

Professional Service Agreement (Draft)

THIS AGREEMENT, made and entered into Date of contract, by and between K Friese & Associates, Inc. (KFA) and the Client identified herein, provides for the Professional Services described under Item 2 of this Agreement.

CLIENT: City of Rollingwood Phone Number: 512-327-1838
 ADDRESS: 403 Nixon Dr Fax Number: 512-327-1869
Rollingwood, TX 78746 Contact Person: Amber Lewis

Project Number: Project number
 Project Title: Riley Road Speed Study

1. DESCRIPTION OF PROJECT SITE:

Riley Road between Hatley Drive and Stratford Drive

2. SCOPE OF SERVICES TO BE PROVIDED BY KFA:

(if additional pages are necessary, they are identified as Attachment A):

The Scope of Services to be provided by KFA is defined in Attachment A.

3. THE COMPENSATION TO BE PAID KFA for providing the requested services shall be

(if additional pages are necessary, they are identified as Attachment B):

- Direct personnel expense plus a surcharge of _____%, plus reimbursable costs.*
- A Lump-Sum charge of \$ _____, plus out of pocket expenses.*
- Unit Cost/Time Charges identified in Attachment B, plus reimbursable costs.*
- Other – See Attachment B.

* See explanation under Item 5 below.

4. IF KFA'S SERVICES UNDER THIS AGREEMENT ARE DELAYED for any reasons beyond KFA's control, the time of performance shall be adjusted appropriately. Except where the services provided are under a continuous service contract for more than one year, if the services under this Agreement are delayed for a period of more than one (1) year from the beginning date (as above provided), the fees shall be subject to renegotiation; any change in such fees shall apply only to the unfinished services as of the effective date of such change.

This Agreement is subject in all respects to the Terms and Conditions attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, this Agreement is accepted on the date written above and subject to the terms and conditions set forth herein.

| | |
|------------------------------------|--|
| CLIENT: <u>City of Rollingwood</u> | K Friese & Associates, Inc. |
| SIGNED: _____ | SIGNED: _____ |
| NAME: <u>Michael Dyson</u> | NAME: <u>Thomas M. Owens, P.E.</u> |
| TITLE: <u>Mayor</u> | TITLE: <u>Executive Vice President</u> |
| DATE: _____ | DATE: _____ |

TERMS AND CONDITIONS

5. **COMPENSATION:** Direct personnel expenses shall be defined as: the cost of salaries and fringe benefit costs related to vacation, holiday, and sick leave pay; contributions for Social Security, Workers' Compensation Insurance, retirement benefits, and medical and insurance benefits; unemployment and payroll taxes; and other allowed benefits of those employees directly engaged in the performance of the requested service.

Reimbursable costs include: fees of Professional Associates (whose expertise is required to complete the project) and out-of-pocket expenses, the cost of which shall be charged at actual costs plus an administrative charge of 10% and shall be itemized and included in the invoice. Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.) job-related mileage at the prevailing Company rate, long distance telephone calls, courier, printing and reproduction costs, and survey supplies and materials. In the event the requested service involves the use of special equipment an additional direct charge shall be made for the use of this equipment.

It is understood and agreed that KFA services under this Agreement are limited to those described in Item 2 hereof (and Attachment A if applicable) and do not include participation in or control over the operation of any aspect of the project. Compensation under this Agreement does not include any amount for participating in or controlling any such operation. The scope of services under this Agreement will not change without the written consent of KFA, and if the scope of services increase, the compensation payable to KFA shall be equitably increased as well.

6. **INVOICE PROCEDURE AND PAYMENT:** KFA shall submit invoices to the Client for work accomplished during each calendar month. For services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby KFA will estimate the percentage of the total work (provided on a Lump Sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Professional Associates and reimbursable costs. Such invoices shall be submitted by KFA as soon as possible after the end of the month in which the work was accomplished and shall be due and payable by the client upon receipt.

The Client, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice for same is mailed to the Client at the address set out herein or is otherwise delivered, and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at the maximum rate allowed by law after they have been outstanding for over 30 days. KFA reserves the right to suspend all services on the Client's project without notice, and/or to terminate this Agreement, if an invoice remains unpaid 45 days after date of invoice. The suspension shall remain in effect until all unpaid invoices are paid in full.

It is understood and agreed that KFA services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental Agreement may be negotiated between Client and KFA describing the services desired and providing a basis for compensation to KFA.

7. **COST ESTIMATES:** Client hereby acknowledges that KFA cannot warrant that any cost estimates provided by KFA will not vary from actual costs incurred by the Client.

