

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

**PROFESSIONAL SERVICES CONTRACT
FOR THE
CITY OF MANSFIELD, TEXAS**

This Professional Services Contract, hereinafter referred to as "Contract" is entered into between the **CITY OF MANSFIELD, TEXAS**, a municipal corporation of the State of Texas, hereinafter referred to as "CITY", and **Kimley-Horn and Associates, Inc.**, hereinafter referred to as "PROFESSIONAL". CITY and PROFESSIONAL are each a "Party" and are collectively referred to herein as the "Parties".

**ARTICLE I.
EMPLOYMENT OF PROFESSIONAL**

For and in consideration of the covenants herein contained, PROFESSIONAL hereby agrees to perform professional services in connection with the project as set forth below, and CITY agrees to pay, and PROFESSIONAL agrees to accept fees as set forth in this Contract as full and final compensation for all services performed under this Contract. If PROFESSIONAL is representing that it has special expertise in one or more areas to be utilized in this Contract, then PROFESSIONAL agrees to perform those special expertise services to the appropriate local, regional and national professional standards. PROFESSIONAL shall provide professional services, as further described in Exhibit "A", within the City of Mansfield, Tarrant County, Texas, and hereinafter referred to as the "Project."

**ARTICLE II.
PAYMENT FOR SERVICES**

In consideration of the services to be performed by PROFESSIONAL under the terms of this Contract, CITY shall pay PROFESSIONAL for services actually performed, a fee, not to exceed One Hundred Forty Thousand Seven Hundred Dollars and 00/100 (\$140,700.00) as stated in Exhibit "A", unless other conditions necessitate additional services, which must be authorized in advance in writing by CITY and shall be billed based on rates as agreed upon by the Parties. PROFESSIONAL shall invoice the City monthly for services actually performed, and subject to Article X, CITY shall pay within thirty (30) days of the receipt of said invoice. Notwithstanding the foregoing, services invoiced that were performed ninety (90) days or more after the invoice date shall not be billed without prior CITY authorization. In the event of a conflict between Exhibit "A" and this Contract, this Contract shall control. Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract. CITY will not be required to make any payments to PROFESSIONAL when PROFESSIONAL is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which CITY may have if PROFESSIONAL is in default, including the right to bring legal action for damages or for specific performance under this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

ARTICLE III.
CHARACTER AND EXTENT OF SERVICES

PROFESSIONAL, and its employees or associates, jointly shall perform all the services under this Contract in a manner consistent with the degree of professional skill and care and the orderly progress of the work ordinarily exercised by members of the same profession currently practicing under similar circumstances. PROFESSIONAL represents that all its employees who perform services under this Contract shall be qualified and competent to perform the services described in Exhibit "A". The scope of services includes the following:

- A. Services as further described in Exhibit "A".
- B. PROFESSIONAL shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by PROFESSIONAL under this Contract, and CITY may look solely to PROFESSIONAL for performance of these services.
- C. It is agreed and understood that this Contract contemplates the full and complete services for the Project including changes necessary to complete the Project as outlined herein. PROFESSIONAL acknowledges by the execution of this Contract that all contingencies known to PROFESSIONAL at the date of this Contract, as may be deemed necessary and proper to complete the assignment, have been included in the fee stated herein. PROFESSIONAL will advise CITY as to the necessity of CITY's providing or obtaining from others special services and data required in connection with the Project (which services and data PROFESSIONAL is not to provide hereunder). Nothing contained herein shall be construed as authorizing additional fees for services to complete the plans, specifications, inspections, tests, easements and permits necessary for the successful completion of the Project.

ARTICLE IV.
TIME FOR COMPLETION

The term of this Contract shall begin on the last date of execution of this Contract. PROFESSIONAL understands and agrees that time is of the essence. All services, written reports, and other data are to be completed and delivered to CITY as shown on Exhibit "A".

This contract shall terminate when CITY has accepted the plans as being final. No extensions of time shall be granted unless PROFESSIONAL submits a written request, and CITY approves such request in writing.

ARTICLE V.
REVISIONS OF SCHEMATIC DRAWINGS

CITY reserves the right to direct substantial revision of the deliverables after acceptance by CITY as CITY may deem necessary and CITY shall pay PROFESSIONAL equitable compensation for services rendered for the making of any such revisions. In any event, when PROFESSIONAL is directed to make substantial revisions under this Section of the Contract, PROFESSIONAL shall provide to CITY a written proposal for the entire costs involved in the revisions. Prior to PROFESSIONAL undertaking any substantial revisions as directed by CITY, CITY must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

If revisions of the deliverables are required by reason of PROFESSIONAL's error or omission, then such revisions shall be made by PROFESSIONAL without additional compensation to the fees herein specified, and in a time frame as directed by CITY.

