



February 21, 2019

Chad Bartee
City Engineer
City of Keller
1100 Bear Creek Pkwy
Keller, Texas 76248

Re: Professional Services Agreement for
Bear Creek Parkway at Elm Street/Whitley Road Roundabout

Dear Chad Bartee:

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

Project Understanding

The project will consist of developing construction plans and specifications for the reconstruction of the existing intersection at Bear Creek Parkway and Elm Street/Whitley Road into a single lane roundabout. The project will also include extending the sidewalk along the south side of Bear Creek Parkway from US 377 to the proposed roundabout. Kimley-Horn will design the paving, drainage, illumination, signing, pavement markings, basic utility adjustments, and basic traffic control for the proposed roundabout and sidewalk extension. Kimley-Horn's undertaking to provide services extends only to those services specifically described in the Scope of Services.

The project will include the following tasks:

- Task 1 – Project Management
- Task 2 – TxDOT and Franchise Utility Coordination
- Task 3 – Public Meetings
- Task 4 – Data Collection
- Task 5 – ROW Documentation (Hourly)
- Task 6 – Third Party Roundabout Review
- Task 7 – Traffic Analysis
- Task 8 – Final Design Submittal (90% and Bid Package)
- Task 9 – Bidding and Construction Phase Services
- Task 10 – Construction and Materials Testing (Hourly)

Scope of Services

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

Task 1: Project Management

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

- 1.2. *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.
- 1.3. *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) design coordination meetings. It is anticipated that there will be one per design submittal (90% and bid package) and one additional to prepare for the public meeting.

Task Duration:

1. Kimley-Horn will perform project management for a up to a six (6) month duration. Project management will be considered additional services if the design portion of the project (Tasks 1 through 8) lasts longer than six (6) months.

Task 2: TxDOT, and Franchise Utility Coordination

The meetings listed below are design coordination meetings with the City, Franchise Utility Providers, and TxDOT. These are in addition to meetings listed under Task 3: Community and City Council Engagement. Any additional meetings beyond what is noted under Task 2 and 3 will be considered additional services.

2.1. *TxDOT Coordination*

- Kimley-Horn will coordinate with TxDOT to discuss the coordination of the traffic signal at Bear Creek Parkway and US 377 with the proposed roundabout at Bear Creek Parkway and Whitley Road/Elm Street. Up to twenty-five (25) hours will be spent coordinating with TxDOT. Any additional time spent beyond the allotted twenty-five (25) hours will be considered an additional service.

2.2. *Franchise Utility Coordination:* Kimley-Horn will coordinate with Atmos, Frontier/Verizon, and Oncor regarding the proposed design improvements developed as part of this project.

- Coordination – Kimley-Horn will coordinate with the franchise utility companies to discuss relocation locations. Up to twenty (20) hours will be spent on franchise utility coordination. Any additional time spent beyond the allotted twenty (20) hours will be considered additional services.

Task 3: Public Meetings

- 3.1. *Property Owner Meetings* – Kimley-Horn will prepare for and attend up to two (2) property owner meetings.
- 3.2. *Public Meeting* – Kimley-Horn will prepare materials, attend, and document as needed for up to two (2) community meetings. The City will be responsible for selecting and scheduling the meeting location and distributing notifications to the public either through mailers, social media, or email.
 - 3.2.1. Home Owner's Association (HOA) Meeting – Kimley-Horn will prepare for an attend up to one (1) HOA meeting. The HOA meeting be a combined HOA meeting for the Westpark and Riverdance neighborhoods. The intent of this meeting will be to present the roundabout geometry, discuss project schedule, and answer questions. Kimley-Horn will prepare a PowerPoint presentation, an exhibit of the project, comment cards, and a sign-in sheet for use during the meeting. Two staff members from Kimley-Horn will be present as well as a representative from MSA/Ourston.

