The Consultant will prepare a geotechnical report describing existing geotechnical conditions and considerations necessary for design and construction of the project for City and TxDOT review and approval. The report will consist of up to eight (8) pavement borings in the outside shoulder.

### **Task 6 – Environmental Services**

The Consultant, through a subconsultant (Stantec Engineering) will prepare Environmental Documentation in accordance with TxDOT Requirements. The following are anticipated to be necessary for Environmental Clearance.

- A. Environmental Services
- 1) Prepare the Environmental Project Description Form according to the TxDOT Fort Worth District guidelines and policy.
  - 2) Prepare a Work Plan Development according to the TxDOT Fort Worth District

Professional Services Agreement

guidelines and policy.

- 3) This scope assumes that the project will meet the requirements for a D or C list Categorical Exclusion. The Consultant will collect the necessary data and prepare the technical reports for a Categorical Exclusion. The following reports are anticipated:
  - i. Air Quality Assessment
  - ii. Archeological Resource Background Study
  - iii. Biological Resource Deliverables
  - iv. Surface Water Analysis Form
  - v. Hazardous Materials Initial Site Assessment
  - vi. Historic Resources Project Coordination Request
  - vii. Traffic Noise Analysis
  - viii. Community Impacts Analysis
  - ix. Indirect Impacts

B. Public Meetings. Attend and prepare for up to one (1) public meeting during the schematic design phase. The public meetings are required for the environmental process and documentation for TxDOT requirements. Public meeting materials and summary report will be provided.

### **Task 7 – Traffic Evaluation (Hourly)**

#### A. Traffic Evaluation

- 1) Coordinate with TxDOT and NTTA to determine traffic report scope.
- 2) The Consultant will collect turning movement counts and 24 hour traffic data at the Chisolm Trail Parkway intersection.
- 3) Collect TPP volumes from TxDOT.
- 4) The Consultant will analyze the existing and ultimate build out for the intersection at Chisolm Trail Parkway and the connection to FM 1902 to Lakewood Drive.
- 5) The Consultant will utilize City traffic model to develop growth projections.
- 6) The traffic study will evaluate the level of service for the project intersections and corridor and provide necessary recommendations.
- 7) The Consultant will analyze up to four (4) intersection control options.
- 8) The Consultant will perform a signal warrant study for Chisholm Trail Parkway and FM 1902 intersection with Lakewood Parkway.
- 9) The Consultant will prepare the findings and recommendations in a technical memo.
- 10) Address up to two (2) rounds of comments from the City, TxDOT and NTTA.
- 11) Meetings are included in Task 11.

### **Task 8 – TxDOT and Federal Documentation (Hourly)**

#### A. TxDOT and Federal Documentation

- 1) Provide a project description and scope, location map, and opinion of probable construction costs in accordance with TxDOT requirements for use in the advanced funding agreement.
- 2) Assist the City with the Advanced Funding Agreement supporting documents.
- 3) Design Concept Conference (DCC). Prepare agenda and document the DCC prior to or during preliminary schematic development.
- 4) Prepare design criteria in accordance with FHWA and TxDOT requirements.
- 5) DSR Prepare a Design Summary Report (DSR) to reflect discussion and decisions at the DCC. DSR will be updated throughout project development as design progresses.
- 6) Follow FHHWA checklist criteria for each submittal.
- 7) Prepare Page 3 of TxDOT Form 1002.



- 8) Schematic and PS&E comment response form for each submittal.
- 9) Prepare contract documents in accordance with TxDOT LGPP Guidelines.
- 10) Coordinate with TxDOT during the duration of the project via email correspondence and phone calls.
- 11) Assist the City with preparing federal forms as required.
- 12) Coordinate with City and NTCOG to add the project to the TIP.
- 13) Assist the City with reviewing TIP information and coordinating TIP Modifications on quarterly basis.

### **Task 9 – Chisholm Trail Parkway Intersection Improvements (Hourly)**

Based on the results of the Traffic Evaluation in Task 7, the Consultant will prepare preliminary and final design plans for the associated improvements to Lakewood Drive from the intersection of the southbound Chisholm Trail Parkway frontage road to the northbound Chisholm Trail Parkway frontage road. The intersection design will begin once Task 3 and Task 7 are complete and the City authorizes the Consultant to Proceed.

