

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 Six Hundred Ten Thousand Dollars and 00/100 (\$610,000.00) 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 agreed upon in writing by the Parties. 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 or liability 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.: James Fish, Parks Planning Manager  
1164 Matlock  
Mansfield, Texas 76063  
(817) 728-3394

If intended for Professional, to: Kimley Horn and Associates, Inc.  
Attn: Katherine Utecht  
801 Cherry Street, Ste. 1300, Unit 11  
Fort Worth, TX 76102

**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 \_\_\_\_\_, 2024, 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: \_\_\_\_\_  
Troy Lestina, Deputy City Manager

ATTEST:

\_\_\_\_\_  
Susana Marin, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Vanessa Ramirez, Assistant City Manager

“PROFESSIONAL”  
Kimley Horn and Associates, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF MANSFIELD**

**STATE OF TEXAS           §**

**COUNTY OF TARRANT §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2024, by Troy Lestina, Deputy City Manager of the City of Mansfield.

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Notary Public in and for the State of Texas

**PROFESSIONAL**

**STATE OF TEXAS           §**

**COUNTY OF TARRANT §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2024, by \_\_\_\_\_, \_\_\_\_\_ of Kimley Horn and Associates, Inc.

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Notary Public in and for the State of Texas



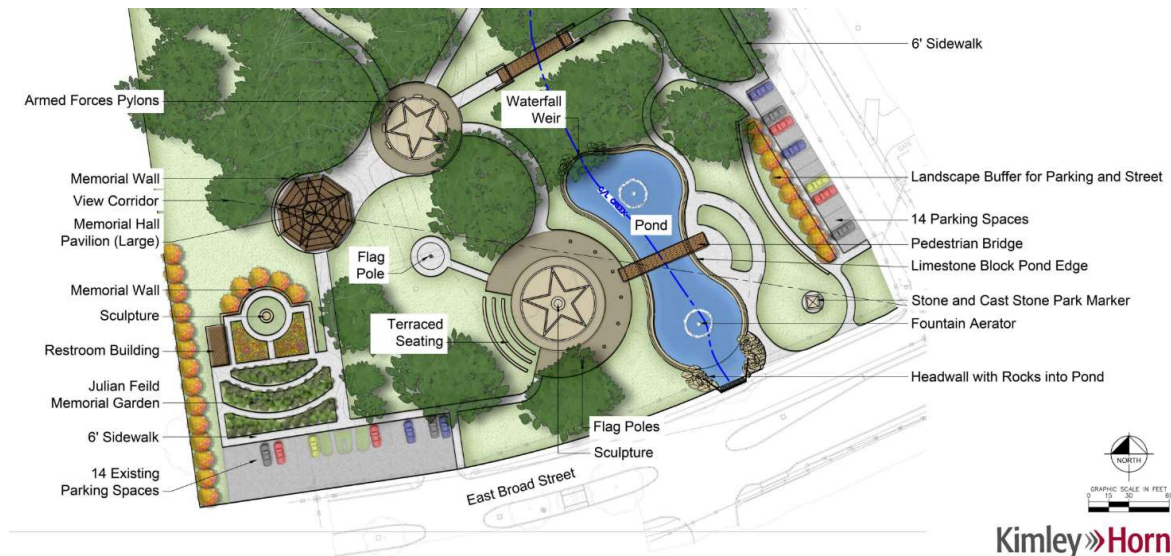
March 19, 2024

Mr. James Fish, PLA, ASLA  
Parks Planning Manager  
City of Mansfield  
1164 Matlock Road  
Mansfield, TX 76063

Re: Letter Agreement for Professional Services for Julian Feild Park Improvements  
1531 E Broad St., Mansfield, TX 76063

Dear Mr. Fish:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement (the "Agreement") to the city of Mansfield ("Client") for providing construction document development, bidding phase services, and construction contract administration for Julian Field Park Improvements phase 1 based on the image below. The letter agreement is separated into two parts, Part A and Part B. Part A covers construction document development and project management for the park amenities and Part B covers hydrologic conditions, analysis, construction document development, and project management for the permanent erosion control structure for the existing creek within Julian Feild Park.





## **Scope of Services**

### **PART A**

#### **BASIC SERVICES**

Consultant will provide the services specifically set forth below.