- 3.2.2. Neighborhood Pre-Construction Meeting – The focus of the meeting will be to present the final design, traffic control plan, and anticipated construction schedule for the roundabout. Kimley-Horn will prepare a PowerPoint presentation, an exhibit of the project, comment cards, and a sign-in sheet for use during the meeting. Two staff members from Kimley-Horn will be present. MSA/Ourston will not attend this meeting.

Task 4: Data Collection and Analysis

- 4.1. *Data Research* – Kimley-Horn will collect data to develop a base map, this information will be utilized to analyze existing constraints and issues for the development of the conceptual design.
- Aerial Photography – Kimley-Horn will collect aerial photography for the project corridor from NearMaps and/or available aerial photos from the City.
 - LIDAR – Kimley-Horn will gather LIDAR data (1' contour information) available from USGS.
 - Available Record Drawings and Development Plans – Kimley-Horn will collect from the City any available record drawings (roadway, drainage, water, sewer, etc.) within the project limits and any proposed development plans.
 - Existing and Proposed Utility Information – Kimley-Horn will collect from the City existing and proposed water, storm, and sewer utility information for project limits.
 - Franchise Utility Information – Kimley-Horn will contact utility company providers to obtain maps of existing and/or proposed facilities.
 - Field Observation – Kimley-Horn will conduct site visit to visually document the existing conditions of the site.
- 4.2. *Topographic and Boundary Survey* – Kimley-Horn will prepare a topographic survey and right-of-way determination 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.
- The limits of the survey for the sidewalk extension from US 377 to the roundabout will be from the back of the southern curb to the edge of the southern right-of-way for the roadway limits shown below:
 - US 377 to 500 feet west of the Bear Creek Parkway and Elm Street/Whitley Road intersection.
 - The limits of survey for the roundabout will be right-of-way to right-of-way plus up to an additional 50 feet based on proposed grading tie in limits for the roadway limits listed below:
 - Bear Creek Parkway:
 - Western Limits: 500 feet west of the Bear Creek Parkway and Elm Street/Whitley Road intersection
 - Eastern Limits: 500 feet east of the intersection
 - Elm Street/Whitley Road
 - Northern Limits: South end of Bear Creek culvert
 - Southern Limits: 600 feet south of the intersection
 - The survey will consist of: the location of the right-of-way lines and adjoining property lines with existing easements readily available in the public record (this does not include an abstract of title); improvements and elevations; contour lines representing the surface

of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, franchised utility facility appurtenances, trees, shrubs, and flowerbeds; and benchmarks established with the survey.

- 4.3. *Subsurface Utility Exploration* – Kimley-Horn will, via a sub-consultant, expose certain utilities using SUE methods and collect survey data on their exposed location. This information will be used during civil engineering design. SUE quality level B is described as follows:
- Quality Level B. QL-B involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits. This activity is called "designating". The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
 - The limits of Level B SUE will be the same as the topographic survey limits listed above. SUE fee is based on 10 underground utilities in the area. If there are additional utility lines, additional fee may be needed which will be considered additional services.

Task 5: Right-of-Way Documentation (Hourly)

- 5.1. *Right-of-Way Documentation* – Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for proposed easements and or right-of-way dedications. Right-of-way dedication and or easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to Kimley-Horn. The City will file the documents.

Kimley-Horn will prepare up to two (2) right-of-way documents and one (1) easement document for the City.

- 5.2. *Right-of-Way Negotiations* – Kimley-Horn will, via a subconsultant, obtain appraisals and perform negotiations including the following services:
- Introduction letter – The letter will be distributed to property owners while the appraisals are being developed. The letter will provide the property owner with an understanding of the project and the contact name and information of the negotiations subconsultant.
 - Offer Letter – The offer letter will be distributed with a copy of the appraisal report.
 - Communications with the property owner and/or designated representative.
 - Meeting with the property owners up to 3 times.
 - Final Offer Letter – Will be distributed to the property owners.
 - Documented File – This will document the negotiations with the property owners with completed negotiations or for use during condemnation. This file will be delivered to the City.

Services will be performed for up to 3 property owners. Condemnation proceedings will be considered additional services.

