

November 2, 2021

Cody Mayberry
Director of Community Services
1100 Bear Creek Parkway
Keller, TX, 76248

Re: Professional Services Agreement for
Bates Park Improvements

Dear Cody Mayberry:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Keller (“Client” or “City”) for providing professional services. Our project understanding, scope of services, schedule, and fee are below.

Project Understanding

The project is located on Bates Park. The project will consist of public engagement activities, conceptual design, developing construction drawings and specifications, and bidding and construction phase services. Public engagement will include meetings with the Parks Board, the community, and City Council as defined in the scope of services.

Kimley-Horn’s undertaking to provide services extends only to those services specifically described in the Scope of Services. All tasks are considered lump sum unless otherwise noted. Additional information is provided under the Fee and Expenses section of this scope.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1: Project Management and Agency Coordination

1.1. *Status Report and Invoicing* – Kimley-Horn will provide status reports outlining what has been completed, what the goals are for the following month, and what information is needed from the City. The status report will be updated and distributed to the project manager with the monthly invoice. Kimley-Horn will also provide schedule updates as needed.

Monthly deliverables include invoices and progress reports.

1.2. *Franchise Utility Coordination* – Kimley-Horn will coordinate with the franchise utility companies to notify them of construction activities and to obtain electrical/gas meter connections per the design. Up to 20 hours of coordination will be provided. No meetings are anticipated.

1.3. *Kick-Off Meeting with City Staff* – Prepare for and attend a kick-off meeting with the City to discuss the findings of the data collection. This meeting will be in-person.

1.4. *Design Coordination Meetings* – Kimley-Horn will conduct and document coordination meetings with the project team and any additional City department members. This task

includes up to three (3) virtual design coordination meetings. These meetings are intended for the discussion of the design of Bates park. Design meetings with the Parks Board are included under Task 2.

Task 2: Parks Board, City Council, Development Review Committee, and Community Meetings

The meetings listed below are design coordination meetings with the Parks Board, City Council, and the Community. Any additional meetings beyond what is noted under Task 2 will be considered additional services.

2.1. Parks Board and Community Joint Meetings

The meetings listed below are joint meetings with the Parks Board and the Community to obtain feedback on site amenities in Bates Park.

2.1.1. Conceptual Design Review and Town Hall Discussion – Kimley-Horn and City Staff will present the design as developed during the Old Town Keller (OTK) PH II Planning Project in 2018 to the Community and the Parks Board. During the presentation, existing site constraints and features as well as recommended site amenities will be presented and discussed. The public and the Parks Board will be able to provide feedback which will be used to prepare an updated conceptual layout.

- This meeting is anticipated to occur in December 2021.

2.1.2. Updated Concept Review and Town Hall Discussion – Kimley-Horn and City Staff will present the updated design prepared as part of Task 4. The updates will be based on feedback provided during Task 2.1.1. During the presentation, the updated park design will be presented and the individual recommended site amenities will be discussed. The public and Parks Board will be able to provide feedback which will be incorporated into the 60% Design Submittal.

- This meeting is anticipated to occur in January 2022.

2.2. City Council Meetings

Kimley-Horn will prepare for and attend up to two (2) meetings with City Council. The purpose of both meetings will be to present the design progress to City Council.

- Preliminary Progress Meeting – The focus of this meeting will be to present the preliminary design plan to City Council. This meeting will be conducted after Task 5.1 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.
- Final Plan Design Progress Meeting – The focus of this meeting will be to present the final plan to City Council. This meeting will be conducted after Task 5.2 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.

2.3. *Parks Board Only Meeting*

- Final Plan Design Progress Meeting – The focus of this meeting will be to present the 60% design to the Parks Board. This meeting will be conducted after 60% design is complete and the submittal has been provided to the City. The intent of this meeting is to provide any updates to the park design, discuss key park features, and provide an update on cost. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address Parks Board comments.

2.4. *Development Review Committee Meetings*

Kimley-Horn will prepare for and attend up to two (2) meetings with the Development Review Committee. The purpose of both meetings will be to present the design progress to City Council.

