



April 6, 2020

Alonzo Linan, PE, PTOE, MPA
Director of Public Works
City of Keller
1100 Bear Creek Parkway
Keller, Texas 76248

Re: Professional Services Agreement
2020 Keller Impact Fee Update

Dear: Alonzo Linan:

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 for updating Keller's impact fees. The project name will be 2020 Keller Impact Fee Update (the "Project").

Project Understanding

Kimley-Horn understands the goal of this project is to evaluate the development and implementation of Roadway, Water, and Wastewater Impact Fees for the City, as well as provide an update to the Master Thoroughfare Plan. This scope of services will provide the City with the technical analysis required by Chapter 395 of the Texas Local Government Code to determine the maximum assessable Roadway, Water, and Wastewater Impact fee that may be assessed. Kimley-Horn will also assist the City with updating the Impact Fee Ordinance, assist with public hearings, and other infrastructure policy recommendations as outlined in the Scope of Services.

The following tasks are included in the Scope of Services. All tasks will be lump sum unless indicated otherwise.

- Task 1: Project Initiation, Education, and Management
- Task 2: Land Use Assumptions
- Task 3: Roadway Impact Fee
- Task 4: Master Thoroughfare Plan Update
- Task 5: Water Impact Fee
- Task 6: Wastewater Impact Fee
- Task 7: Adoption Process
- Task 8: Administration Tools and Implementation Support
- Task 9: Additional Services (Hourly)

Scope of Services

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

TASK 1: PROJECT INITIATION, EDUCATION, AND MANAGEMENT

Task 1.1 Project Kick-Off and Impact Fee 101 Meeting

Kimley-Horn will meet with the City for a formal kick-off meeting and review the basics of impact fee updates. During this meeting, the Project Workplan will be reviewed, City contacts will be determined for each task, we will review the individual scope tasks. Kimley-Horn will also present an Impact Fee 101 to City staff.

Task 1.2 Impact Fee Education Meetings

Kimley-Horn will prepare for and attend education meetings to Council, CIAC, and project stakeholders. These meetings will include: a presentation of the fundamentals of Roadway, Water and Wastewater Impact Fees, a summary of Impact Fee methodology, Land Use Assumptions, and the CIP and Maximum Assessable Impact Fees. Kimley-Horn will prepare for and attend up to three (3) meetings. The meetings are anticipated to include:

- 1.2.1. One (1) Council education meeting
- 1.2.2. One (1) CIAC education meeting
- 1.2.3. One (1) stakeholder project education meeting

Task 1.3 Service Areas

Kimley-Horn will meet with the City to review current service areas for roadway, water, and wastewater impact fees. Kimley-Horn will review the existing roadway service areas and make recommendations to the number of service areas so that each area does not exceed the six (6) mile restriction as stated in Chapter 395 of the Local Government Code. Kimley-Horn will work with City staff to revise the service area boundaries (if necessary). It is anticipated that the Service Areas will remain consistent with the previous study.

Task 1.4 Land Use Assumption Meetings

Kimley-Horn will meet with the City to review the land use assumptions for the impact fee update. Kimley-Horn will not proceed with Tasks 2 through 7 until Council and the CIAC have approved the land use assumptions. Kimley-Horn will prepare for and attend up to four (4) meetings with Council and CIAC. The initial two meetings listed below will be conducted with two (2) of the three (3) Impact Fee Education Meetings listed in Task 1.2. It is anticipated that the following meetings will include:

- Two (2) CIAC Land Use Meetings
 - 1.4.1. Initial Land Use Assumption Meeting: The first meeting will include an initial land use recommendation prepared by City Staff and Kimley-Horn as part of Task 2.3. During the meeting, City Staff, CIAC, and Kimley-Horn will review recommended assumptions, and CIAC will provide feedback. This feedback will be used to update the assumptions before the Task 1.4.3 Council presentation. (Concurrent with Task 1.2)

1.4.2. Final CIAC Land Use Assumption Meeting: This meeting will occur after Task 1.4.3. The feedback provided by Council during Task 1.4.3 will be discussed with CIAC. During this meeting, CIAC will provide a final round of feedback and comments. This last round of review will be incorporated into the Land Use Assumptions which will be presented to Council during Task 1.4.4.