Task 6: Third Party Roundabout Review

- 6.1. *Third Party Roundabout Review* – Kimley-Horn will retain MSA/Ourston as a subconsultant to perform third party review of the horizontal and vertical design of the roundabout. MSA/Ourston will perform up to two (2) reviews of the roundabout.
- The first review will be after the conceptual layout is updated based on the topographic survey obtained.
 - The second review will occur prior to the 90% design submittal at roughly 60% design.

- MSA will also attend up to one (1) public meeting. It is anticipated that this meeting will be the HOA Meeting Task 3.2.1.

Task 7: Traffic Analysis

- 7.1. *Traffic Analysis* – Kimley-Horn will perform a traffic analysis to evaluate how the existing signal queuing at US 377/Main Street and Bear Creek Parkway interacts with the traffic operations at the proposed roundabout at Bear Creek Parkway and Elm Street/Whitley Road. It is anticipated that no additional signal re-timing will be required. Any signal modifications or re-timing will be considered additional services.

Task 8: Final Design Submittals (90% and Bid Package)

It is understood that Kimley-Horn has already developed the horizontal geometry as part of the Old Town Keller PH II Implementation Plan project adopted in December 2018. Per City direction, Kimley-Horn will not re-submit the conceptual layout or develop a preliminary 60% plan set. Kimley-Horn will revise the horizontal geometry, develop a central island landscape exhibit, and prepare a final (90%) and bid package submittal per the following sub-tasks:

- 8.1. *Horizontal Revisions* – Kimley-Horn will revise the horizontal geometry of the roundabout up to one (1) time per topographic survey, property owner meetings, and per MSA/Ourston review (see Task 6) prior to beginning final design. If revisions to the horizontal layout are needed after final design has started, any revisions to the final plan set will be considered additional services.
- 8.2. *Central Island Landscape Exhibit* – Kimley-Horn will develop a conceptual exhibit including the roundabout horizontal geometry and the proposed central island plantings and layout.
- 8.3. *Final Design (90% Design)*

Following any horizontal updates completed under Task 8.1, Kimley-Horn will develop a final (90%) design submittal which will include the following plan sheets:

- Cover Sheet
- Sheet Index
- General Notes
- Quantity Summary Sheet
- Project Control Plan and Right-of-Way Strip Map –
 - Alignment information including coordinate data for all horizontal alignment P.C.'s, P.T.'s, P.I.'s.
 - Bearings given on all proposed centerlines, or baselines.
 - Station equations relating utilities to paving, when appropriate.
 - Property owner information, existing right-of-way and easements, and proposed right-of-way and easements.
- Removal Plan Sheets
- Roundabout Paving Plan Layout
 - Horizontal geometry for proposed horizontal alignments, city and franchise utilities, curbs, sidewalks, street lights, and driveways. As well as horizontal geometry for existing right-of-way lines, easements, pavement, curbs, utility poles, mailboxes (within right-of-way), water meters, fire hydrants, and trees (within right-of-way).
- Roundabout Profiles

- Station and elevation data of all vertical profile P.C.'s, P.T.'s, P.I.'s, low points, and high points; lengths of vertical curves, grades, K values, e, and vertical clearances where required.
- Roundabout Grading Plan
 - To include contours shown at 1' intervals as well as station, coordinate data, and elevations for all horizontal alignment P.C.'s, P.T.'s, P.I.'s;
- Roundabout, Hardscape, and Paving Details - to include curbs, curb expansion joints, driveways, sidewalks, pavement details, truck apron, central island, and median paving details.
- Storm Drain
 - Proposed Drainage Area Maps (DAM) – The existing DAM developed with the Old Town Keller PH II Preliminary Drainage Report will be reviewed, updated per the topographic survey, and included in the preliminary plan submittal. The proposed DAM will be reviewed and updated per the vertical and storm drain design developed under Tasks 5, 7, and 8.
 - Runoff, inlet, and hydraulic grade line calculations
 - Storm drain layout sheets showing location and size of all inlets, manholes, junction boxes, and piping to include storm drain profiles showing existing and proposed flow lines, flows, lengths and slopes of pipe, top of ground profile over pipe and connections to existing or proposed storm sewer systems.
- Existing Utility Adjustment Plan
 - Horizontal locations and vertical elevation adjustments for existing City utilities that are not going to be relocated during the water and sewer utility replacements. This will include surface adjustments for storm, water, and sanitary sewer utility lid adjustments from existing grade to proposed grade.
- Proposed City Sanitary Sewer Line Replacement
 - To include sewer plan and profile layouts for the replacement of the existing VCT sewer line from the manhole nearest Bear Creek to the manhole on the northeast corner of the intersection.
- Pavement Marking and Signing Plan
- Illumination Plan
- Traffic and Erosion Control Plan Sheets – This will include the sequence of construction, typical sections, and plan sheets that outline construction traffic control devices, signage, pavement markings, and erosion controls.