- Conceptual Plan Review Meeting – The focus of this meeting will be to present the conceptual design prepared as part of Task 4 to the Development Review Committee. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.
 - This meeting will be held virtually.
- Preliminary Progress Meeting – The focus of this meeting will be to present the preliminary design plan to the Development Review Committee. This meeting will be conducted after Task 5.1 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.
 - This meeting will be held virtually.

Task 3: Data Collection and Analysis

3.1. *Data Research* – Kimley-Horn will utilize the following data as well as topographic survey collected as part of this task to develop base files. These base files will be utilized during design to analyze existing constraints and issues for the development of the conceptual and final design.

- *Previously Collected Data* – Kimley-Horn will combine survey collected as part of Task 3.2 with the topographic and boundary survey information collected as part of previous projects within OTK.
- *Field Observation* – Kimley-Horn will conduct up to one (1) site visit to visually document the existing conditions of the site.

3.2. *Topographic Survey* – Kimley-Horn will prepare a topographic survey to be used for civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.

- Bates Park Limits: Obtain survey within the limits of Bates Park as well as portions of adjacent property to allow for tie-ins and the evaluation of potential pedestrian alignments.

3.3. *Geotechnical Analysis* – Kimley-Horn will, via a subconsultant, obtain borings and perform geotechnical engineering services to provide the following information:

- general soil and ground-water conditions;
- recommendations for foundation type, depth, and available loading for park amenities, including the use of a monolithic slab on-grade;
- foundation construction requirements;
- recommendations for slab support, including an evaluation of the swell characteristics of the subgrade soils; and
- earthwork recommendations.

Task 4: Conceptual Design

4.1. *Updated Concept Plan Rendering* – After the joint Parks Board and Community meeting (Task 2.1.1) has been conducted, Kimley-Horn will update the horizontal park layout and rendering. Any custom perspective renderings of features within the park will be performed as part of Task 6 and will be included on the Updated Concept Plan Rendering.

- The updated plan rendering will be used during the joint Parks Board and Community meeting as part of Task 2.1.2. Any updates to the plan rendering after Task 4 and Task 2.1 are complete will be performed as part of the 60% or 90% design stages.

Task 5: Bates Park Basic Final Design Services

5.1. *Preliminary (60%) Design Submittal*

Following approval of the preferred concept plan, Kimley-Horn will prepare the preliminary (60%) design submittal. Design drawings for the park will consist of:

- Cover and index sheet
- Project control plan
 - Benchmark information including coordinate data and elevations
- Existing site features and removal items
- Site layout plan and details:
 - Kimley-Horn will provide a site layout plan that will include locations for the following features:
 - Pavilion
 - Arbor structure
 - 10' walking path
 - Natural playscape features
 - Open space play area
 - Decomposed granite seating area with string lights
 - Yard game play area
 - Locations for future park features including:

- OTK Wayfinding Map – This is intended to be a wayfinding sign/monument showing the map of OTK with businesses and a “you are here” location marker.
 - Park Rules – Sign structure for the display of park rules (standard park rules and safety language to be provided by the City)
 - Custom details and product information will be provided.
- Site grading plan
 - To include contours shown at 1’ intervals.
- Site furnishing layout
 - Kimley-Horn will coordinate with City Staff to select benches, picnic tables, and other park furniture.
 - Plan layout will consist of: site furniture locations such as tree benches, picnic tables, and walking path benches.
- Custom details

Details will be created for the following park amenities. Structural details (if necessary) will be created as part of the 90% submittal.