It is expressly understood and agreed by PROFESSIONAL that any compensation not specified in Article II may require City Council approval and is subject to funding limitations.

ARTICLE VI.
PROFESSIONAL'S COORDINATION WITH OWNER

PROFESSIONAL shall be available for conferences with CITY so that Project can be designed with the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. CITY shall make available to PROFESSIONAL all existing plans, maps, field notes, and other data in its possession relative to the Project. PROFESSIONAL may show justification to CITY for changes in design from CITY standards due to the judgement of said PROFESSIONAL of a cost savings to CITY and/or due to the surrounding topographic conditions. CITY shall make the final decision as to any changes after appropriate request by PROFESSIONAL.

ARTICLE VII.
TERMINATION

This Contract may be terminated at any time by CITY, with or without cause, without penalty or liability except as may otherwise be specified herein upon thirty (30) days written notice. Upon receipt of written notice by CITY, PROFESSIONAL shall immediately discontinue all services and PROFESSIONAL shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this Contract. As soon as practicable after receipt of notice of termination, PROFESSIONAL shall submit a statement, showing in detail the services performed but not paid for under this Contract to the date of termination. CITY shall then pay PROFESSIONAL promptly the accrued and unpaid services to the date of termination; to the extent the services are approved by CITY.

This Contract may be terminated by PROFESSIONAL, with mutual consent of CITY, at any time for any cause without penalty or liability except as may otherwise be specified herein upon thirty (30) days written notice. PROFESSIONAL shall submit written notice to terminate Contract and all completed or partially completed studies, reports, drawings, documents, and material prepared under this Contract shall then be delivered to City which it, its agents, or contractors, may use without restraint for the purpose of completing the Project. All rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination. PROFESSIONAL shall be liable for any additional cost to complete the project as a result of PROFESSIONAL's termination of this Contract without cause.

ARTICLE VIII.
OWNERSHIP OF DOCUMENTS

Upon completion of PROFESSIONAL services and receipt of payment in full, the Project drawings, specifications, and other documents or instruments of professional services prepared or assembled by PROFESSIONAL under this Contract shall become the sole property of CITY and

shall be delivered to CITY, without restriction on future use. PROFESSIONAL shall retain in its files all original drawings, specifications, documents or instruments of professional services as well as all other pertinent information for the Project. PROFESSIONAL shall have no liability for changes made to the drawings and other documents by other professionals subsequent to the completion of the Contract. CITY shall require that any such change be sealed, dated, and signed by the professional making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE IX. **INSURANCE**

- A. PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. PROFESSIONAL shall not commence work under this Contract until PROFESSIONAL has obtained all the insurance required under this Contract and such insurance has been approved by CITY, nor shall the PROFESSIONAL allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the term of this Contract.
1. Worker's Compensation Insurance, as required by law; Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease-each employee, \$500,000 disease-policy limit.
 2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Contract, fully insuring PROFESSIONAL'S liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.
 3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000 per occurrence; or separate limits of \$500,000 for bodily injury (per person), \$500,000 for bodily injury (per accident), and \$500,000 for property damage. This clause does not apply to personal owned vehicles.
 4. Professional Liability Insurance: PROFESSIONAL shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be \$1,000,000 per occurrence.
- B. Each insurance policy to be furnished by PROFESSIONAL shall include the following conditions by endorsement to the policy:
1. Name CITY as an additional insured as to all applicable coverage(s) except Worker's Compensation and Employer's Liability Insurance and Professional Liability Insurance;

2. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail to:

Risk Manager
City of Mansfield
1200 E. Broad St.
Mansfield, Texas 76063

If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to CITY is required;

3. The term “Owner” or “CITY” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of CITY and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of CITY;
 4. The policy phrase “other insurance” shall not apply to CITY where CITY is an additional insured on the policy; and
 5. All provisions of the Contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- C. Concerning insurance to be furnished by PROFESSIONAL, it is a condition precedent to acceptability thereof that:
1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by PROFESSIONAL. The CITY’s decision thereon shall be final.
 2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
- D. PROFESSIONAL agrees to the following:
1. PROFESSIONAL hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CITY, it being the intention that the insurance policies shall protect all Parties to the Contract and be primary coverage for all losses covered by the policies;
 2. Companies issuing the insurance policies and PROFESSIONAL shall have no recourse against CITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of PROFESSIONAL;

3. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by PROFESSIONAL (or any subcontractors) shall not relieve PROFESSIONAL of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate PROFESSIONAL from liability;
4. No special payments shall be made for any insurance that PROFESSIONAL and subcontractors, if any, are required to carry; all are included in the Contract price and the Contract unit prices; and
5. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby. CITY's Risk Manager reserves the right to review the insurance requirements stated in this Contract during the effective period.