▪ Two (2) Council Land Use Meetings

1.4.3. Initial Land Use Assumption Worksession: Based on the feedback provided by CIAC Task 1.4.1, Kimley-Horn will present the initial Land Use Assumptions to Council during a worksession. During this worksession, Council will provide feedback regarding the Land Use Assumptions. (Concurrent with Task 1.2)

1.4.4. Final Council Land Use Assumption Worksession: Based on the feedback provided by CIAC Task 1.4.2, Kimley-Horn will present the final Land Use Assumptions to Council during a worksession. During this worksession, Council will approve the land use assumptions. Kimley-Horn will not proceed with Tasks 2 through 7 without Council's approval of the land use assumptions.

Task 1.5

Project Team Status Meetings

Kimley-Horn will prepare for and attend project status meetings with City staff. These meetings will be held on specific days and times as agreed by the City and will last a maximum of two (2) hours per meeting. Kimley-Horn will prepare and distribute meeting notes. The following meetings are anticipated for this project. All meetings will be in-person.

- Land Use Meeting – Up to two (2)
- Roadway Impact Fee Study Meeting – Up to three (2)
- Water Impact Fee Study Meeting – Up to two (2)
- Wastewater Impact Fee Study Meeting – Up to two (2)

The City and Kimley-Horn may reduce or increase the number of meetings per category up to a total number of eight (8) meetings. These meetings do not include the meetings from Tasks 1.1 to 1.4. The meetings included in Task 1.5 are separate.

Task 1.6

Project Workplan

This document will provide a brief understanding of the project, highlight the Kimley-Horn team members involved, document city staff members involved, and document the Capital Improvements Advisory Committee (CIAC) members. A milestone schedule will be included as well as a Communication Protocol. The milestone schedule will be updated periodically as work tasks are completed.

The intent of the Communication Protocol is to identify the project contacts, and their roles and responsibilities within the Kimley-Horn and City Staff. The information in

this protocol will be used to maintain smooth coordination and enhance communication with the public, stakeholders, and the City.

Task 1.7 Project Status Reports and Invoicing

Kimley-Horn will prepare and submit status reports regarding completed tasks, what the goals are for the following month, and what information is needed from the City. Project status reports and invoices will be submitted monthly.

TASK 2: LAND USE ASSUMPTIONS

Task 2.1 Data Collection

Kimley-Horn will coordinate with the City to obtain the following data to be used in preparing the Land Use Assumptions:

- Residential: Provide single and multi-family dwelling units that have been added
- Non-Residential: Provide the square footage or acreage and the designated uses
- Future Land Use Plan: Provide the land use plan(s) to be used

Data will be within the City of Keller City limits as well as planning areas to facilitate both the roadway and water/wastewater service area analyses. The City will provide Kimley-Horn with electronic data, specifically GIS shapefiles. It is assumed that all land use data will be provided in an electronic format. If that assumption is incorrect, any additional effort required to develop the shapefiles will be considered additional services.

Task 2.2 Existing Land Use

Kimley-Horn will utilize data collected from Task 2.1 to document existing growth rates, trends and socio-demographics as well as provide the development of base projections. Kimley-Horn will provide supporting documentation for land use, population, and employment data by planning areas and service areas for the base year. In addition, Kimley-Horn will review the “performance” of the existing Impact Fee system and the growth rates referenced in the biannual reports.

Task 2.3 10-Year Land Use Assumptions

Chapter 395 states that impact fees may only be used to pay for items included in the Impact Fee Capital Improvements Plan and attributable to new service units projected over a period not to exceed ten (10) years. Based on guidance from City Staff, Kimley-Horn will perform the following tasks:

- 2.3.1 Develop a base land use assumption as directed by the City in Task 2.1.
- 2.3.2 Develop up to two (2) alternative scenarios for up to twelve (12) critical, undeveloped area in the City.

- 2.3.3 Update land use assumptions up to three (3) times. It is assumed that the assumptions will be updated after each of the following tasks are completed: Tasks 1.4.1, 1.4.2, and 1.4.3.

During Task 1.4.4, Council will approve the 10-Year Land Use Assumptions developed as part of this task for the 2020 – 2030 planning window.