8. **LIMIT OF LIABILITY:** The limit of liability of KFA to the Client for any cause or combination of causes shall be, in total amount, limited to the fees paid under this Agreement, and in no event will KFA be liable to Client for any punitive, special, incidental, or consequential damages.

9. **CONSTRUCTION SERVICES:** If, under this Agreement, professional services are provided during the construction phase of the project, KFA shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; nor shall KFA be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for the Contractor's failure to comply with applicable laws, ordinances, rules or regulations.

10. **INSURANCE:** KFA shall at all times carry Workers Compensation Insurance as required by statute; commercial general liability insurance including bodily injury and property damage; automobile liability coverage; and professional liability coverage. Insurance certificates will be provided to the Client upon request. Client agrees to require that KFA is named as an additional insured on insurance coverage provided by contractors on the project.

11. **ASSIGNMENT:** Neither the Client nor KFA will assign or transfer its interest in this Agreement without the written consent of the other. Notwithstanding the foregoing, KFA may hire subcontractors to work on the project and to assist KFA in performing services hereunder.

12. **SUSPENSION, TERMINATION, CANCELLATION OR ABANDONMENT :** In the event the project described in Attachment A, or the services of KFA called for under this Agreement, is/are suspended, cancelled, terminated or abandoned by the Client, KFA shall be given seven (7) days prior written notice of such action and shall be compensated for the professional services provided up to the date of suspension, termination, cancellation or abandonment in accordance with the provisions of this Agreement for all work performed up to the date of suspension, termination, cancellation or abandonment, including reimbursable expenses.

13. **ENTIRETY OF AGREEMENT:** This writing including attachments and addenda, if any, embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing signed by both parties hereto.

14. **DOCUMENTS:** Any reuse by the Client or others of documents and plans that result from KFA services under this Agreement shall be at Client's or others' sole risk without liability to KFA. Client agrees to provide full information to KFA regarding any project and property covered by this agreement, including, without limitation, copies of all reports, surveys, restrictions, and other data related thereto. Client will assist KFA in gaining entry to public and private property as necessary for KFA to perform under this Agreement.

15. **WAIVER:** Any failure by KFA to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and KFA may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

16. **DISPUTE RESOLUTION:** If a dispute arises out of or relates to this Agreement or the breach thereof, the parties will attempt to settle the matter between themselves. If no agreement can be reached the parties agree to use mediation with a mutually agreed upon mediator before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, the prevailing party will be entitled to reimbursement of all reasonable costs and attorneys' fees. The parties mutually agree that a similar dispute resolution clause will be contained in all other contracts executed by Client concerning or related to this contract and all subcontracts executed by KFA.

17. **HAZARDOUS WASTE, MATERIAL OR SUBSTANCES:** Unless otherwise specifically provided in this Agreement, KFA shall not be responsible for or have control over the discovery, presence, handling, removal, transport or disposal of hazardous waste, materials or substances in any form on the project site.

18. **GOVERNING LAW:** This Agreement shall be governed by and construed according to the laws of the State of Texas.

19. **INTELLECTUAL PROPERTY:** With the sole exception of specifically marked reproducible materials subject to the Limited Copyright License herein, all worldwide right, title and interest in and to any and all Intellectual Property conceived, invented, authored or otherwise made by or on this Agreement shall remain the sole and exclusive property of KFA, its successors and assigns unless licensed or assigned by KFA pursuant to a separate written instrument. The term "Intellectual Property" shall be construed broadly to include all forms of intellectual property including without limitation all inventions, discoveries, designs, plans, improvements, trademarks, service marks and copyrights in drawings, computer programs, architectural works, and in all other original works of authorship. KFA grants Client a paid-up, non-transferable, non-exclusive license to make or have made copies of any copyrightable materials delivered under this Agreement and specifically marked by KFA as "Reproduction Authorized".

ATTACHMENT A– Scope of Services
ATTACHMENT B – Compensation
ADDENDA A (if required)

Attachment A: Scope of Services

Project Name: Riley Road Speed Study

Background:

The City of Rollingwood has been requested to install speed cushions and flexible delineators near the intersection of Riley Road and Vance Lane and desires to conduct a speed study to determine if they are warranted.

KFA is tasked with performing a speed study based on data available from the City to determine the existing 85th Percentile speed along Vance Road as well as the existing roadway design speed based on k-values and stopping sight distances between Hatley Drive and Stratford Drive.

If speed cushions and/or vertical panels are warranted, KFA will prepare a plan sheet, detail sheet and cost estimate for installation of the items.

The deliverable will include a technical memorandum summarizing the existing 85th percentile speed (based on data provided by the City), and the design speed of Riley Lane based on vertical curvature and stopping sight distance. In addition, a plan set consisting of a cover sheet, plan sheet and detail sheet will be prepared for construction. Opinion of Probable Construction Cost (OPCC) will be provided to help inform and advise the City on how to proceed with the project.