 - Natural playscape features
 - Yard game play area
 - Arbor structure
 - Entry gateway feature – One entry sign will be placed either on the north side where the proposed pedestrian walkway connects or along Bates Street.
- Hardscape plan and details
 - Horizontal layout of proposed pavement surfaces.
 - Pattern and color information for colored and textured concrete pavement surfaces.
 - Pavement details for decomposed granite and yard game play area.
- Landscape Plan and Details
 - To include: general notes, location, quantity, and size of City approved plant species, and construction details.
- Illumination and Electrical Plan
 - Park Lighting Selection - Kimley-Horn will work with the City to select pedestrian scale lighting for the park.
 - String Lights – Kimley-Horn will utilize the same string lighting system for Bates Street within the Park. The string lights are anticipated to be above the picnic area.
 - Photometric Analysis – Kimley-Horn will provide a photometric analysis for pedestrian lighting within Bates Park based on the pedestrian scale lights selected.
 - Electrical Connections – Kimley-Horn will coordinate with the City regarding electrical outlet locations and voltage requirements. Electrical outlets within the park will be standard 120V outlets used for decorations. It is anticipated that 30A/50A electrical outlets will be provided near the pavilion.
 - Design plans will consist of preliminary layout of illumination and electrical items such as lights, outlets, and power source. Final locations of ground boxes and conduit will be provided with the 90% submittal

- Kimley-Horn will coordinate with Oncor as part of Task 1.
- The following services are considered additional services: photometric analysis outside of Bates Park and 3D renderings.
- Utility plan and details
 - The utility plan will consist of design for water services for water line/service extensions, up to one (1) irrigation service and three (3) drinking fountains.
 - Sanitary sewer service and underground storm drainage systems are not included as part of the scope.
- Erosion control and tree protection plan and details.
- Site mobilization and pavement protection plan and details – This will be prepared to protect the newly constructed Bates Street sidewalk and roadway pavement.
- Kimley-Horn will prepare an OPCC to be submitted with the Preliminary (60%) Design Submittal.

Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known at this time and represent only Kimley-Horn's judgement as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

5.2. *Final (90%) Design Submittal*

Following the review of the preliminary (60%) design submittal, Kimley-Horn will respond to one (1) round of comments and will provide a comment response letter with the final (90%) design submittal. The submittal of the preliminary comments by the City is an assumed notice to proceed with final design. The final (90%) design submittal will consist of all the plan sheets prepared as part of the preliminary (60%) plan sheets as well as the following:

- Grading plan
 - To include contours shown at 1' intervals, slopes, and spot elevations as well as location information such as dimensions, stations, and coordinate data as applicable for site features.
- Structural details
 - Kimley-Horn will prepare structural details for the arbor structure, pavilion, and proposed monument sign. Any additional structural design will be provided as an Additional Service. The following sheets will be included:
 - Arbor structure foundation and framing details
 - Entry Gateway Feature foundation and anchorage details
 - Stage structure and pavilion foundation details
 - Structural framing details for the pavilion
- Illumination and Electrical Plan
 - Design plans will consist of layout plan sheets and details for the pedestrian lighting fixtures, pavilion sound and stage outlets(30A and 50A), pavilion and arbor lights,

- string lighting, tree outlets (up to 4), park electrical outlets (up to 6), and power to irrigation controllers.
 - Details to include: conduit layout, pull box layout, cable feeds to the different circuits, voltage drop calculations, and pedestal service size requirements.
- Irrigation plan and details
 - The irrigation plan will be prepared in accordance with current published City and Texas Commission on Environmental Quality (TCEQ) standards. In addition, the irrigation plan will be prepared based on the landscape plan prepared as part of the preliminary (60%) submittal. Kimley-Horn has excluded design for water line extensions for irrigation service, and design of booster pumps.
- Project manual:
 - Kimley-Horn will develop a project manual utilizing the City’s standard front-end documents (contract forms and contract conditions) and technical specifications applicable to the project.
- Kimley-Horn will prepare an OPCC to be submitted with the Final (90%) Design Submittal.

5.3. *Bid Package Submittal*

- Following the review of the final design submittal, Kimley-Horn will respond to one (1) round of comments and will provide a comment response letter with the bid package submittal. The submittal of the final design comments by the City is an assumed notice to proceed with preparing the signed and sealed plans and project manual (bid package).