**ARTICLE X.
MONIES WITHHELD**

When CITY has reasonable grounds for believing that:

- A. PROFESSIONAL will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or
- B. A claim exists or will exist against PROFESSIONAL or CITY arising out of the negligence of the PROFESSIONAL or the PROFESSIONAL's breach of any provision of this Contract; then CITY may withhold payment of any amount otherwise due and payable to PROFESSIONAL under this Contract. Any amount so withheld may be retained by CITY for that period of time as it may deem advisable to protect CITY against any loss and may, after written notice to PROFESSIONAL, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of CITY by reason of CITY'S failure or refusal to withhold monies. No interest shall be payable by CITY on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of CITY.

**ARTICLE XI.
NO DAMAGES FOR DELAYS**

Notwithstanding any other provision of this Contract, PROFESSIONAL shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

ARTICLE XII.
PROCUREMENT OF GOODS AND SERVICES FROM MANSFIELD BUSINESSES
AND/OR HISTORICALLY UNDERUTILIZED BUSINESSES

In performing this Contract, PROFESSIONAL agrees to use diligent efforts to purchase all goods and services from Mansfield businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons in organizations proposed for work on this Contract, the PROFESSIONAL agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

ARTICLE XIII.
RIGHT TO INSPECT RECORDS

PROFESSIONAL agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of PROFESSIONAL involving transactions relating to this Contract. PROFESSIONAL agrees that CITY shall have access during normal working hours to all necessary PROFESSIONAL's facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give PROFESSIONAL reasonable advance notice of intended audits.

PROFESSIONAL further agrees to include in subcontract(s), if any, a provision that any subcontractor or PROFESSIONAL agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such PROFESSIONAL or subcontractor involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all PROFESSIONAL's or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. CITY shall give the PROFESSIONAL or subcontractor reasonable advance notice of intended audits.

ARTICLE XIV.
NO THIRD-PARTY BENEFICIARY

For purposes of this Contract, including its intended operation and effect, the Parties (CITY and PROFESSIONAL) specifically agree and contract that: (1) the Contract only affects matters/disputes between the Parties to this Contract, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or PROFESSIONAL or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or PROFESSIONAL.

ARTICLE XV.
SUCCESSORS AND ASSIGNS

CITY and PROFESSIONAL each bind themselves, their successors, executors, administrators and assigns to the other Party of this Contract and to the successors, executors, administrators and assigns of such other Party in respect to all covenants of this Contract. Neither CITY nor PROFESSIONAL shall assign or transfer its interest herein without the prior written consent of the other.

ARTICLE XVI.
PROFESSIONAL'S LIABILITY

Acceptance of the receivables by CITY shall not constitute nor be deemed a release of the responsibility and liability of PROFESSIONAL, its employees, associates, or agents for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any negligent error, omission or inconsistencies in the designs, working drawings, specifications or other documents and work prepared by said PROFESSIONAL, its employees, subcontractors, and agents subject to §271.904 of the Texas Local Government Code

ARTICLE XVII.
INDEMNIFICATION

To the extent allowed under Texas law (in particular §271.904 of the Texas Local Government Code), PROFESSIONAL agrees to indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought and suffered by any person or persons, to the extent caused by PROFESSIONAL's breach of any of the terms or provisions of this Contract, or by any other negligent act or omission of PROFESSIONAL, its officers, agents, associates, employees or subcontractors, in the performance of this Contract; and in the event of joint and concurrent negligence of both PROFESSIONAL and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defense of the Parties under Texas law. The provisions of this Paragraph are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE XVIII.
SEVERABILITY

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are for any reason held to be invalid, void or unenforceable, then these provisions shall be stricken from the Contract and the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

ARTICLE XIX.
INDEPENDENT CONTRACTOR

PROFESSIONAL covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of CITY; that PROFESSIONAL shall have exclusive control of and the exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and professionals; that the doctrine of respondent superior shall not apply as between CITY and PROFESSIONAL, its officers, agents, employees, contractors, subcontractors and professionals and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and PROFESSIONAL.