Kimley-Horn will prepare traffic control for up to two (2) phases of construction. It is assumed the roundabout will be built in halves. Half the road, including access, will be closed for each phase. If any additional phases are required, or if the assumption of closing half the roadway for each phase during construction is incorrect, the extra design effort necessary to design additional traffic control phases will be considered additional services.
- Central Island Landscape and Irrigation Plan – Kimley-Horn will develop plans for the landscape and irrigation for the central island based on the central island landscape template developed by Dunaway for the Johnson Road roundabout. Any modifications to the template will be considered additional services. Any design of landscaping outside of the central island will be considered additional services.

- Standard City and TxDOT Details – Kimley-Horn will include in the plan set City and/or TxDOT details applicable to the project.
- Opinion of Probable Construction Costs (OPCC): Kimley-Horn will prepare an OPCC to be submitted with the Final (90%) 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 judgment 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.

Deliverables:

1. 3 Sets of 11X17 size hard copy plans and a compiled 22X34 PDF Plan Set
2. Opinion of Probable Construction Costs

8.4. Bid Package Submittal

Following the review of the Final Design Submittal, the City will provide Kimley-Horn with comments and will authorize moving forward with preparing the Bid Package Submittal. The Bid Package will be the final signed and sealed plan set that will be used during the bidding process. Kimley-Horn will address the City's comments, develop a project manual, sign and seal the plans, and prepare a final OPCC. The following tasks will be performed to prepare the Bid Package Submittal:

- Opinion of Probable Construction Cost (OPCC) – Kimley-Horn will submit a project manual and an OPCC with the 90% submittal for review by the City.
- Project Manual – Kimley-Horn will develop a project manual utilizing the City's standard bidding documents and technical specifications applicable to the project.

Deliverables (To be Provided with the 90% plan submittal and the bid package):

3. 3 sets of 11X17 size hard copy plans and a compiled 22X34 PDF Plan Set
4. Opinion of Probable Construction Costs
5. Project Manual

Task 9: Bid Phase and Construction Phase Services

Kimley-Horn will provide support for the bidding and construction of the roundabout at Bear Creek Parkway and Elm St/Whitely Rd.

9.1. Bidding Support

- 9.1.1. Pre-Bid Meeting: Kimley-Horn attend the pre-bid meeting.
- 9.1.2. 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.
- 9.1.3. 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.
- 9.1.4. Bid Opening: Attend the bid opening

- 9.1.5. Addenda: Incorporate all addenda into the contract documents and issue conformed sets.

Task Duration:

1. Kimley-Horn will perform bidding services for up to forty-five (45) hours. Any additional time spent performing bid phase services will be considered additional services.

9.2. *Construction Phase Services*

Kimley-Horn will assist the City with construction per the following tasks. Kimley-Horn will not assist the City with a substantial completion walkthrough, reviewing pay applications, or preparing any change orders. Any of these tasks will be considered additional services.

- 9.2.1. Pre-Construction Conference: Kimley-Horn will conduct a Pre-Construction Conference prior to commencement of construction activity.