##### **Task 1A          Project Management and Design Coordination**

The Consultant will manage the contract and monitor the project schedule and deliverables. Consultant will provide timely invoicing and reporting of project progress to the Client. A project kick-off initiation call between the Client and Consultant shall be conducted once we receive Notice to Proceed (NTP). The call will occur within two (2) weeks of the Notice to Proceed (NTP). The preliminary agenda for the kickoff will consist of:

- Scope of Services and responsibilities
- Project objectives
- Information needs
- Schedule milestones
- Review of conceptual design amenities

Note: Consultant will be responsible for meeting logistics such as online hosting (MS Teams or Zoom) and will document calls with meeting notes. Notes will be submitted to the Client for review.

##### **Task 2A          Construction Document Development**

Based on the approved final conceptual design from 2021, the Consultant will prepare a 50% and 75% design development plan package for the park improvements. The package will consist of the following items:

- Cover sheet
- General notes
- Demolition/removal items
- Site layout
- Grading sheets
- Erosion control sheets
- Planting plan
- Irrigation plan
- Utility plans
- Detail sheets
- OPCC

Consultant will submit the design packages to the Client for review. The Client will provide one (1) consolidated set of comments for review by Consultant. The Consultant will facilitate one (1) in-person meeting with Client to review the design development plan package. Based upon input from

the Client documented during the Review Session, Consultant will update materials to be included in the 75% construction document package.

Based on the review session with the Client, the Consultant will prepare a 75% construction document plan package for the proposed park amenities. The package will consist of the following items:

- Cover sheet
- General notes
- Removal items
- Site layout
- Grading sheets
- Drainage areas/storm sewer areas
- Environmental sheets
- Erosion control sheets
- Planting plan
- Irrigation plan
- Lighting/electrical plans
- Utility plans
- Detail sheets
- Project manual consisting of technical specifications
  - City of Mansfield front-end master contract documents
- OPCC

Consultant will submit the package to the Client for review. The Client will provide one (1) consolidated set of comments for review by Consultant. The Consultant will facilitate one (1) in-person meeting with the Client to review the construction document plan package. Based upon input from the Client documented during the Review Session, Consultant will update materials to be included in the final construction document package.

The Client will provide consolidated written comments to Consultant. Consultant will revise materials one (1) time to incorporate comments into the final construction document package.

The Consultant will prepare final construction document plan package (100% Construction Documents), highlighting proposed amenities based on the 75% construction document phase. The final construction document package will consist of the following items:

- Cover sheet
- General notes
- Removal items
- Site layout
- Grading sheets
- Drainage areas/storm sewer areas
- Environmental sheets
- Erosion control sheets
- Planting plan
- Irrigation plan
- Lighting/electrical plans
- Utility plans



- Detail sheets
- Project manual consisting of technical specifications
  - City of Mansfield front-end master contract documents
- OPCC

Consultant will submit the package to the Client for review and approval.

This task consist of two (2) rounds of revisions, one (1) revision after 50% phase and one (1) revision after 75% phase as requested by the Client. Additional revisions or revisions required by changes per the Client, along with any additional submittals and meetings that might be required, will be billed as an additional service at our current hourly rates.

*Task 2A Deliverables – As a result of this task, the Consultant will produce:*

- One (1) digital PDF set of 50% design development plans and OPCC
- One (1) digital PDF 75% construction document plans, OPCC, and project manual
- One (1) digital PDF set of final (100%) construction documents, OPCC, and project manual
- One (1) digital PDF set of review session notes
- One (1) digital set of all CAD drawings for the project

### **Task 3A          Bidding Phase Services**

The Consultant will assist the Client to prepare advertisement of the project on Ionwave, CivCast, Bonfire or another media platform per the Client's discretion. Prepare for and conduct one (1) pre-bid meeting and answer appropriate questions from bidders. Issue addenda in response to bidder's requests for information. Following advertisement of the project, the Consultant will assist the Client in opening bids and provide a summary of the bid analysis to the Client for use in selection and award of the construction contract. The Consultant will provide a letter of recommendation to the Client for award of the construction contract.