ARTICLE XX.
DISCLOSURE

By signature of this Contract, PROFESSIONAL acknowledges to CITY that he/she has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. PROFESSIONAL further agrees that he/she will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

ARTICLE XXI.
VENUE

The Parties to this Contract agree and covenant that this Contract will be enforceable in Mansfield, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Tarrant County, Texas, or for federal actions in the U.S. District Court Northern District of Texas.

ARTICLE XXII.
ENTIRE CONTRACT

This Contract embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the Parties, including Exhibit "A". In the event of conflicting provisions between this Contract and any attachments or exhibits, this Contract shall be controlling. If there are Amendments and there are any conflicts between the Amendment and a previous version, the terms of the Amendment will prevail.

ARTICLE XXIII.
APPLICABLE LAW

This Contract is entered into subject to the Mansfield City Charter and ordinances of CITY, as same may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and Federal laws. Situs of this Contract is agreed to be Tarrant County, Texas, for all purposes, including performance and execution.

ARTICLE XXIV.
DEFAULT

If at any time during the term of this Contract, PROFESSIONAL shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if PROFESSIONAL shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other Parties therefor. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy, the cost to CITY of the performance of the balance of the work is in excess of that part of the Contract sum, which has not therefore been paid to PROFESSIONAL hereunder, PROFESSIONAL shall be liable for and shall reimburse CITY for such excess.

ARTICLE XXV.
HEADINGS

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

ARTICLE XXVI.
NON-WAIVER

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

ARTICLE XXVII.
REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

ARTICLE XXVIII.
EQUAL EMPLOYMENT OPPORTUNITY

PROFESSIONAL shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, ancestry, national origin or place of birth. PROFESSIONAL shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, disability, ancestry, national origin or place of birth. This action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training including apprenticeship. Upon final determination by a court of competent jurisdiction that the PROFESSIONAL has violated this section, this Contract shall be deemed terminated and PROFESSIONAL's further rights hereunder forfeited.

ARTICLE XXIX.
CONSTRUCTION OF CONTRACT

Both Parties have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Contract.

ARTICLE XXX.
NOTICES

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either Party is otherwise notified in writing by the other Party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for City, to:	City of Mansfield Attn.: Raymond Coffman, P.E. Director of Engineering Services 1200 E. Broad St. Mansfield, Texas 76063 (817) 276-4238
If intended for Professional, to:	Kimley-Horn and Associates, Inc. Attn: Jeff Dolian, P.E. 13455 Noel Rd. Two Galleria Office Tower, Ste. 700 Dallas, Texas 75240 972-770-1363

ARTICLE XXXI.
PRIVATE LAND ENTRY

No entry onto any property of others by PROFESSIONAL on behalf of CITY to survey, or for other reasons related to the performance of services within this Contract shall be made until PROFESSIONAL has secured the landowners' permission to enter and perform such activities, and PROFESSIONAL shall hold CITY harmless from any and all damages arising from activities of PROFESSIONAL on land owned by others.

ARTICLE XXXII.
VERIFICATIONS AND CERTIFICATIONS REQUIRED BY LAW

PROFESSIONAL agrees to execute, simultaneously with this Contract, CITY's Verification and Certifications Required by Law form.

[Signature Page Follows]

EXECUTED this the ____ day of _____, 20 ____, by CITY, signing by and through its City Manager, or designee, duly authorized to execute same and by PROFESSIONAL, acting through its duly authorized officials.

“CITY”
City of Mansfield

By: _____
Raymond Coffman, P.E.
Director of Engineering Services

ATTEST:

Susana Marin, City Secretary

“PROFESSIONAL”
Kimley-Horn and Associates, Inc.

By: _____
Jeffrey W. Dolian, P.E.
Vice-President

CITY OF MANSFIELD

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____,
20____, by Raymond Coffman, P.E., Director of Engineering Services of the City of Mansfield.

Notary Public in and for the State of Texas

PROFESSIONAL

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
20____, by Jeffrey W. Dolian, P.E., Vice-President of Kimley-Horn and Associates, Inc.

Notary Public in and for the State of Texas

August 30, 2024

Mr. Raymond Coffman
City of Mansfield
Engineering Department
1200 E Broad Street
Mansfield, Texas 76063

**Re: Agreement for Professional Services - Public Roadway Engineering
Mansfield Multi-Use Stadium at Harvest Point
Mansfield, Tarrant County, Texas**

Dear Mr. Coffman,

Kimley-Horn and Associates, Inc. (“KH” or the “Consultant”), is pleased to submit this letter agreement (the “Agreement”) to City of Mansfield (“the Client”) for certain professional services. This agreement may be signed in the section entitled “AUTHORIZATION”.

