

**PROFESSIONAL SERVICES AGREEMENT
FOR
DESIGN SERVICES RELATED TO THE
TOMBALL ALLEY AMENITIES PROJECT**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT made on the _____ day of _____, 2023 entered into, and executed by and between the Tomball Economic Development Corporation, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 48, now Chapter 505 of the Texas Local Government Code, located in Harris County, Texas (the "TEDC"), and Kimley-Horn and Associates, Inc. ("Consultant").

WITNESSETH:

WHEREAS, the TEDC is committed to partnering with the City of Tomball on targeted infrastructure improvements including alleyway enhancements that improve Old Town's tourism readiness and visitor experience (the "Project"); and

WHEREAS, the services of a professional design consultant are necessary for final design of alleyway enhancements and entryway features; and

WHEREAS, the Consultant represents that it is fully capable and qualified to provide the services herein specified;

NOW, THEREFORE, the TEDC and Consultant, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Consultant agrees to perform certain professional design services as defined in Attachment "A" attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the TEDC agrees to pay Consultant compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Consultant shall do all things necessary to render the design services and perform the Scope of Work in a professional and workmanlike manner. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields

and circumstances in accordance with sound professional practices. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the TEDC, or make representations or commitments on behalf of the TEDC or its officers or employees without the express prior approval of the TEDC. The TEDC shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the TEDC.

SECTION III OWNERSHIP OF WORK PRODUCT

Consultant agrees that the TEDC shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant pursuant to this Agreement. The TEDC shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the TEDC had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

Consultant and the project team are committed to achieving the schedule necessary to meet the Tomball EDC project goals. Consultant will coordinate with the Executive Director and establish a schedule of events to include project task, milestones, and deadlines. Tasks identified can be authorized as a whole or individually as the project progresses at the discretion of the Tomball EDC and their Executive Director.

SECTION V COMPLIANCE AND STANDARDS

Consultant agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Consultant's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Consultant shall and does hereby agree to indemnify, hold harmless and defend the TEDC, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant, the Consultant's

agent, consultant under contract, or another entity over which the Consultant exercises control.

SECTION VII CONSULTANT'S COMPENSATION

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the TEDC shall pay Consultant only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A."

SECTION VIII TERMINATION

The TEDC may terminate this Agreement at any time by giving written notice to Consultant. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Consultant shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The TEDC shall then pay Consultant for such services performed under this Agreement as those services bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the TEDC when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Kimley-Horn and Associates, Inc.
11700 Katy Freeway, Suite 800
Houston, TX 77079
Attn: Jim Patterson

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the TEDC at the following address:

Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Texas 77375
Attn: Kelly Violette, Executive Director

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Consultant has been advised by the TEDC and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the TEDC shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the TEDC and that the total compensation that Consultant may become entitled to hereunder and the total sum that the TEDC shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The TEDC and Consultant bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Consultant shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the TEDC. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the TEDC or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by the TEDC, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope,

extent or character of the portions of the Project designed or specified by the Consultant, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the TEDC.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary of the City of Tomball a Conflict of Interest Questionnaire.

SECTION XV PAYMENT TO CONSULTANT FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services will be prepared in accordance with Consultant's standard invoicing practices and will be submitted to the TEDC by Consultant at least monthly. Invoices are due and payable thirty (30) days after receipt by the TEDC.

SECTION XVI INSURANCE

Consultant shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall be considered to be evidence of performance by Consultant or of the receipt of or acceptance by the TEDC of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the TEDC and Consultant, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Consultant further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to

the United States, or (b) authorized by law to be employed in that manner in the United States.

IN WITNESS WHEREOF, the TEDC of Tomball has lawfully caused this Agreement to be executed by the Board President of TEDC and attested by the Vice President of the TEDC and Kimley-Horn and Associates, Inc., acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 2023.

CONSULTANT:

Kimley-Horn and Associates, Inc.

By: _____

Name: _____

Title: _____

**TOMBALL ECONOMIC
DEVELOPMENT CORPORATION**

President, Board of Directors

ATTEST:

Vice President, Board of Directors