



June 3, 2020

Sarah Hensley
Administrative Services Manager
City of Keller
1100 Bear Creek Pkwy
Keller, Texas 76248

Re: Professional Services Agreement for
Old Town Keller Phase II – Step I Infrastructure Improvements

Dear Sarah Hensley

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 limits are within Old Town Keller (OTK) Phase II, located east of US 377/Main Street, west of Elm Street, south of FM 1709, and north of the Bear Creek culvert. The project will consist of developing construction drawings for Bates Street and the pedestrian hybrid beacon as well as bidding and construction phase services.

Construction plans and specifications will be developed for Bates Street and the pedestrian hybrid beacon. Bidding and construction phase services will be performed for only the pedestrian hybrid beacon.

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

SCOPE OF SERVICES

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

- Task 1 – Project Management
- Task 2 – City Staff, TxDOT, and Franchise Utility Coordination
- Task 3 – Community and Council Engagement
- Task 4 – Data Collection and Analysis
- Task 5 – Right-of-Way Documentation, Appraisals, and Negotiations
- Task 6 – Bates Street and Pedestrian Hybrid Beacon (PHB) Final Design
- Task 7 – Gateway Design
- Task 8 – Accessibility Review (Hourly)
- Task 9 – PHB Bidding and Construction Phase Services (Hourly)
- Task 10 – Construction Material Testing
- Task 11 – Record Drawings
- Task 12 – Additional Services (Hourly)

Task 1: Project Management

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

Task 2: City Staff, TxDOT, and Franchise Utility Coordination

The meetings listed below are design coordination meetings with the City, TxDOT, and Franchise Utility Providers. 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. *Kick-Off Meeting with City Staff* – Prepare for an attend a kick-off meeting with the City to discuss the findings of the data collection.
- 2.2. *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 eight (8) design coordination meetings.
- 2.3. *TxDOT Coordination*
 - Meetings – Kimley-Horn will conduct and document up to two (2) meetings with TxDOT.

- Coordinate with TxDOT for the approval of installing a pedestrian hybrid beacon at the intersection of US 377/Main Street and Bates Street. Up to twenty (20) hours will be spent coordinating with TxDOT. Any additional time spent beyond the allotted twenty (20) hours will be considered additional service.
- 2.4. *Franchise Utility Coordination*
- Meetings – Kimley-Horn will conduct and document up to three (3) coordination meetings with franchise utility companies.
 - Coordination – Kimley-Horn will coordinate with the franchise utility companies within the study area to determine relocation options and associated estimated costs. Up to thirty (30) hours will be spent on franchise utility coordination. Any additional time spent beyond the allotted thirty (30) hours will be considered additional service.

Task 3: Community and Council Engagement

3.1. City Council Meetings

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

- 3.1.1. Preliminary Design Progress Meeting – The focus of this meeting will be to present the preliminary design plan to City Council. This meeting will be conducted before final design begins for Task 6. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.
- 3.1.2. Final Plan Design Progress Meeting – The focus of this meeting will be to present the final plan to City Council. This meeting will be conducted after Task 6.2 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.

3.2. Community Meetings

Kimley-Horn will prepare materials, attend, and document as needed up to one (1) community meeting. The City will be responsible for selecting and scheduling the meeting location and distributing notifications to the public.

- 3.2.1. Pre-Construction Neighborhood Meeting – The focus of the meeting will be to present the final design, traffic control plan, and anticipated construction schedule for Bates Street and the Pedestrian Hybrid Beacon. This meeting will be conducted prior to the bidding phase starting for all projects being constructed.

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 updated aerial photography for the project corridor from NearMaps and/or available aerial photos from the City.
 - LIDAR – Kimley-Horn will gather updated 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 up to one (1) site visit to visually document the existing conditions of the site.
- 4.2. *Topographic Survey* – Kimley-Horn will prepare a topographic survey to be used for civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.
- Bates Street
 - Survey Width:
 - Up to face of building where applicable.
 - Where there isn't a building, 20' beyond the existing right-of-way.
 - US 377 Intersection: 150 feet north, south, and west
 - S. Elm Street Intersection: 150 feet north, south, and west
- 4.3. *Geotechnical Analysis* – Kimley-Horn will, via a subconsultant, obtain borings and perform geotechnical engineering services to provide the following information:
- General soil and ground-water conditions
 - Recommendations for concrete pavement depth as well as subgrade stabilization type, depth, and concentration
 - Recommendations for foundation type, depth and available loading for the Gateway Feature and pedestrian hybrid beacon.
 - Foundation construction requirements
 - Evaluation of the swell characteristics of the subgrade soils
 - Earthwork recommendations

4.4. *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 levels B & A are described as follows:

4.4.1. Level B Utility Exploration - 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 will be the same as the topographic survey limits listed above. SUE fee is based on an average 5 underground utilities. If there are additional utility lines, additional fee may be needed which will be considered additional services.