*Task 3A Deliverables – As a result of this task, the Consultant will produce:*

- One (1) digital PDF of the bid tab and bid analysis
- One (1) digital PDF of the Letter of Recommendation

### **Task 4A          Basic Construction Contract Administration**

The Consultant will provide limited construction phase services for the project, as follows. The Consultant will attend one (1) pre-construction meeting prior to commencement of Work at the Site. During the course of the construction contract, the Consultant will review and approve or take appropriate action in respect to ten (10) Shop Drawings, Samples, and other data which the Contractor is required to submit, but only for conformance with the information given in the Construction Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Consultant will respond to reasonable

and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to the Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by the Client.

The Consultant will attend up to twelve (12) site visits total at intervals as directed by the Client in order to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep the Client informed of the general progress of the Work. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents. The Consultant will conduct one (1) final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to the Consultant upon which it is entitled to rely.

### **SPECIAL SERVICES**

#### **Task 5A Franchise Utility Coordination**

Consultant will perform the following services with the franchise utilities:

- Identify franchise utility contacts.
- Request each franchise utility to verify existing utility lines and appurtenances, identify size, material, type, and location and submit mark-ups to Consultant.
- Submit one (1) set of utility relocation exhibits in PDF format to each of the following franchise utilities for review and comment upon City approval of plans:
  - Electrical
  - Gas
  - Communication/Fiber
- Investigate potential conflicts and coordinate with City staff in support of their efforts to coordinate with the franchise utilities.
- Prepare for and attend up to three (3) coordination meetings with the City and franchise utilities.

*Task 5A Deliverables – As a result of this task, the Consultant will produce:*

- *One (1) digital PDF of the franchise utility relocation exhibit*

- One (1) digital CAD file of the location of the utilities

#### **Task 6A Subsurface Utility Engineering Study**

The Consultant will utilize a subsurface utility engineer to provide and perform SUE information regarding the project area. The scope includes Quality Level (QL) "B" SUE. Utilities to be designated consist of gas, telecommunications, electric, traffic signals, storm, water, and sanitary sewer. Designated marks surveyed using project control points will be provided. Any necessary Right-of-Entry (ROE) permits will be provided prior to the start of field work.

*Task 6A Deliverables – As a result of this task, the Consultant will produce:*

- One (1) digital PDF map of the subsurface utilities
- One (1) digital CAD file of the subsurface utilities

#### **Task 7A Environmental Documentation and Coordination**

Consultant will perform an Aquatic Resources Delineation in general accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetlands Delineation Manual and appropriate USACE Regional Supplement (Great Plains Region) as detailed below. Consultant will locate readily available resource documents which may consist of aerial photographs, historic topographic maps, soil surveys, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, National Hydrography Dataset (NHD), Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), and other related data for a desktop review of site conditions.

Consultant will perform a site visit to evaluate the existence and approximate locations of aquatic resources on the site generally following the USACE 1987 Wetlands Delineation Manual and the applicable USACE Regional Supplement. Following the site visit, Consultant will prepare exhibits showing the boundaries (polygons) and acreage and/or linear footage (if applicable) of aquatic resources identified onsite during the site visit. Appropriate feature data, locations, and extents will be collected with a GPS with sub-meter accuracy as required by the USACE. Please note that the USACE does not require survey-level accuracy for delineated aquatic resources. Consultant will provide the Client with PDF and AutoCAD versions of the aquatic resources' files.

*This scope of work does not include flagging; however, if warranted by the Client, features can be flagged for an additional fee to allow for surveyors to collect the data at a later date.*

Consultant will prepare a report for the project documenting the results of the aquatic resources delineation performed onsite. The report will address the applicable regulatory framework, describe the assessment methodology, limitations and findings, provide site-specific conclusions and jurisdictional analysis of identified features, and provide recommendations pertaining to compliance with Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. The report will also include applicable maps/exhibits, site photographs, and data sheets/forms. This task assumes up to one revision of the delineation report. If additional revisions are requested, additional fees may apply.

*It is important for the Client to understand that the Environmental Protection Agency (EPA) and the USACE occasionally issue guidance concerning what they intend to assert jurisdiction over. Changes that impact our strategy or scope will cause additional work and will be addressed as an additional service amendment to this agreement. Observations will be made under the applicable regulatory guidance at the time of the observations.*

Consultant will prepare for and attend one pre-application meeting with the USACE. Consultant assumes the meeting will take place virtually. To initiate the meeting, it will be necessary to submit a brief letter describing the status of the project and to request the meeting. The intent of the meeting will be to define project specific requirements from the USACE based on the conceptual development plan. Consultant will seek to understand what the USACE will require in terms of details for permit submittals and anticipated timeframes.