PROJECT UNDERSTANDING

The Client desires to construct a multi-use stadium in the Harvest Point Development in the City of Mansfield. The Client has selected Perkins & Will as the design team lead for the private improvements associated with the stadium and KH is the civil engineer on Perkins & Will's team for the private civil improvements. The Stadium property is 8.4-acres in size and bounded by future public roads on all sides. The road to the south has been designed by Dunaway. This Agreement is for additional design services on the north, east, and west roadways, also known as Stadium Drive North, East and West, and shown in green in the below image. KH has been asked to coordinate with Dunaway regarding the design of the stadium and surrounding infrastructure tie ins with the infrastructure being designed by others. KH has also been asked to coordinate with Dunaway to support their preparation of the Final Plat for the overall development regarding the Stadium property boundary and surrounding rights-of-way shown in green below. This addendum also includes additional design of landscape plaza areas requested during the SD phase, additional public utility infrastructure, and street lighting design. Services beyond these are excluded.

A table summarizing our proposed scope of services, by task, is provided below. The table includes projected fees, fee type, and in-house expenses. Only tasks with accompanying fees are included in our proposed scope of services, though we are available to provide other tasks upon request. The tasks are organized in the order they are typically performed. Detailed descriptions of each task are provided later in this agreement, as are the notes and assumptions upon which our scope and fee are based.

TASK AND FEE SUMMARY

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Item	Task	Stadium	Fee Type
400 Basic Site Civil Engineering Services			
407	Submittals and Permitting - Civil	\$10,000	LS
408	Review and Comment of City Off-Site Infrastructure Plans	\$8,800	LS
409	Meetings and Team Coordination - CD - Civil	\$6,000	LS
410	Final Plat Coordination	\$4,000	LS
	Subtotal	\$28,800	
500 Site Specific & Specialty Civil Engineering Services			
502	East Roadway Design - CD	\$5,000	LS
523	Northwest Roadway Public Sewer Design	\$4,500	LS
524	TX 360 Offsite Water Design	\$8,800	LS
525	Public Water and Sewer Plans in East Roadway	\$13,000	LS
526	Public Water and Sewer Plans in North Roadway	\$13,000	LS
527	West Roadway Design - CD	\$21,600	LS
529	Street Electrical Plans	\$12,000	LS
530	Street Lighting Plans	\$12,000	LS
	Subtotal	\$89,900	
600 Basic Landscape Architectural Services			
603	Meetings and Team Coordination - Landscape	\$10,000	LS
	Subtotal	\$10,000	
700 Enhanced Landscape Architectural Services			
701	Additional Enhanced Landscape Schematic Designs	\$12,000	LS
	Subtotal	\$12,000	
	Grand Total	\$140,700	

Fee Type:
LS = Lump Sum Fee

Expenses:
All reimbursable expenses will be invoiced at cost plus a markup of 15.00%.

Sales Tax:
Certain survey services are subject to state sales tax of 8.25%.

OUR SCOPE AND FEE ARE BASED ON THE FOLLOWING**For all projects:**

- 1 Fees are to perform each task one time. Revisions to address Jurisdictional or Client review comments will be made under the appropriate Submittals and Permitting Task (with hours limits shown).
- 2 Our scope of services terminates five feet from the building(s) and at the back of curb of the surrounding streets to be designed by others.
- 3 Our services will be performed in general accordance with current published City design standards.
- 4 Effort resulting from changes to the building, site plan, or utility design after commencement of our work will be additional services.
- 5 The improvements we design will be privately bid (no quantities, separate specifications books, and bid numbers as is often required for publicly bid plans is included) and will be designed and built in a single phase.
- 6 Private utility information (gas, electric, cable, and telephone) will be shown on the plan for reference only if provided by the appropriate entities in a timely manner. Design of franchise utilities is beyond the scope of this Agreement. Coordination of the relocation of offsite franchise utilities is beyond the scope of this Agreement.
- 7 Inspections and Certifications during construction, if required, will be performed by others and is beyond the scope of this agreement.
- 8 We shall be entitled to rely on the accuracy and completeness of information provided to us by the others. The following items are anticipated:
 - Offsite easements, if needed.
 - A dimensionally correct and zoning compliant site plan in AutoCAD format.
 - Mechanical, Electrical, and Plumbing plans for the buildings showing size, location, and depth of all domestic and fire protection meters and lines, roof drains, sanitary sewer services, and electrical facilities.
 - A geotechnical investigation report with paving and building subsurface design recommendations.
 - A current title commitment with legible copies of the Schedule B exceptions.
 - Timely participation by other members of the consultant team.
 - Any previously prepared surveys, reports, or documents with bearing on our scope of services.
 - TDLR/ADA/FHWA or other accessibility-related review and input will be provided to KH prior to KH's commencement of final design of the Project, including a complete list of doors or other site features or amenities requiring accessible access or an accessible route.
- 9 Design of Life Safety lighting and signage is beyond the scope of this agreement.
- 10 KH does not guarantee the issuance of permits or approvals. If permits are issued for this project, the conditions and expiration dates are the sole responsibility of the Client.
- 11 KH 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 Construction Costs (OPCC) are based on the information known to KH at the time and represent only KH's judgment as a design professional. KH cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.
- 12 Additional tasks may be necessary to complete the project based on City/Client requirements. If necessary KH will provide the Client with a separate scope and fee for this effort.

