

**MASTER AGREEMENT BETWEEN CLIENT AND  
KIMLEY-HORN AND ASSOCIATES, INC. FOR CONTINUING PROFESSIONAL SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the WYLIE ECONOMIC DEVELOPMENT CORPORATION ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC. ("the Consultant"). This Agreement sets forth the terms whereby Kimley-Horn, or an affiliated company, will provide professional services on one or more projects (with respect to each engagement "the Project"), with the specifics of each engagement to be set forth in an Individual Project Order ("IPO"). If the IPO is executed by an affiliated company of Kimley-Horn, the IPO shall incorporate the terms of this Agreement as if signed by the affiliated company.

(1) Scope of Services and Additional Services. The Consultant will perform only services set forth in IPO's ("the Services"). If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) Client's Responsibilities. In addition to other responsibilities in this Agreement or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the Project and all Client standards of development, design, or construction.

(c) Provide the Consultant all available studies, plans, or other documents pertaining to the Project, such as surveys, engineering data, and environmental information, etc., all of which the Consultant may rely upon.

(d) Provide for access to the project site and other property as required for the Consultant to provide its services.

(e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.

(f) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary.

(g) Obtain any independent accounting, legal, insurance cost estimating, and feasibility services as the Client may require.

(h) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the Consultant's services, or any defect or

nonconformance in any aspect of the Project.

(3) Period of Services. This Agreement and the rates of compensation in IPO's are agreed to in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work on each IPO after receipt of a fully executed copy of the IPO. The times for performance shall be extended as necessary for periods of suspension or delay resulting from circumstances the Consultant does not control. If such suspension or delay extends for more than six months, the rates of compensation shall be renegotiated.

(4) Compensation for Services. The Consultant's compensation shall be computed on the basis set forth herein, unless otherwise stated in the IPO. The Client shall pay the Consultant an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost. If the Consultant's compensation is on an hourly labor fee basis, estimated fees and expenses may be set forth in the IPO in question. Services undertaken or expenses incurred by the Consultant exceeding any estimates set forth in the IPO shall be the liability of the Client.

(5) Method of Payment.

(a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25<sup>th</sup> day. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full.

(b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.

(c) If the Client objects to any charge on an invoice, it shall so advise the Consultant in writing giving its reasons within fourteen (14) days of receipt of the invoice or all such objections shall be waived and the amount stated in the invoice shall conclusively be deemed due and owing. If the Client objects on only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.

(d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal billing rates, of the time devoted to such proceedings by its employees.

(e) The Client agrees that payment to the Consultant is not subject to any contingency. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing the right of the Consultant to collect additional amounts from the Client.

(6) Use of Documents. All documents, data, and programs prepared by the Consultant are related exclusively to the services described in the IPO and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of the Project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in the IPO. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(7) Opinions of 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 the costs of construction and materials, are made solely based on its judgment a professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator to make such determination. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services by the Client.

(8) Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof or upon thirty days' written notice for the convenience of the terminating party. The Consultant will be paid for all services rendered to the effective date of termination, all expenses subject to reimbursement, and other reasonable expenses incurred by the Consultant as a result of such termination.

(9) Standard of Care. The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the

same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) LIMITATION OF LIABILITY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE CONSULTANT, THE RISKS HAVE BEEN ALLOCATED SUCH THAT TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THE TOTAL LIABILITY, IN THE AGGREGATE OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THE CONSULTANT'S SUBCONSULTANTS, AND ANY OF THEM, TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, THE CONSULTANT'S SUBCONSULTANTS OR ANY OF THEM, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THE IPO IN QUESTION OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 10 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 10 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(11) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or lost profits.

(12) Construction Costs. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions, or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(13) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual

knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(14) Dispute Resolution. All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action must be commenced within two years of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(15) Hazardous Substances. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(16) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(17) No Third-Party Beneficiaries; Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. The Client shall not assign, sublet or transfer any rights under or interest in this Agreement or any claim

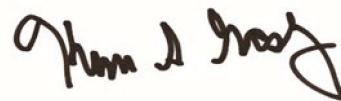
arising out of the performance of services by the Consultant without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, it will maintain the agreed-upon billing rates for services identified in this Agreement or the IPO, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(18) Confidentiality. The Client hereby consents to the use and dissemination by the Consultant of photographs of the Project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. Notwithstanding the foregoing, with respect to any facts, data or information specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of such identified material.

(19) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement and each executed IPO contain the entire and fully integrated agreement between the parties, and supersede all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 4, this Agreement can be supplemented or amended only by a document executed by both the Consultant and the Client. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

The parties have made and executed this Agreement as of the day and year first above written.

WYLIE ECONOMIC DEVELOPMENT CORPORATION    KIMLEY-HORN AND ASSOCIATES, INC.



SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

PRINTED NAME: Kevin Gaskey, P.E.

TITLE: \_\_\_\_\_

TITLE: Senior Vice President

## Request for Information

### Client Identification

Full, Legal Name of Client						
Mailing Address for Invoices						
Federal ID Number						
Contact for Billing Inquiries						
Contact's Phone and e-mail						
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner	<input type="checkbox"/>

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