NWPs generally allow for impacts to jurisdictional waters that do not exceed 0.5 acre in area. NWPs only authorize single and complete projects. Each single and complete project must show independent utility, that it would be constructed absent the construction of other projects in the area. Some NWPs require notification to the USACE prior to commencing construction activities onsite.

Given our understanding of the proposed project, notification to the USACE Fort Worth District would be required under the terms and conditions of potential NWPs. Based on the pre-application meeting, Consultant will prepare a pre-construction notification (PCN) package for the proposed project requiring the NWP authorization. Under this scenario, Consultant anticipates providing, at a minimum, the following information in the PCN document:

- Aquatic Resources Delineation Report
- Project Description (input from Client may be necessary)
- Purpose and Need (input from Client may be necessary)
- Plan, Profile, and other CAD Drawings (input from Client may be necessary)
- Threatened and Endangered Species information from readily available databases
- Cultural Resources information from readily available databases.

Upon compilation of the PCN document, Consultant will submit to the Client for review and minor comments. Consultant will make minor revisions based upon the Client's review of the permit application.

Although not anticipated, the USACE may require species specific studies for threatened and endangered species and/or cultural resources. Potential species and/or cultural resources studies are not included in this Agreement. Consultant will attempt to identify if these items are needed as early as possible; however, the potential needs for these additional studies are not likely to be recognized until after the permit application has been submitted to the USACE.

*This task is based on the ability to receive authorization under the current NWP Program (2022-2026); however, receiving authorization from the USACE is not guaranteed. This scope does not include pursuing authorization under an Individual Permit.*

The USACE may require a site visit to verify conditions in the field. Consultant will attend this site visit with the USACE. The USACE may modify the aquatic feature classifications or may request additional information about aquatic features. Consultant will update the NWP PCN package based on this field site visit and provide the modifications to the USACE. This task consist of one (1) site visit with the USACE and one (1) set of an additional information request from the USACE.

*Task 7A Deliverables – As a result of this task, the Consultant will produce:*

- One (1) digital PDF of PCN document
- One (1) digital PDF of aquatic resources report

#### **Task 8A Additional Tasks out of Scope**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then currently hourly rates not to exceed \$20,000. The Client will submit written authorization prior to performing services under this task.

### **PART B**

#### **Task 1B H&H Drainage Study**

The Consultant will prepare a hydrologic analysis of the Walnut Creek tributary that is located within the Julian Park project area. The intent of this analysis is to determine the 1, 5, and 100 year peak design flows for the creek. The Consultant will prepare an ultimate conditions drainage area map for the creek. The analysis will assume ultimate hydrologic conditions. The Consultant will use 2019 LIDAR to delineate the contributing watershed, as well as rely upon available record drawings. The Consultant will develop a HEC-HMS model to determine the peak discharges for each storm event. The Consultant will obtain and summarize the hydrologic parameters such as soil conditions, time of concentrations and land uses in the hydrologic calculation summary table.

The Consultant will prepare an existing conditions and proposed conditions HEC-RAS model. The limits of the modeling will extend from Magnolia Street to Broad Street. The peak discharges identified in the hydrologic analysis will be used in the hydraulic analysis. The Consultant will evaluate up to two (2) options to provide stream bank protection for the existing creek. These two (2) options may consist of gabion baskets and/or an articulated block wall system. The improvements will be designed upon the 100-year ultimate flow but will also be evaluated for the lower storm events to design for velocity and downstream impacts. The Consultant will prepare an abridged technical memorandum documenting the existing and proposed hydrologic and hydraulic conditions for the creek and project. This task consist of coordination and correspondence with Client and subconsultants throughout the project.

*Task 1B Deliverables – As a result of this task, the Consultant will produce:*

- One (1) digital PDF of H&H study and findings

## **Task 2B Construction Document Development**

After the City provides feedback and direction on the preferred stream bank protection method, the Consultant will prepare a 50% and 75% design development plan package for the proposed drainage improvements. The construction plans will be incorporated into the park plan package. The package will consist of the following items:

- General notes
- Demolition/removal items
- Site layout
- Detail sheets
- OPCC

The Consultant will submit the packages to the Client for review. The Client will provide one (1) consolidated set of comments for review by the Consultant. The Consultant will facilitate one (1) in-person meeting with Client to review the design development plan package. Based upon input from the Client documented during the Review Session, Consultant will update materials to be included in the 75% construction document package.