Task 6: Perspective Renderings (Hourly)

- Kimley-Horn will prepare up to 10 perspective renderings for evaluation by City Staff, Parks Board, and City Council. These graphic renderings exclude the surrounding context of Bates Park. Custom details will be prepared as part of the 60% and 90% submittals.
 - Entry Gateway Features –
 - Gateway Feature locations will be on the north side of the park where the proposed pedestrian walkway connects as well as adjacent to Bates Street.
 - Gateway Features will be developed to match the same style as the roadway gateway features developed as part of the Bates Street project (OTK PH II Step 1).
 - Arbor Structure
 - Pavilion and Stage
 - Splash Pad
 - Playground

Task 7: Bates Park Bidding and Construction Phase Services (Hourly)

Kimley-Horn will provide support for the bidding and construction of Bates Park. The bidding and construction phase services are based on a 4-month construction schedule.

7.1. Bidding Support

- 7.1.1. Pre-Bid Meeting: Kimley-Horn attend the pre-bid meeting.
- 7.1.2. Bid Tabulations: Kimley-Horn will tabulate the bids received and evaluate compliance of bids with the bidding documents. Kimley-Horn will prepare a written summary of this tabulation and evaluation and will provide a recommendation of award of contract.
- 7.1.3. Requests for Information: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information during bidding in the form of an addenda. Requests for information will be received and responded to until an agreed upon date prior to the established bid opening date. The addenda will be issued to all registered plan holders.
- 7.1.4. Bid Opening: Attend the bid opening
- 7.1.5. Addenda: Incorporate all addenda into the contract documents and issue conformed sets.

Task Duration:

1. Kimley-Horn will perform bidding services for up to twenty-five (25) hours. Any additional time spent performing bid phase services will be considered additional services.

7.2. Construction Phase Services

- 7.2.1. Pre-Construction Conference: Kimley-Horn will conduct a Pre-Construction Conference prior to commencement of construction activity.
- 7.2.2. Schedule: Kimley-Horn will perform a review of Contractor's Construction schedule. An initial schedule will be reviewed for schedule health and for consistency with project phasing and contract time limits. Comments will be provided to the Contractor and the City.
 - This task includes:
 - Up to four (4) progress schedule reviews to coincide with monthly schedule updates and review of the Contractor's invoice.
- 7.2.3. Applications for Payment: Based on its observations and on review of applications for payment and supporting documentation, Kimley-Horn will determine amounts that Kimley-Horn recommends Contractor be paid. Such recommendations will be based on Kimley-Horn's knowledge, information and belief, and will state whether in Kimley-Horn's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. For unit price work, Kimley-Horn's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. Kimley-Horn's recommendations will not be a representation that its observations to check

Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

- This task includes:
 - Up to four (4) invoice reviews to coincide with monthly schedule updates and review of the Contractor's schedule.

7.2.4. Visits to Site and Observation of Construction: Kimley-Horn will make visits as directed by the City in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep the City informed of the general progress of the work.

Kimley-Horn will not supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Kimley-Horn does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

- This task includes:
 - Kimley-Horn will perform bi-weekly site visits throughout the 4-month construction schedule. This will include up to eight (8) site visits.
 - Each site visit will be up to 2 hours. During the site visits, Kimley-Horn will discuss the Contractor's progress, coordinate with franchise utility owners, and coordinate with adjacent property owners as needed.

7.2.5. Recommendations with Respect to Defective Work: Kimley-Horn will recommend to the City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, Kimley-Horn believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