#### A. Preliminary Design

- 1) Roadway improvements (plan and profile) showing curb, median, turn lanes, median openings, sidewalk, existing and proposed right-of-way.
- 2) Existing and proposed typical sections.
- 3) Existing utilities and survey data collected in Task 1 and Task 12.
- 4) Existing water and sanitary sewer mains and potential conflicts (if applicable).
- 5) Sidewalk, retaining walls (if applicable), and curb ramps.
- 6) Lane and pavement width dimensions.
- 7) Proposed structure locations, lengths, and widths.
- 8) Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
- 9) Begin and end superelevation transitions and cross slope changes.
- 10) Limits of rip-rap, block sod, and seeding.
- 11) Existing utilities and structures.
- 12) Benchmark information.
- 13) Cross-sections of existing ground surface line and proposed ground surface lines.
- 14) 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).
- 15) Storm sewer plan and profile sheets, including hydraulic grade lines.
- 16) Erosion Control Plans
- 17) Traffic Control Sequencing Plan
- 18) Traffic Signal Plans
- 19) Pavement markings, striping and/or traffic button plans
- 20) An opinion of probable construction cost
- 21) Compile applicable details.
- 22) Address up to one (1) rounds of comments from the City, TxDOT, and NTTA.

#### B. Final Design- Upon acceptance of preliminary plans by City, the Consultant will prepare final plans. Final plans will contain all information and requirements of the preliminary plans and will incorporate comments from City, TxDOT, NTTA and utility companies.

- 1) Roadway plan and profile sheets.
- 2) Storm sewer improvement plan and profile sheets (as needed).

- 3) Detail and standard sheets for all elements of the Project.
- 4) Plan sheets for traffic signals, and signs and pavement markings.
- 5) Traffic Control Plans.
- 6) Water and/or sanitary sewer adjustment sheets (as needed).
- 7) Prepare street lighting conduit and foundation plan.
- 8) Prepare proposed cross-sections every 50 feet and at culvert locations.
- 9) An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate will be based on current unit prices bid on similar projects.
- 10) Address up to two (2) rounds of comments from the City, TxDOT and NTTA.

**Task 10 – FM 1902 Intersection Improvements (Hourly)**

Based on the results of the Traffic Evaluation in Task 7, the Consultant will prepare preliminary and final design plans for the associated improvements to Lakewood Drive and FM 1902. Task 10 will consist of intersection improvements such as traffic signal and changes to the striping and widening along FM 1902 for the connection to Lakewood Drive. The intersection design will begin once Task 3 and Task 7 are complete and the City authorizes the Consultant to Proceed.

A. Preliminary Design 30% and 60%

- 1) Intersection Improvements at FM 1902 and Lakewood Drive
- 2) Existing and proposed typical sections.
- 3) Existing utilities and survey data collected in Task 1 and Task 12.
- 4) Existing water and sanitary sewer mains and potential conflicts (if applicable).
- 5) Lane and pavement width dimensions.
- 6) Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
- 7) Limits of rip-rap, block sod, and seeding.
- 8) Existing utilities and structures.
- 9) Benchmark information.
- 10) Cross-sections of existing ground surface line and proposed ground surface lines.
- 11) Traffic Control Sequencing Plan
- 12) Traffic Signal Plans
- 13) Pavement markings, striping and/or traffic button plans.
- 14) An opinion of probable construction cost.
- 15) Compile applicable details.
- 16) Submit 30% Plans
- 17) Submit 60% Plans
- 18) Address up to two (2) rounds of comments from the City and TxDOT.

B. Final Design- Upon acceptance of preliminary plans by City, the Consultant will prepare final plans. Final plans will contain all information and requirements of the preliminary plans and will incorporate comments from City, TxDOT and utility companies.

- 1) Intersection Layout sheets.
- 2) Storm sewer improvement plan and profile sheets (as needed).
- 3) Detail and standard sheets for all elements of the Project.
- 4) Final right-of-way plans or easements as required in Task 2.
- 5) Plan sheets for traffic signals, and signs and pavement markings.
- 6) Traffic Control Plans.
- 7) Water and/or sanitary sewer adjustment sheets (as needed).

- 8) An opinion of probable cost based upon the items and quantities listed in the proposal in the contract documents. This estimate will be based on current unit prices bid on similar projects.
- 9) Submit 90% and Final Plans.
- 10) Address up to two (2) rounds of comments from the City and TxDOT.