4.4.2. Level A Test Holes – QL-A, also known as "locating", is the highest level of accuracy presently available and involves the full use of the subsurface utility engineering services. It provides information for the precise plan and profile mapping of underground utilities through the nondestructive exposure of underground utilities, and also provides the type, size, condition, material and other characteristics of underground features.

- Kimley-Horn will obtain up to 8 test holes within the limits of the topographic survey area.

Task 5: Right-of-Way Documentation, Appraisals, and Negotiation (Hourly)

5.1. *Right-of-Way Coordination* – Kimley-Horn will coordinate with City Staff regarding property negotiations. This coordination may include conference calls, emails, and meetings. Kimley-Horn will provide up to seventy (70) hours of right-of-way coordination.

5.2. *Right-of-Way Documentation* – Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for proposed easements 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 as necessary.

Kimley-Horn will prepare documents for the following:

- Elm Street Improvements: Twelve (12) right-of-way documents. These parcels are near the Pecan Street intersection. South of the intersection, the existing

right-of-way is narrower than the proposed 80-foot right-of-way width. North of the intersection, the roadway will be re-aligned to reduce the skew across the Pecan Street intersection.

- No easements will be obtained along S. Elm Street. Any easements including but not limited to temporary construction easements, utility easements, or pedestrian easements that are determined to be needed during final design will be obtained with future contracts.
- Bates Street Improvements: Up to ten (10) temporary construction easements will be developed. This is an estimate. Not all easements may be required.

5.3. *Appraisal and Right-of-Way Acquisitions* – Kimley-Horn will, via a sub-consultant, perform appraisal and right-of-way acquisition services associated with this project.

- Condemnation is not included as part of this contract and will be considered an additional service.

Task 6: Bates Street and Pedestrian Hybrid Beacon Final Design

6.1. Prepare 60% Construction Drawings

Development of preliminary (60%) design drawings shall include:

- Cover and index sheet
- Project control plan and right-of-way strip map
 - Alignment information including coordinate data for all horizontal alignment PCs, PTs, and PIs.
 - Bearings given on all proposed centerlines or baselines
 - Existing and proposed right-of-way and easement information including property owners, addresses, and easement widths.
- Existing and proposed typical sections
- Removal plan sheets
- Roadway paving plan and profile
 - Horizontal geometry for proposed horizontal alignments, City and franchise utilities, curbs, sidewalks, street lights, driveways, existing right-of-way lines, easements, pavement, utility poles, mailboxes (within right-of-way), water meters, fire hydrants, and trees (within right-of-way).
 - Station and elevation data of all vertical profile PCs, PTs, PIs, low points, and high points, lengths of vertical curves, grades, K values, and vertical clearances where applicable.
- Roadway grading plan
 - To include contours shown at 1' intervals.

- Driveway plan and profiles
 - To include driveway slopes, station and elevations for horizontal geometry points, and a driveway profile with PVI's, slopes, and elevations.
 - Kimley-Horn will provide driveway design for the current residential and parking lot driveways. Up to four (4) driveways will be designed.
- Preliminary paving details
- Pedestrian hybrid beacon layout
- Existing City and franchise utility layout
- City utility replacements and adjustments
 - There is one water line and one sanitary sewer line between US 377/Main Street and Elm Street along Bates Street that will be replaced. This task includes water and sewer plan and profile layouts for the relocation/replacement of the existing water and sanitary sewer lines.
 - Adjustments will include location and vertical elevation adjustments for existing City utilities that are not going to be relocated/replaced during the water and sewer utility replacements. This will include surface adjustments for storm, water, and sewer utility lid adjustments from existing grade to proposed grade as well as new fire hydrant locations.
 - Water line extensions will be designed for the Bates Street and Bates Park irrigation systems.
- Franchise utility relocation layout
 - To include proposed locations for Tri-County, Oncor, Frontier (Verizon), and Atmos to relocate their existing overhead or underground utility lines.
 - This information will be provided by the franchise utility companies. Kimley-Horn will not provide design for any franchise utilities.
- Storm drain
 - Existing and proposed drainage area maps (DAM) – The existing DAM developed with the OTK PH II Preliminary Drainage Report dated May 8, 2018 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 6, 7, 8, and 11.
 - Runoff, inlet, and hydraulic grade 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.
- Pavement marking and signing plan