- 2.3.4 Once the land use assumptions are approved, Kimley-Horn will complete the demographic table for each service area.

Task 2.4 Documentation

Kimley-Horn will prepare a Chapter entitled “Land Use Assumptions for Impact Fees”. This will be incorporated into the final report.

Task 2.5 Deliverables

The Land Use Assumptions (LUA) will be standalone report that will ultimately be incorporated into the final Impact Fee Study report. Key elements of the LUA report include:

- Coordination and correlation of LUA with service areas for roads, water and wastewater
- Documentation of existing growth rates, trends and socio-demographics
- Development of base, 10-year, and ultimate or build-out projections
- Land use, population, and employment assumptions for the projection periods
- Supporting documentation for population and employment data by planning areas and service areas for the base year and 10-year growth.

Task 2.6 Meetings

Land use discussions with City Staff are included in Task 1.5. Discussions with CIAC and Council are included in Task 1.4.

TASK 3: ROADWAY IMPACT FEE

Task 3.1 Data Collection

Kimley-Horn will coordinate with the City to obtain the following data:

- City contacts – City shall provide the organization structure and contact information for the applicable City staff involved with the completion of the roadway capacity analysis and Roadway Impact Fee Capital Improvement Plans (CIP). These contacts will be included in the Workplan developed as part of Task 1.6.
- Thoroughfare Plan – The City will provide the files for the current master thoroughfare plan as is currently adopted. It is assumed that the City will provide data in an electronic format, specifically GIS shapefiles. If that assumption is

incorrect, any additional effort required to develop the shapefiles will be considered additional services.

- Traffic Counts – The City will provide Kimley-Horn will traffic data obtained from Miovision for locations throughout the City.
- Historical Project Costing Information – The City shall provide recent construction project bids for completed or in-progress arterial roadway improvement projects to assist in the development of planning level project costs.

Task 3.2 10-Year Growth Projections and Capacity Analysis

Kimley-Horn will perform the following tasks associated with determining the 10-year growth projection and roadway capacity analysis:

- Kimley-Horn will identify the service units for new development and the average trip length. Using the 10th Edition of the Institute of Transportation Consultant's (ITE) Trip Generation Manual, Kimley-Horn will incorporate trip generation and pass-by trip rates.
- Kimley-Horn will perform an analysis of existing conditions. This will include a determination of roadway capacities, volumes, vehicle-miles of supply, vehicle-miles of demand, existing excess capacity, and existing deficiencies.
- Kimley-Horn will project traffic conditions for the 10-year planning period, the target year for the impact fee growth projections. This will include growth and new demand for each service area established in Task 1 and 2. Kimley-Horn will determine the capacity available for new growth.

Task 3.3 Roadway Impact Fee Capital Improvements Plan

Kimley-Horn will assist the City to develop a Roadway Impact Fee Capital Improvements Plan which will include cost projections for anticipated projects to be included in the study. The Roadway Impact Fee Capital Improvements Plan will include existing oversized facilities and proposed facilities designed to serve future development.

The Roadway Impact Fee Capital Improvements Plan shall include a general description of the project and a project cost projection. Planning level conceptual cost projections for future projects will be prepared based on discussion with local roadway construction contractors, City staff, and previous experience with roadway construction costs. The City shall provide actual City cost information for previously completed projects with excess capacity and any cost contribution to County, State, Federal, or developer constructed projects.

Kimley-Horn will identify the portion of projected improvements required to serve existing demand and the portion of project improvements required to serve new development within the 10-year planning period.

Task 3.4 Evaluate the Land Use, Vehicle-Mile Equivalency Table

Kimley-Horn will review the existing Land Use, Vehicle-Mile Equivalency Table and provide recommendations on modifications to the existing table based on the 10th Edition of the ITE Trip Generation Manual and experience from the City of Keller in the implementation of the Impact Fee program.

Task 3.5 Maximum Assessable Roadway Impact Fee Calculation

Using the newly developed 10-year growth projections, roadway impact fee capital improvements plan, and capacity available for new growth, Kimley-Horn will determine:

- the cost of roadway improvements by service area,
- the maximum costs per service unit, and
- the resulting pre-credit maximum assessable roadway impact fees by service area.