Scope of Work:

This task order authorizes KFA to perform the following tasks:

1. Project Coordination
 - a. KFA will prepare monthly progress reports and invoices for the project (2 months assumed).
 - b. KFA will attend two (2) meetings with the City for project kick-off and after delivery of the technical memorandum to discuss the City's comments.
2. Speed Study Technical Memorandum
 - a. KFA will review existing travel speed data along Riley Road provided by the City and include results in tabular form.
 - b. KFA will review and prepare an existing vertical profile along Riley Road and determine the existing design speed based on vertical curvature according to the AASHTO Geometric Design of Highways and Streets.
 - c. KFA will summarize results in a technical memorandum.
3. Plan Set
 - a. KFA will prepare a set of plans for installation of speed cushions and/or vertical panels. The plan set will include the following sheets:
 - i. Cover Sheet
 - ii. Plan Sheet (Riley Road and Vance Lane)
 - iii. Detail Sheets (including TxDOT and/or City of Austin Standards where applicable)
4. Engineers Opinion of Probable Construction Cost (OPCC) – KFA will prepare a cost estimate of recommended improvements.

Items not included in Scope:

1. Traffic Counts, including Average Daily Traffic and existing travel speeds
2. Topographic Survey – vertical profile will be determined from publicly available GIS data

Services to be provided by the City: The City shall furnish the following services and/or data that is necessary for the development and completion of this project.

1. Existing traffic count data, including travel speeds

Schedule:

- | | |
|---|--|
| 1. Project Kick-Off Meeting | 1 week from Notice to Proceed |
| 2. Speed Study/Draft Technical Memorandum | 3 weeks from kick-off meeting or receipt of traffic data |
| 3. Review Meeting with City | 1 week from submittal of Draft Tech Memo |
| 4. Final Technical Memorandum | 1 week from receipt of City comments |

Deliverables:

- Riley Road Speed Study Technical Memorandum
- Plan Set
- Cost Estimate

**ATTACHMENT B
KFA MANPOWER/BUDGET ESTIMATE (DRAFT)
CITY OF ROLLINGWOOD
RILEY ROAD SPEED STUDY**

| Task | Principal Hrs | Senior PM Hrs | PM Hrs | Project Engineer Hrs | Project EIT Hrs | CADD/GIS Technician Hrs | Admin Hrs | Total Hrs | Labor Cost \$ | Expenses \$ | Total Cost \$ |
|--|---------------|---------------|-------------|----------------------|-----------------|-------------------------|-----------|-------------|----------------|------------------------|----------------|
| | \$350.00 | \$250.00 | \$225.00 | \$185.00 | \$125.00 | \$120.00 | \$90.00 | | | | |
| 1 Project Management (2 months) | | | | | | | | 0 | \$0 | \$0 | \$0 |
| Progress Reports and Invoices | | | 1 | | | | 2 | | \$355 | \$0 | \$355 |
| Meetings (2) | 2 | | 2 | | | | | | \$1,050 | \$0 | \$1,050 |
| | | | | | | | | | | Task 1 Subtotal | \$1,405 |
| 2 Speed Study Technical Memorandum | | | | | | | | | | | |
| a Review Existing Speed Data (from City) | | | 2 | | 2 | | | 4 | \$600 | | \$600 |
| b Review existing profile | | | 2 | | 4 | 4 | | 10 | \$1,330 | \$0 | \$1,330 |
| c Draft Technical Memorandum | | 1 | 2 | 2 | | | | 5 | \$880 | \$0 | \$880 |
| | | | | | | | | | | Task 2 Subtotal | \$2,810 |
| 3 Plan Set | | | | | | | | | | | |
| i. Cover Sheet | | | 0.5 | | 1 | | | 1.5 | \$213 | \$0 | \$213 |
| ii. Plan Sheet | | | 2 | | 4 | 2 | | 8 | \$1,090 | \$0 | \$1,090 |
| iii. Detail Sheet | | | 1 | | 2 | 2 | | 5 | \$665 | \$0 | \$665 |
| | | | | | | | | | | Task 3 Subtotal | \$1,968 |
| 4 Engineers Opinion of Probable Constructon Cost | | | | | | | | | | | |
| a Cost Estimate | | | 1 | 1 | 2 | | | | \$565 | \$0 | \$565 |
| | | | | | | | | | | Task 4 Subtotal | \$2,533 |
| Total | 2 | 1 | 13.5 | 3 | 15 | 8 | 2 | 33.5 | \$6,748 | \$0 | \$8,715 |