**Task 11 – Meetings (Hourly)**

A. Meetings

- 1) The Consultant will prepare for and attend Project Kickoff Meeting with City, NTTA, and TxDOT.
- 2) The Consultant will prepare for and attend up to six (6) meetings with NCTCOG through the duration of the project.
- 3) The Consultant will attend up to two (2) plan review meetings during schematic design with the City, NTTA, and TxDOT.
- 4) The Consultant will attend up to three (3) plan review meetings with the City, NTTA, and TxDOT staff at 30%, 60% and 90% level.
- 5) The Consultant will attend a constructability site visit after 60% Submittal.
- 6) The Consultant will attend one monthly virtual progress meeting with the City PM to discuss project progress. Up to forty eight (48) meetings are assumed.
- 7) The Consultant will attend up to twelve (10) coordination meetings with the City and TxDOT or NTTA or other stakeholder to discuss progress, design and/or coordination items beyond in addition to the review meetings listed above.
- 8) The Consultant will prepare an agenda and meeting notes for all meetings.

**Task 12 – Subsurface Utility Engineering**

The Consultant, through its subconsultant (The Rios Group), will provide subsurface utility engineering for the survey limits.

A. Provide Subsurface Utility Engineering (SUE) to Quality Level D, C, B, and A.

- 1) SUE level B will be performed as needed.
- 2) SUE level A will be performed on any utilities where conflicts with proposed improvements are suspected based on level B SUE. The SUE will be performed in accordance with CI/ASCE 38-02.
- 3) Expose and locate utilities up to 15 specific locations (Level A).
- 4) Perform Level B SUE for the Level A locations (up to 2,000 linear feet)

**Task 13 -Franchise Utility Coordination and Utility Clearance (Hourly)**

- A. Send plans to franchise utility companies.
- B. Develop “Time of Relocation” schedule containing the estimated time for each utility company with facilities impacted by Project to relocate their facilities.
- C. Attend up to six (6) meetings with franchise utility companies to review and coordinate relocation design.
- D. Adhere to TxDOT Utility Clearance Process by supporting the City with the following tasks:
  - a. Prepare and Maintain Utility Layout
  - b. Prepare and maintain Utility Conflict Matrix

- c. Prepare and Maintain Utility Conflict Exhibits
- d. Review Plans
- e. Prepare proposed utility layouts
- f. Obtain clearance letters from franchise utility companies.

**Task 14 - Bidding and Construction Phase Services (Hourly)**

A. Bidding

- 1) Assist City during advertisement by answering response for information or clarifications.

B. Construction Phase Services

- 1) Review and approve shop drawings, samples and other data which contractor(s) are required to submit.
- 2) Evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s).
- 3) Attend pre-construction conference with the Contractor.
- 4) 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 Consultant is anticipated during the construction phase.
- 5) 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 Consultant will be prepared by The Consultant and included in the basic Design fee.
- 6) Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the project made during construction.

## II. Method of Compensation

The Consultant will perform the services in Tasks 1 - 5 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the City.

Task 1 – Design Survey	\$ 28,240
Task 2 – Right-of-Way and Easement Determination	\$ 13,870
Task 3 – Schematic Design	\$ 154,675
Task 4 – Preliminary and Final Design	\$ 247,430
<u>Task 5 – Geotechnical Investigation</u>	<u>\$20,800</u>
Total Lump Sum Fee	\$465,015

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

The Consultant will perform the services in Tasks 6-14 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 6 Environmental Services	\$95,000
Task 7 Traffic Evaluation (Hourly)	\$32,400
Task 8 TxDOT and Federal Documentation (Hourly)	\$73,620
Task 9 Chisholm Trail Pkwy Intersection Improvements(Hourly)	\$163,270
Task 10 – FM 1902 Intersection Improvements (Hourly)	\$73,720
Task 11 – Meetings (Hourly)	\$68,660
Task 12 – Subsurface Utility Engineering	\$44,820
Task 13 – Franchise Utility Coordination (Hourly)	\$48,790
<u>Task 14 – Bidding and Construction Phase Services (Hourly)</u>	<u>\$25,620</u>
Maximum Labor Fee	\$625,900

Total Fee	\$1,090,915
-----------	-------------

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

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost.

Kimley-Horn and Associates, Inc.  
Hourly Labor Rate Schedule

Classification	Rate
Analyst	\$125 - \$210
Professional	\$200 - \$250
Senior Professional I/Project Manager	\$250 - \$310
Senior Professional II/Senior Project Manager	\$330 - \$390
Support Staff	\$100 - \$160

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

**KIMLEY-HORN AND ASSOCIATES, INC.:**

By: \_\_\_\_\_

By: Scott R. Arnold

Name: \_\_\_\_\_

Name: Scott R. Arnold

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: March 15, 2023

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney, Assistant City Attorney,  
or Deputy City Attorney