- 13 KH shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract Documents. The Client shall not allow the contractor to take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the Client shall direct the contractor to promptly submit the matter to the Client before the improvements are built. The Client shall promptly make a determination and issue the necessary instructions to the contractor in writing. Any adjustment by the contractor without this determination and instructions shall be at the contractor's own risk and expense. The Work is to be made complete as intended by the Contract Documents.
- 14 In the performance of any services during construction, KH shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. KH shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. KH will not be responsible for any inspections or certifications during or after completion of the project.
- 15 Any standard details or specifications provided or referenced on KH plans are for the convenience of the Client only. The Client understands that jurisdictions often mandate use of their standard and that these standards have not been modified or designed by KH. The Client has declined to have these standards updated or made specific to this project and will not hold KH responsible for errors or omissions in these standards should an issue arise from their use.
- 16 If Pavers will be utilized on the project, the Client understands "Pavers" (Unit pavers, interlocking pavers, brick pavers, paver slabs, or similar) are not equivalent to other pavement sections. The owner assumes an elevated level of installation, inspection, and maintenance responsibility, and elevated claims risk, by electing to use pavers. Without proper installation, routine inspection and maintenance, pavers are liable to fail and cause unsafe conditions. Specifically: 1) Pavers require installation by qualified contractors having successfully completed paver installation similar in design, material, and extent indicated within contract plans. The owner will ensure that only qualified contractors install the pavers per these requirements. 2) Pavers require routine inspection and maintenance. The owner will be solely responsible for this inspection and maintenance. 3) The client agrees to indemnify, defend, and hold Kimley-Horn harmless from any issues related to the installation, inspection, and maintenance of pavers.
- 17 Our plans will establish proposed finished grade elevations outside the building. The client understands that there is the potential for vertical movement of flatwork after construction is complete. The amount of vertical movement can be mitigated by preparing the subgrade beneath the flatwork like the subgrade under the building. We recommend that the client obtain building and flatwork subgrade preparation recommendations from the Geotechnical engineer. Our plans will direct the contractor to the Geotechnical Report for subgrade recommendations. The client understands that even with proper subgrade preparation of the building and the flatwork there is still the potential for vertical movement and finely graded areas, ADA routes, etc. may need to be adjusted and maintained in the future if they move.
- 18 Our plans show a drainage system to within five feet of the building. The Client is responsible for directing the Mechanical, Electrical, and Plumbing Engineer to connect all building downspouts and drainage systems to the underground drainage system. The Client is responsible for directing the Landscape Architect that all tree wells and planters located near the building are to be drained and the drains connected to the underground drainage system. Doing so will reduce the likelihood of water being introduced into the subgrade.

For this project we assume:

- 1 The property is zoned to allow the intended use. Changes to the zoning and/or request for variances or special use permits will not be required.

- 2 The adjacent water, wastewater, and storm sewer mains are adequate in size to serve the proposed use and no offsite extensions or improvements will be required. No design of offsite improvements to water, wastewater, roadways, traffic signals, or any other utility or improvement is known at this time and is therefore excluded. If drainage or utility studies determine offsite improvements are requirement, the engineering for those improvements may be provided under a supplemental agreement.
- 3 Electrical design (such as site lighting), structural design (such as retaining walls), SWPPP preparation, and site signage design is beyond the scope of this Agreement.
- 4 The site development is not anticipated to impact United States Army Corps of Engineers jurisdictional areas or other Environmentally Sensitive Areas.
- 5 Traffic control plans, if required, will be prepared by the Contractor or others and is not part of our scope.
- 6 Deceleration/Acceleration or modifications to existing medians for left-turn lanes will not be required unless otherwise specifically included in this Agreement.
- 7 The site development is not anticipated to impact any published FEMA floodplain area.
- 8 Detention of the site's runoff will not be required.
- 9 A Traffic Impact Analysis will not be required.
- 10 A boundary survey, platting, and separate instrument easement exhibits will be provided by others.
- 11 All offsite infrastructure in the road to the south of the site will be provided by others to the back of curb of the street, including all utilities and storm water retention.
- 12 TxDOT Permitting of the northern deceleration lane and driveway off of Toll Road 360 Frontage Road will be provided by others.
- 13 Landscape and irrigation plans for the stadium side of the north, west, and east roadways are included in the Original Agreement. Landscape and irrigation plans along any other portion of public roadways are excluded.
- 14 Design of pavers are beyond the scope of this agreement. Pavers requested to be included in the design of the roadways will defer to the details and design provided by Dunaway for the overall development.