As required by Chapter 395 of the Local Government Code, Kimley-Horn will incorporate the financial analysis by using 50% of the Impact Fee CIP as the credit calculation.

Task 3.6 Documentation

Kimley-Horn will provide both a draft and final Roadway Impact Fee Report. The report will include:

- Land Use Assumptions;
- Roadway service areas;
- Roadway CIP;
- Narrative of the impact fee methodology;
- Impact fee calculations;
- Land Use Vehicle-Mile Equivalency Table; and
- Supporting Exhibits.

Task 3.7 Deliverable

- Electronic (.pdf) copy of the Draft Roadway Impact Fee Report;
- Five (5) 8.5" x 11" hard copies of the Draft Roadway Impact Fee Report; and
- Upon final approval of the Roadway Impact Fee Analysis and new ordinance by the City Council, Kimley-Horn will provide five (5) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final Roadway Impact Fee Report

Task 3.8 Meetings

Roadway impact fee discussions with City Staff are included in Task 1.5.

TASK 4: MASTER THOROUGHFARE PLAN UPDATE

Task 4.1 Data Collection

Kimley-Horn will create a revised map that updates the currently adopted master thoroughfare plan (MTP). The MTP update will consist of the following steps:

- Roadway Inventory - Kimley-Horn will perform a roadway inventory of the current status and number of lanes of each roadway on the current MTP
- Traffic Counts – The City will provide Kimley-Horn will traffic data obtained from Miovision for locations throughout the City.
- Sub-Area Traffic Modeling – Kimley-Horn will use the traffic counts provided by the City to develop a city-wide micro traffic analysis model using such as Synchro or VISTRO.
 - The model will include up to 34 signalized intersections and up to 24 unsignalized intersections
 - Kimley-Horn will analyze existing conditions and up to 2 future land use scenarios to identify roadway network and intersection needs.
- Identification of Connection Opportunities - Kimley-Horn will evaluate the connectivity of the MTP and identify opportunities for new or enhanced roadway connections.
- Documentation – Kimley-Horn will provide documentation describing the sub-area modeling methodology and results.

The City staff will perform the necessary tasks to have the revised MTP adopted by City Council.

TASK 5: WATER IMPACT FEE

Task 5.1 Data Collection for City

Kimley-Horn will coordinate with the City on obtaining data required for the impact fee study, including cost data for recently constructed projects, information on water meters, recent water usage, etc. Kimley-Horn will prepare and present a data request memorandum for City staff.

Task 5.2 Master Plan Review

Kimley-Horn will review the current Water Distribution System Master Plan that is being developed as part of the ongoing Water Master Plan. Kimley-Horn will verify if modifications are needed prior to formulating the Water Impact Fee Capital Improvement Plan. Modification will be provided with the recommendations from City staff. City staff will perform the necessary tasks to have the revised Water Distribution System Master Plan adopted by City Council (if necessary).

The review of the Master Plan is anticipated to be a half-day workshop and map will be developed for the use of impact fees. No water system hydraulic model will be

developed for the study but may utilize the existing water master plan to analyze a proposed project.

Task 5.3 10-Year Growth Projections and Capacity Analysis

Kimley-Horn will develop projected water demands over the 10-year planning period which will be based on socio-demographic data developed in the LUAs report. This will be compared to the results in the on-going Water Master Plan. The determination of 10-year water demands will be based on LUAs and recent historical water usage for average, and maximum day conditions.

Kimley-Horn will utilize data from the recent Master Plan in addition to the newly requested data.

Kimley-Horn will utilize equivalent capacity of water meters to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions.

Task 5.4 Water Impact Fee Capital Improvements Plan

Kimley-Horn will review recently completed (over the last 5 years) water improvements and determine which projects are eligible for future cost recovery based on future growth.

Kimley-Horn will update the cost of proposed water system improvements to be included in the impact fee calculation. Maps will be prepared showing the existing and proposed water capital improvements plan projects to be included in the impact fee calculation.

Task 5.5 Maximum Assessable Water Impact Fee Calculation

Kimley-Horn will calculate the additional service units based on the capacity analysis and capital project costs.