7.2.6. Clarifications and Interpretations: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by the City.

7.2.7. Shop Drawings and Samples: Kimley-Horn will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.

- 7.2.8. Substitutes and "or-equal": Kimley-Horn will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- 7.2.9. Disagreements Between the City and Contractor: Kimley-Horn will, if requested by the City, render written decision on all claims of the City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Kimley-Horn shall be fair and not show partiality to the City or Contractor and shall not be liable in connection with any decision rendered in good faith.
- 7.2.10. Substantial Completion: Consultant will, after notice from Contractor that it considers the Work ready for its intended use, in company with the inspector, Client and Contractor, conduct and document a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.
 - This task includes:
 - Up to one (1) substantial completion walkthrough with the inspector, Client, and Contractor.
 - Document remaining punch-list items.
- 7.2.11. Final Notice of Acceptability of the Work: Kimley-Horn will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Kimley-Horn may recommend final payment to Contractor. Accompanying the recommendation for final payment, Kimley-Horn shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Kimley-Horn's knowledge, information, and belief based on the extent of its services and based upon information provided to Kimley-Horn.
 - This task includes:
 - Up to one (1) final walkthrough with the inspector, Client, and Contractor.
 - Document any outstanding punch-list items from the substantial completion walkthrough.
 - Provide a recommendation to the Client for final payment and that the Work is complete and is generally in accordance with the Contract Documents.
- 7.2.12. Record Drawings: Kimley-Horn will revise plan sheets to show those changes during the construction process reported by the Contractor to Kimley-Horn and considered to be significant.

Task Duration:

1. Kimley-Horn will perform construction phase services for up to four (4) months of construction. During those four (4) months, Kimley-Horn will perform construction phase services for up to one-hundred ten (110) hours.
2. Any additional time spent performing construction phase services will be considered additional services.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional renderings
- Additional meetings with the City, public, parks board, and/or city council
- Design of the pedestrian walkway
- Final design of a splash pad or playground
- Right-of-way or easement acquisition
- Additional survey
- Design iterations beyond what is included in the design.
- Pedestrian and vehicle wayfinding signs other than locations specified within the park.
- Services related to warranty claims, enforcement and inspection after final completion;
- Assist the City as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City's acceptance of substitutions proposed by the contractor; and
- Any services not listed above.

Schedule

Tasks 1 – 7 will be completed based on a mutually agreed upon schedule. Additional services, if desired, will be performed within a mutually agreed upon schedule, once authorized by the Client in writing.

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

Fee and Expenses

Lump Sum Tasks:

Kimley-Horn will perform the services in Tasks 1 through 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 Client.

Task 1: Project Management and Agency Coordination	\$	8,210
Task 2: Parks Board Meetings, City Council, and Community Engagement	\$	23,310
Task 3: Data Collection and Analysis	\$	9,130
Task 4: Conceptual Design	\$	6,860
Task 5: Bates Park Final Design Services	\$	97,090
Total Lump Sum Fee	\$	144,600

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Hourly Not to Exceed

Kimley-Horn will perform the services in Tasks 6 and 7 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 6: Perspective Renderings	\$	35,000
Task 7: Bates Park Bidding and Construction Phase Services	\$	20,180
Maximum Labor Fee	\$	55,180

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn 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. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Keller.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute one copy of this Agreement in the spaces provided below, retain the executed copy, and provide an electronic copy to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Katherine Utecht, PLA (TX, OK), LI (TX)
Project Manager



Scott R. Arnold, P.E.
Vice President

THE CITY OF KELLER

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

Attachment – Rate Schedule
Attachment – Standard Provisions

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Analyst	\$120 - \$200
Professional	\$180 - \$230
Senior Professional I	\$220 - \$285
Senior Professional II	\$265 - \$300
Senior Technical Support	\$145 - \$210
Support Staff	\$90 - \$130
Technical Support	\$90 - \$135

Effective through June 30, 2022

Subject to periodic adjustment thereafter

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. 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 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 herein 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 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, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the 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 from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (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 by the Consultant 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 25th day. If the Client fails to make any payment due 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.
- (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 an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- (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 hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. 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 any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, 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 this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any 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 this Agreement. 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.

(6) **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 to the costs of construction and materials, are made solely based on its judgment as a 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. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven 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 shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **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.

(9) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE 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, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS 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 CAUSES, 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, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(10) **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 loss of profits.

(11) **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.

(12) **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.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client 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.

(14) **Hazardous Substances and Conditions.** 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.

(15) 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 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.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by 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, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client 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. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. 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.