

PROFESSIONAL SERVICES AGREEMENT FOR MIDDLE SCHOOL PEDESTRIAN IMPROVEMENTS

This Agreement made and entered into this, the _____ day of _____, 2022 and between the **City of Dripping Springs**, Texas (hereinafter referred to as the “City”) and **Kimley Horn**. (hereinafter referred to as “Engineer”), is understood and agreed to be as set forth herein:

1. Description of Services:

Engineer will be responsible for the design and preparation of PS&E and construction phase services for the Project as specified in **Attachment “A”**. The Project generally consists of completion of sidewalk and shared-use path design, pedestrian traffic signals, drainage analysis, survey, subsurface utility engineering, and environmental compliance of approximately 1.1 miles of sidewalk along US 290, Old Hwy 290, and Broken Lance Road and approximately 0.3 miles of shared use path along Roger Hanks Pkwy. Project specifications will be developed using the latest Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges.

2. Disadvantage Business Enterprise (DBE). This is a federally funded contract. When federal funds are participating in the professional services phase of the project the City will implement TxDOT’s DBE program and coordinate closely with the TxDOT district. A DBE goal of zero has been established for this program; however, compliance with the Disadvantaged/Minority Business Enterprise Program, established in 49 CFR Part 26, will be followed and goal monitored if established by TxDOT.

3. Scope of Work. Engineer will perform engineering services and all work as further described in the Proposal of Services in **Attachment “A”**. Additional Services may be agreed to in writing by both parties and billed at a negotiated rate.

4. Payment for Services: The City will compensate Engineer in the manner described in **Attachment “A”** including a lump sum fee and time and materials with a not to exceed of \$325,873.43. Engineer shall invoice the City accordingly. Any charge that is in excess of the maximum costs in the proposal shall not be paid by the City unless additional costs have been approved in writing by the City.

5. Relationship of Parties: It is understood by the parties that Engineer is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Engineer. The City may contract with other individuals or firms for engineering services.

6. Termination: Either party may terminate this Agreement at any time with thirty (30) days written notice to the other party.

- 7. **Injuries/Insurance:** Engineer acknowledges his obligation to obtain appropriate insurance coverage as shown in **Attachment “B”**.
- 8. **Indemnification:** ENGINEER AGREES TO INDEMNIFY AND HOLD CITY HARMLESS FROM ALL CLAIMS, LOSSES, EXPENSES, FEES, INCLUDING ATTORNEY’S FEES, COSTS, AND JUDGMENTS THAT MAY BE ASSERTED AGAINST CITY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF ENGINEER, ENGINEER’S EMPLOYEES, IF ANY, AND ENGINEER’S AGENTS.
- 9. **Assignment:** Engineer’s obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.
- 10. **Notice:** All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

Attention: City Administrator
City of Dripping Springs City
P.O. Box 384
Dripping Springs, TX 78620
512-858-4725

For the Engineer:

Sam Lundquist, P.E.
Kimley Horn
10814 Jollyville Rd., Avallon IV, Suite 300
Austin, Texas
(512) 418-1771

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

- 11. **Mandatory Disclosures:** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Consultant has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) and, by signing this Agreement, the Consultant affirms compliance with the Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). The Consultant must also fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: <https://www.ethics.state.tx.us/whatsnew/elfinfo form 1295.htm>
- 12. **Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 13. **Waiver of Contractual Right:** The failure of any party to enforce any provision of this

Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

14. Applicable Law: The laws of the State of Texas shall govern this Agreement.

15. Venue: The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.

16. Entire Agreement: This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written agreements between the parties.

CLIENT:
City of Dripping Springs

ENGINEER:
Kimley Horn

Bill Foulds Jr., Mayor

Trey Neal, P.E.

Date

Date

ATTEST:

Andrea Cunningham, City Secretary

Attachment “B”

CITY OF DRIPPING SPRINGS ENGINEERING FIRM INSURANCE REQUIREMENTS

Engineering Firm providing goods, materials and services for the City of Dripping Springs shall, during the term of the contract with the City of Dripping Springs or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City of Dripping Springs as additional named insured on the General & Auto Liability coverage.
2. Provide for at least ten (10) days prior written notice to the City of Dripping Springs for cancellation, non-renewal, or material change of the insurance where the change affects the coverage of the City as an additional named insured.
3. Provide for a waiver of subrogation against the City of Dripping Springs for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

Certificate of Insurance: Certificates of insurance evidencing all of the required insurance coverages shall be submitted with the Engineering Firm’s submission. Copies of any modifications, amendments, renewals, or terminations of any coverage shall be promptly submitted to the City. If the contract is renewed or extended by the City of Dripping Springs, certificates of insurance evidencing all of the required insurance coverages shall also be provided to the City of Dripping Springs prior to the date the contract is renewed or extended.

Type of Contract Type and Amount of Insurance

- Statutory Workers Compensation insurance as required by state law.
- Commercial General Liability minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
- Automobile Liability with a minimum of \$500,000 Dollars combined single limit.
- Professional Services Professional Liability Insurance with a minimum of \$1 Million Dollars per claim and \$1 Million Dollars aggregate.