TASK DESCRIPTIONS**Task 407 - Submittals and Permitting - Civil**

This task is to capture effort expended by KH for project submittals and responses to jurisdictional review comments during the off-site roadway permitting portion of the project beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the city for plan approval is unknown we have provided a projected budget for these services but actual cost will depend on actual effort required. This task assumes an additional 40 hours of KH effort will be needed for the Stadium project and surrounding public infrastructure.

Task 408 - Review and Comment of City Off-Site Infrastructure Plans

KH will review the Off-site Public Infrastructure plans prepared by Dunaway in an attempt to coordinate the design with the needs of the Stadium. KH will provide up to two rounds of high level comments to Dunaway on design updates requested to Dunaway's public infrastructure plans. KH will attend up to two coordination meetings with Dunaway to discuss comments and coordinate public infrastructure design updates.

Task 409 - Meetings and Team Coordination - CD - Civil

This task is to capture effort expended by KH for project meetings associated with the public roadway design. Because the extent of the effort required is unknown we have provided a projected budget for these services but actual cost will depend on actual effort required. This task assumes 2 engineers will up to 12 one-hour virtual meetings for the Stadium project.

Task 410 - Final Plat Coordination

KH will endeavor to coordinate the proposed Stadium property and the right-of-way dedications, for the public roadways shaded in green in the Project Understanding, with Dunaway to assist in the preparation of the Final Plat for the overall development (prepared by Dunaway). KH will make up to two adjustments to the Stadium boundary and public rights-of-way included in this agreement based on feedback from the Client and Vieste. KH will provide up to two CAD files to Dunaway for support in preparation of the Final Plat.

Task 502 - East Roadway Design - CD

KH will revise the engineering construction documents for the approximately 600 linear foot East Road per the Stadium Roads Infrastructure document provided to KH on 8/15/2024. Design of pavers are beyond the scope of this agreement. Pavers will only be shown in the parallel parking spaces along the roadway. Our plans will defer to the paver details and design provided by Dunaway in the Lone Star 360 Public Infrastructure Improvement Plans.

The revised plans will remain a part of the on-site civil plan set and will not be a separate plan set. Design of the water and sanitary sewer in the East Roadway will be provided under Task 525.

Task 523 - Northwest Roadway Public Sewer Design

KH will design Public Water and Sanitary Sewer Mains in the northwest road to provide public hydrants and public water and sewer services to the Subject Site and adjacent sites. KH will incorporate the design of the public water and sanitary sewer mains into the On-Site Civil Documents.

Task 524 - TX 360 Offsite Water Design

KH will design a 16" water main extension (up to 700 LF) along Toll Road 360 frontage road (to the approximate limits shown in the Project Understanding exhibit) . KH will prepare plans for the anticipated public water improvements for the project, consisting of the following:

General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.

Water Plan: Showing water line size, fixtures, horizontal layout with dimensional ties to existing surveyed improvements, easements, and boundaries.

Water Profile: Showing water line vertical alignment for lines 12 inches in diameter and larger.

Construction Details: Showing details for the water improvements by reference to applicable jurisdictional standard details.

The size of the water line will be determined by the local jurisdiction. There is a potential for additional plans depending on project specifics. These plans will be part of the on-site civil plan set and not a separate plan set. These plans will be submitted for review with the on-site civil plans. This task does not include the design of custom structures.

Task 525 - Public Water and Sewer Plans in East Roadway

KH will design Public Water and Sanitary Sewer Mains in the eastern road to provide public hydrants and public water and sewer services to the Subject Site and adjacent sites. KH will incorporate the design of the public water and sanitary sewer mains into the On-Site Civil Documents.

Task 526 - Public Water and Sewer Plans in North Roadway

KH will design Public Water and Sanitary Sewer Mains in the northern road to provide public hydrants and public water and sewer services to the Subject Site and adjacent sites. KH will incorporate the design of the public water and sanitary sewer mains into the On-Site Civil Documents.