Based on the review session with the Client, the Consultant will prepare a 75% construction document plan package for the proposed drainage improvements. The package will consist of the following items:

- General notes
- Removal items
- Site layout
- Drainage areas/storm sewer areas
- Environmental sheets
- Erosion control sheets
- Detail sheets
- Project manual consisting of technical specifications
  - City of Mansfield front-end master contract documents
- OPCC

Consultant will submit the package to the Client for review. The Client will provide one (1) consolidated set of comments for review by Consultant. The Consultant will facilitate one (1) in-person meeting with the Client to review the construction document plan package. Based upon input from the Client documented during the Review Session, Consultant will update materials to be included in the final construction document package.

The Client will provide consolidated written comments to Consultant. Consultant will revise materials one (1) time to incorporate comments into the final construction document package.

The Consultant will prepare final construction document plan package (100% Construction Documents), highlighting proposed improvements based on the 75% construction document phase. The final construction document package will consist of the following items:

- General notes
- Removal items
- Site layout
- Drainage areas/storm sewer areas
- Environmental sheets
- Erosion control sheets
- Detail sheets
- Project manual consisting of technical specifications
  - City of Mansfield front-end master contract documents
- OPCC

Consultant will submit the package to the Client for review and approval.

This task consist of two (2) rounds of revisions, one (1) revision after 50% phase and one (1) revision after 75% phase as requested by the Client. Additional revisions or revisions required by changes per the Client, along with any additional submittals and meetings that might be required, will be billed as an additional service at our current hourly rates. This task consist of coordination and correspondence with Client and subconsultants throughout the project.

*Task 2B Deliverables – As a result of this task, the Consultant will produce:*

- *One (1) digital PDF set of 50% design development plans and OPCC*
- *One (1) digital PDF 75% construction document plans, OPCC, and project manual*
- *One (1) digital PDF set of final (100%) construction documents, OPCC, and project manual*
- *One (1) digital PDF set of review session notes*
- *One (1) digital set of all CAD drawings for the project*

### **Additional Services**

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

- Conceptual design
- Renderings, perspectives, sections/elevations
- Topographic Survey
- Public engagement
- LOMR/CLOMR and Flood Study
- Resident construction project representative

### **Information Provided By Client**

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Consultant during the project, including but not limited to the following:



- Topographic survey
- Geotechnical investigation and report
- Final approved conceptual design
- GIS data and files

## Schedule

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule, the below estimated schedule is based on Clients notice to proceed:

Contract approved at City Council	March 2024 or notice from Client
NTP	March 2024 (late) or notice from Client
Franchise Utility Coordination, SUE, Environmental	16 Weeks
50% Design Development Plans	16 Weeks
75% Construction Document Plans	12 Weeks
Final (100%) Construction Documents	12 Weeks
Advertisement & Bidding Phase	8 Weeks
Pre-Construction Meeting	4 Weeks
Construction	11 Months
Park Ribbon Cutting	4 Weeks

## Fee and Expenses

Consultant will perform the services in Tasks 1 - 7 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.

### **PART A**

Task 1A	Project Management and Design Coordination	\$ 35,000
Task 2A	Construction Document Development	\$ 245,000
Task 3A	Bidding Phase Services	\$ 14,000
Task 4A	Basic Construction Contract Administration	\$ 33,000
Task 5A	Franchise Utility Coordination	\$ 18,000
Task 6A	Subsurface Utility Engineering Study	\$ 13,000
Task 7A	Environmental Documentation and Coordination	\$ 42,000

**Total Lump Sum Fee (PART A) \$ 400,000**

Task 8A Additional Tasks out of Scope \$ 20,000 (HR)

### **PART B**

Task 1B	H&H Drainage Study	\$ 55,000
Task 2B	Construction Document Development	\$155,000

**Total Lump Sum Fee (PART B) \$ 210,000**

**TOTAL PROJECT LUMP SUM FEE (PART A AND PART B) \$ 610,000**

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