Kimley-Horn will then calculate the Impact Fee per service unit, unit equivalents by meter size and the Maximum Assessable Water Impact Fee table by meter size. As required by Chapter 395 of the Local Government Code, Kimley-Horn will incorporate the financial analysis by using 50% of the Impact Fee CIP as the credit calculation.

Task 5.6 Documentation

Kimley-Horn will provide both a draft and final Water Impact Fee Report. The report will include:

- Land Use Assumptions;
- Water service area;
- Water Impact Fee Eligible CIP;
- Narrative of the impact fee methodology;
- Impact fee calculations;

- Service Unit Equivalency Table; and
- Supporting Exhibits.

Task 5.7 Deliverable

- Electronic (.pdf) copy of the Draft Water Impact Fee Report;
- Five (5) 8.5" x 11" hard copies of the Draft Water Impact Fee Report; and
- Upon final approval of the Water Impact Fee Analysis and new ordinance by the City Council, Kimley-Horn will provide five (5) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final Water Impact Fee Report

Task 5.8 Meetings

Water impact fee discussions with City Staff are included in Task 1.5.

TASK 6: WASTEWATER IMPACT FEE**Task 6.1 Data Collection for City**

Kimley-Horn will coordinate with the City on obtaining data required for the impact fee study, including cost data for recently constructed projects, information on wastewater meters, recent wastewater discharge, etc. Kimley-Horn will prepare and present a data request memorandum for City staff.

Task 6.2 Master Plan Review

Kimley-Horn will review the current Wastewater Master Plan (if available) to verify if modifications are needed prior to formulating the Wastewater Impact Fee Capital Improvement Plan. Modification will be provided with the recommendations from City staff. City staff will perform the necessary tasks to have the revised Wastewater Collection System Master Plan adopted by City Council (if necessary).

The review of the Master Plan is anticipated to be a half-day workshop and map will be developed for the use of impact fees. No wastewater system hydraulic model will be developed for the study.

Task 6.3 10-Year Growth Projections and Capacity Analysis

Kimley-Horn will develop projected wastewater discharges over the 10-year planning period which will be based on socio-demographic data developed in the LUAs report. The determination of 10-year wastewater discharge and will be based on LUAs and recent historical wastewater discharge for average and peak dry weather conditions along with peak wet weather conditions.

Kimley-Horn will utilize data from the recent Master Plan in addition to the newly requested data.

Kimley-Horn will utilize equivalent capacity of water meters that also have wastewater service to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions.

Task 6.4 Wastewater Impact Fee Capital Improvements Plan

Kimley-Horn will review recently completed (over the last 5 years) wastewater improvements and determine which projects are eligible for future cost recovery based on future growth.

Kimley-Horn will update the cost of proposed wastewater system improvements to be included in the impact fee calculation. Maps will be prepared showing the existing and proposed wastewater capital improvements plan projects to be included in the impact fee calculation.

Task 6.5 Maximum Assessable Wastewater Impact Fee Calculation

Kimley-Horn will utilize the capacity analysis and capital project costs to calculate percentage of project cost eligible for impact fee cost recovery.

Kimley-Horn will then calculate the Impact Fee per service unit, unit equivalents by meter size and the Maximum Assessable Wastewater Impact Fee table by meter size. . As required by Chapter 395 of the Local Government Code, Kimley-Horn will incorporate the financial analysis by using 50% of the Impact Fee CIP as the credit calculation.

Task 6.6 Documentation

Kimley-Horn will provide both a draft and final Wastewater Impact Fee Report. The report will include:

- Land Use Assumptions;
- Wastewater service area;
- Wastewater Impact Fee Eligible CIP;
- Narrative of the impact fee methodology;
- Impact fee calculations;
- Service Unit Equivalency Table; and
- Supporting Exhibits.

Task 6.7 Deliverable

- Electronic (.pdf) copy of the Draft Wastewater Impact Fee Report;
- Five (5) 8.5" x 11" hard copies of the Draft Wastewater Impact Fee Report; and
- Upon final approval of the Wastewater Impact Fee Analysis and new ordinance by the City Council, Kimley-Horn will provide five (5) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final Wastewater Impact Fee Report

Task 6.8 Meetings

Wastewater impact fee discussions with City Staff are included in Task 1.5.