Task 527 - West Roadway Design - CD

KH will prepare engineering construction documents for the approximately 700 linear foot Stadium Drive West, as shown in the Project Understanding exhibit, based on current published City design criteria. These documents will consist of plan view sections of the proposed roadway and storm drainage. We anticipate the following sheets will be prepared:

General Notes: Showing general notes related to proposed construction based on jurisdictional standards.

Dimension Control and Paving Plan: Showing the roadway plan, centerline alignment, horizontal layout with dimensional ties to existing surveyed improvements and boundaries.

Paving Profile: Showing centerline of pavement vertical alignment.

Typical Sections

Grading Plan: Showing contours and spot elevations for top of pavement.

Drainage Area Map and Calculations: Showing existing and proposed roadway and applicable off-site drainage patterns and discharges to/from the roadway to be used as the basis for drainage system sizing and layout.

Storm Drainage Plan and Profiles: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan view.

Water Plan and Profiles: Showing proposed water plan layouts and water profiles for lines 12 inches in diameter and larger. The size of the water line will be determined by the jurisdiction.

Sewer Plan and Profiles: Showing proposed sanitary sewer plan layouts and sewer profiles.

These plans will be part of the on-site civil plan set and not a separate plan set. Design of pavers are beyond the scope of this agreement. Pavers will only be shown in the parallel parking spaces along the roadway. Our plans will defer to the paver details and design provided by Dunaway in the Lone Star 360 Public Infrastructure Improvement Plans.

Task 529 - Street Electrical Plans

Kimley-Horn will provide Street Electrical Plans for the public roadway lighting provided in Task 530. The construction documents for the roadway lighting will be based on the approved photometric analysis prepared under task 530. The construction drawings will show electrical power to the street lighting and will consist of underground conduit, conductors, pull boxes, pole and foundation detail, voltage drop, and load calculations. It is assumed that new electrical service will be required for the lights and will be coordinated by others. The Street Electrical Plans (up to 3 sheets) will include:

- Street Lighting General Notes and Legend sheet
- Electrical plan sheets
- Schedules
- Electrical/lighting details sheets

These plans will be part of the on-site civil plan set and not a separate plan set.

Task 530 - Street Lighting Plans

Kimley-Horn will provide roadway lighting photometric analysis for the stadium side of the public roadways adjacent to the stadium. The photometric analysis consists of roadway lighting for the public roadways. The photometric analysis will adhere to the guidelines set forth by the City of Mansfield. The lighting plans will be based on the standard light fixtures established by the City of Mansfield. The Roadway Lighting Plans (up to 3 sheets) will include:

- Photometric Lighting Plan
- Photometric data summary,
- Luminaire schedule
- Fixture Cut Sheets

These plans will be part of the on-site civil plan set and not a separate plan set. This task includes lighting for the stadium side of the north, west, and east roadways. Lighting along any other portion of the public roadways or internal to the stadium property boundary is excluded.

Task 603 - Meetings and Team Coordination - Landscape

KH will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders during the construction document phase of the project. Because the extent of the effort required is unknown we have provided a projected budget for these services but actual cost will depend on actual effort required. This task assumes up to 40 hours of KH effort for the Stadium project.

Task 701 - Additional Enhanced Landscape Schematic Designs

KH will prepare a Schematic Design plan for the northeast and northwest plazas. Schematic Design for the NE and NW plazas were not included in the original agreement. The NW plaza anticipated improvements may include decorative paving (pavers or integral color concrete), enhanced landscape plantings (trees, shrubs, groundcover), site furnishings. The NE plaza anticipated improvements may include decorative paving (pavers or integral color concrete), enhanced landscape plantings (trees, shrubs, groundcover), site furnishings, artificial turf lawn, and children's play elements.

FEE TYPES, EXPENSES, BILLING, STANDARD PROVISIONS

Lump Sum (LS) tasks will be invoiced based on the percent completion of the tasks.

In-House Expenses: A percentage of the labor fee, as shown in the Task and Fee Summary Table, will be included in each invoice to cover certain expenses: telecommunications, in-house reproduction, postage, supplies, and local mileage.

Other Reimbursable Expenses: Direct reimbursable expenses such as FedEx, couriers, print-shop reproduction, travel, and other direct expenses will be billed at cost plus the markup as shown in the Task and Fee Summary Table.

All permitting, application, recording, and similar project fees will be paid directly by the Client.

Project billing will be monthly and payment will be due within 25 days.

The Consultant is not a Contingent Partner in this project. As such the Consultant will be paid in full for all Professional Services rendered.