- Illumination plan
 - Kimley-Horn will provide a photometric analysis for Bates Street in accordance with City of Keller requirements. The photometric analysis will consist of modeling fixtures to meet roadway and pedestrian illumination level requirements. Kimley-Horn assumes the City will provide the type of lights to be used in the photometric model. A photometric exhibit and one sheet for fixture cut sheets will be provided.
 - The following services are considered additional services: photometric analysis of street lighting exterior to project and 3D renderings.
 - Kimley-Horn will coordinate with Tri-County for the illumination design and equipment location. Tri-County will provide the conduit design and construction of the illumination.
- Electrical plan
 - Kimley-Horn will provide a set of electrical construction documents for Bates Street in accordance with City of Keller standards.
 - The electrical design plans will consist of layout plans and electrical details for the electrical outlets within the tree wells and power to irrigation controllers.
 - Details to include: conduit layout, pull box layout, cable feeds to the different circuits, voltage drop calculations, and pedestal service size requirements.
 - The following services will be considered additional services: structural calculations for light pole bases.
- Traffic control sequence of construction
 - Preliminary design will include traffic control sequencing and a construction phasing diagram only. Plan layout of traffic control phasing will be provided during final design.
- Hardscape plan and details
 - Horizontal layout of proposed colored and textured pavement surfaces.
 - Pattern and color information for colored and textured pavement surfaces.
- Landscape plan
 - Kimley-Horn will prepare a landscape plan rendering including a plant palette, reference images, and plant locations.
- Kimley-Horn will prepare an OPCC to be submitted with the Preliminary (60%) Design Submittal.

Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the

information known at this time and represent only Kimley-Horn's judgement as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

Preliminary (60%) Design Submittal Deliverables:

1. Compiled PDF plan sets in 11"x17" and 22"x34"
2. Opinion of Probable Construction Costs
3. Hard copy plans as requested

6.2. Prepare 90% Construction Drawings

Following the review of the Preliminary Design Submittal, Kimley-Horn will respond to one (1) round of comments and will provide a comment response letter with the Final (90%) Design Submittal. The submittal of the preliminary comments by the City is an assumed notice to proceed with final design. The Final (90%) Design Submittal will include all the plan sheets developed under Preliminary Design as well as the below plan sheets:

- General Notes
- Quantity Summary Sheet
- Roadway Grading Plan
 - To include contours shown at 1' intervals as well as station, coordinate data, and elevations for all horizontal alignment PCs, PTs, and PIs.
- Curb Ramp Layout and Grading
 - Will only be developed for curb ramps that are not City or TxDOT standard details.
- Traffic and Erosion Control Plan Sheets
 - To 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 three (3) phases of construction. It is assumed the roadway will be built in halves. 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.
- Standard and Custom Details
- Landscape Plan and Details
 - To include: general notes, location, quantity, and size of City approved plant species, and construction details

- Irrigation Plan and Details
 - The irrigation plan will be based on the landscape plan prepared during Preliminary Design. The City will provide Kimley-Horn with any design requirements and/or recommendations prior to the development of the Irrigation Plan. Kimley-Horn will prepare design for a water line extension for the irrigation system.
- Opinion of Probable Construction Cost (OPCC)
 - Kimley-Horn will submit 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 front-end documents (contract forms and contract conditions) and technical specifications applicable to the project. The Bates Street project manual will be compiled separately from Bates Park and Elm Street.

Final (90%) Design Submittal Deliverables:

1. Compiled PDF plan sets in 11"x17" and 22"x34"
2. Compile PDF project manual
3. Opinion of Probable Construction Costs
4. Hard copy plans and project manual as requested

6.3. Prepare Bid Package

- Following the review of the Final (90%) Design submittal, Kimley-Horn will respond to one (1) round of comments and will provide a comment response letter with the Bid Package Submittal. The submittal of the final design comments by the City is an assumed notice to proceed with preparing the bid package submittal which includes the signed and sealed construction plan documents and project manual.

Task 7: Gateway Feature Design

This task will be performed at the request of the City. The design and plan sheets developed as part of this task will be included in the Bates Street plan set. A separate plan set will not be developed for the Gateway Design. If the City decides to construct the gateway features separate from the roadway design, any additional effort preparing a separate plan set, project manual, and construction services will be considered additional services.

7.1. Prepare 60% Construction Drawings

Kimley-Horn will prepare the following plan and detail sheets for the Gateway Feature as part of the Bates Street 60% construction drawing set.

- Gateway feature plan and details
 - Location information for where the gateway features will be located and custom construction details.
 - Kimley-Horn will design up to one (1) standalone gateway feature for the west end of Bates Street near US 377/Main Street.

7.2. *Prepare 90% Construction Drawings*

Kimley-Horn will prepare the following plan and detail sheets for the Gateway Feature as part of the Bates Street 60% construction drawing set.

- Gateway feature plan and details
 - Location information for where the entry features will be located and custom construction details.
 - Structural details for the gateway feature.