TASK 7: ADOPTION PROCESS

Task 7.1 Comparison Data

Kimley-Horn will collect information on actual Impact Fees collected for up to six (6) benchmark cities as chosen by the City for up to five (5) different land uses. This information will be provided to the City in electronic (.xls) tabular format for use in the development of comparison tables.

Task 7.2 Ordinance Support

Kimley-Horn will review the existing Impact Fee Ordinance and provide recommendations for modifications to the City Attorney. In addition, Kimley-Horn will provide exhibits from the Impact Fee Report to be included in the ordinance.

Task 7.3 Revenue Projections

The Consultant will utilize the Land Use Assumptions calculated in Task 2 to calculate various revenue projections based on potential collection rate scenarios.

Task 7.4 Meetings

It is anticipated that Kimley-Horn will prepare for and attend each of the following meetings (total of eight). These are anticipated to be:

- Two (2) CIAC worksession;
- Two (2) CIAC meeting to present the Land Use Assumptions, CIP, and Maximum Assessable Impact Fees;
- Two (2) Council worksession; and
- Two (2) City Council public hearings to present the Impact Fee, including the Land Use Assumptions, Impact Fee CIP and Maximum Assessable Impact Fees.

In some cases, the work sessions could be the same day as the public hearings.

TASK 8: ADMINISTRATION TOOLS AND IMPLEMENTATION SUPPORT

Task 8.1 Impact Fee Estimator

Kimley-Horn will create an Impact Fee estimator spreadsheet tool to assist in calculating a development's water, wastewater, and roadway impact fees based on the impact fee rates adopted in Task 6.

Task 8.2 Implementation Support

Kimley-Horn will provide implementation support to assist City staff as a program is rolled out. This implementation support is based on 18 hours.

Task 8.3 Deliverables

- Electronic (.xls) Impact Fee Estimator Tool.

TASK 9: ADDITIONAL SERVICES (HOURLY)

This task shall be used for additional services not included in Tasks 1 – 8. This task will be invoiced hourly for an amount not to exceed the amount listed in the Fee summary. Kimley-Horn will not perform any services using this task unless authorized by the City. This task is optional, and is at the discretion of the City to use the Task or not.

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 assistance in developing the land use assumptions outside of that described in this agreement.
- Credit Calculation for ad valorem taxes.
- Preparation for and attendance at additional public meetings not specifically identified in the Scope of Services.
- Furnish additional copies of review documents and/or bid documents in excess of the number identified in the Scope of Services.
- Reanalysis or recalculation to reflect project scope changes or policy changes requested by the City, addressing changes in direction previously approved by the City, or mandated by changing government laws.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project as listed in the Scope of Services.

Schedule

The Scope of Services will be completed based on a mutually agreed upon schedule not to exceed one calendar year in duration. 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 – 8 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 Initiation, Education, and Management	\$ 18,000
Task 2: Land Use Assumptions	\$ 8,000
Task 3: Roadway Impact Fee	\$ 35,000
Task 4: Master Thoroughfare Plan Update	\$ 96,000
Task 5: Water Impact Fee	\$ 35,000
Task 6: Wastewater Impact Fee	\$ 35,000
Task 7: Adoption Process	\$ 16,000
<u>Task 8: Administration Tools and Implementation</u>	<u>\$ 7,000</u>
Total Lump Sum Fee	\$ 250,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Hourly Not to Exceed

Kimley-Horn will perform the services in Task 9 on a labor fee plus expense basis with the maximum labor fee shown below.

<u>Task 9: Additional Services (Hourly)</u>	<u>\$ 10,000</u>
Maximum Labor Fee	\$ 10,000

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client.

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 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 me if you have any questions.

Very truly yours,
KIMLEY-HORN AND ASSOCIATES, INC.



Sam Delmotte, P.E.
Project Manager



Scott R. Arnold, P.E.
Vice President

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)

Analyst	\$110 - \$180
Professional	\$165 - \$215
Senior Professional I	\$185 - \$255
Senior Professional II	\$245 - \$270
Senior Technical Support	\$120 - \$195
Support Staff	\$80 - \$120
Technical Support	\$90 - \$105

Effective through June 30, 2020

Subject to annual adjustment thereafter