- 9.2.2. 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 to 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.

Kimley-Horn will attend up to 6 site visits.

- 9.2.3. 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.
- 9.2.4. 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.
- 9.2.5. 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.
- 9.2.6. 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.
- 9.2.7. 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.

- 9.2.8. 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.
- 9.2.9. 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 one hundred (100) hours. Any additional time spent performing construction phase services will be considered additional services.

Task 10: Construction and Material Testing

- 10.1.1. Inspections and Tests: Kimley-Horn will, via a sub-consultant, perform construction and material testing at the request of the City throughout the duration of construction.

Kimley-Horn may require special inspections or tests of Contractor's work as Kimley-Horn deems appropriate and may receive and review certificates of inspections within Kimley-Horn's area of responsibility or of tests and approvals required by laws or the Contract Documents. Kimley-Horn's review of certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Kimley-Horn shall be entitled to rely on the results of such tests.

It is anticipated that material tests will be performed only on subgrade, street light foundations, asphalt transition pavement, and concrete pavement for an amount up to \$20,000. Any additional tests or costs will be considered additional services.

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Additional Services

Any services not specifically identified in the Scope of Services shall be considered Additional Services. These may be performed on an individual basis upon written authorization by the City at our then current hourly rates under the existing Agreement if budget allows.

Additional Services include, but are not limited to, the following:

- Additional meetings;
- Additional City Council presentations;
- Additional community or public meetings;
- Additional design review from MSA/Ourston;
- MSA/Ourston attendance at more than one public meeting;
- Renderings or any visualizations not listed under the scope of services;
- Open Channel Design;
- Headwall Design;
- Floodplain Modeling or Design Services Related to the Floodplain or Bear Creek;
- Jointing Plan;
- Traffic Control beyond what is listed in the scope of services;
- Signal re-timing at US 377/Main Street and Bear Creek Parkway;
- Preparation of change orders;
- 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.

Information Provided by the City

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the City.

Schedule

Tasks 1-10 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 City in writing.

Fee and Expenses

Kimley-Horn will not exceed the total contract value of \$231,010 the lump sum and hourly not to exceed tasks below.

Lump Sum Tasks

Kimley-Horn will perform the services in Tasks 1 – 4 and 6 – 9 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 City.

Task 1: Project Management	\$ 7,700
Task 2: TxDOT and Franchise Utility Coordination	\$ 7,660
Task 3: Public Meetings	\$ 4,050
Task 4: Data Collection	\$ 22,450
Task 6: Third Party Roundabout Review	\$ 8,580
Task 7: Traffic Analysis	\$ 6,840
Task 8: Final Design Submittals (90% and Bid Package)	\$ 111,970
Task 9: Bidding and Construction Phase Services	\$ 26,710
Total Lump Sum Fee	\$ 195,960

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Hourly Not to Exceed

Kimley-Horn will perform the services in Task 5 and 10 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 5: Right-of-Way Documentation	\$ 15,050
Task 10: Construction and Materials Testing	\$ 20,000
Total Hourly Not to Exceed Fee	\$ 35,050

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the City. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

For hourly not to exceed tasks, 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, subconsultants, and other direct expenses will be billed at 1.10 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 City.

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 terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the City" shall refer to the City of Keller, Texas.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via e-mail 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 both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. 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.



Sam Delmotte, P.E.
Project Manager



Scott R. Arnold, P.E.
Assistant Secretary

CITY OF KELLER, TEXAS
A Municipality

By: _____ Date: _____

(Print or Type Name and Title)

(Email Address)

_____ Witness

(Print or Type Name)

Attachment – Standard Provisions, Rate Schedule

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 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 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.** The Consultant shall not be required to execute certifications 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.

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional II	\$240 - \$265
Senior Professional I	\$180 - \$250
Professional	\$160 - \$210
Senior Technical Support	\$115 - \$190
Technical Support	\$70 - \$100
Analyst	\$105 - \$175
Support Staff	\$ 75 - \$ 115

Effective July 2018