Task 8: Accessibility Review (Hourly)

Kimley-Horn will utilize a subconsultant that is a Registered Accessibility Specialist (RAS) for the purposes of reviewing the plans, for conformance with the Texas Accessibility Standards (TAS). Kimley-Horn will coordinate with the RAS for project registration with the Texas Department of Licensing and Regulation (TDLR), and project inspection upon completion of construction. Kimley-Horn will make one (1) round of revisions to the plans based on comments received from the RAS. Inspection and registration fees for TDLR are included in this fee.

Task 9: PHB Bidding and Construction Phase Services (Hourly)

Kimley-Horn will provide support for the bidding and construction of PHB at Bates Street and US 377/Main Street. The bidding and construction phase services are based on a 3-month construction schedule.

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 thirty-three (33) hours. Any additional time spent performing bid phase services will be considered additional services.

9.2. Construction Phase Services

- 9.2.1. Pre-Construction Conference: Kimley-Horn will conduct a Pre-Construction Conference prior to commencement of construction activity.
- 9.2.2. Schedule: Kimley-Horn will perform a review of Contractor's Construction schedule. An initial schedule will be reviewed for schedule health and for consistency with project phasing and contract time limits. Comments will be provided to the Contractor and the City.
 - This task includes:
 - Up to three (3) progress schedule reviews to coincide with monthly schedule updates and review of the Contractor's invoice.
- 9.2.3. Applications for Payment: Based on its observations and on review of applications for payment and supporting documentation, Kimley-Horn will determine amounts that Kimley-Horn recommends Contractor be paid. Such recommendations will be based on Kimley-Horn's knowledge, information and belief, and will state whether in Kimley-Horn's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. For unit price work, Kimley-Horn's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. Kimley-Horn's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
 - This task includes:
 - Up to three (3) invoice reviews to coincide with monthly schedule updates and review of the Contractor's schedule.
- 9.2.4. Visits to Site and Observation of Construction: Kimley-Horn will make visits as directed by the City in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will 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.

- This task includes:
 - Kimley-Horn will perform bi-weekly site visits throughout the 3-month construction schedule. This will include up to six (6) site visits.
 - Each site visit will be up to 3 hours. During the site visits, Kimley-Horn will discuss the Contractor's progress, coordinate with franchise utility owners, and coordinate with adjacent property owners as needed.

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

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

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

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

Task Duration:

1. Kimley-Horn will perform construction phase services for up to three (3) months of construction.
2. During those three (3) months, Kimley-Horn will perform construction phase services for up to one-hundred seventy-six (176) hours.
3. Any additional time spent performing construction phase services will be considered additional services.

Task 10: Construction Material Testing

10.1. *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, PHB foundations, sidewalk, and concrete pavement for an amount up to \$10,000. Any additional tests or costs will be considered additional services.

Task 11: 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 12: Additional Services (Hourly)

This task shall be used for additional services not included in Tasks 1 – 11. 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 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:

- Any design associated with S. Elm Street or other side streets.
- Additional meetings;
- Additional City Council presentations;
- Additional community or public meetings;
- Additional meetings with the Parks Board;
- Pedestrian and vehicle wayfinding signage for locations other than the pedestrian walkway;
- Renderings or any visualizations not listed under the scope of services;
- Design of Taylor Street, Hill Street, Vine Street, Olive Street and Pecan Street beyond schematic design;
- Services related to warranty claims, enforcement and inspection after final completion;
- Assist the City as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City's acceptance of substitutions proposed by the contractor; and
- Any services not listed above.

Schedule

Tasks 1 – 11 will be completed based on a mutually agreed upon schedule. Additional services, if desired, will be performed within a mutually agreed upon schedule, once authorized by the Client in writing.

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

Fee and Expenses

Lump Sum Tasks

Kimley-Horn will perform the services in Tasks 1 – 4, 6, 7, and 11 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1: Project Management	\$ 13,310
Task 2: City Staff, TxDOT, and Franchise Utility Coordination	\$ 34,600
Task 3: Community and Council Engagement	\$ 23,350
Task 4: Data Collection and Analysis	\$ 51,450
Task 6: Bates Street and PHB Final Design	\$ 204,610
Task 7: Gateway Feature Design	\$ 27,040
Task 11: Record Drawings	\$ 4,220
Total Lump Sum Fee	\$ 358,580

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 Tasks 5, 8, 9, 10, and 12 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 5: Right-of-Way Documentation, Appraisals, and Negotiation	\$ 198,390
Task 8: Accessibility Review	\$ 3,220
Task 9: PHB Bidding and Construction Phase Services	\$ 34,540
Task 10: Construction Material Testing	\$ 10,000
Task 12: Additional Services	\$ 10,000
Maximum Labor Fee	\$ 256,150

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.