

This Agreement for Professional Services (“Agreement”) is made by and between the **City of Farmers Branch, Texas** (“City”) and **Kimley-Horn and Associates, Inc.**, a North Carolina corporation licensed in Texas (“Professional” or “Kimley-Horn”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, City desires to engage the services of Professional as an independent contractor, and not as an employee, to provide services described in Exhibit “A” (the “Scope of Services”) to assist City in surveying services for the **Active Transportation Plan** (the “Project”) on the terms and conditions set forth in this Agreement; and

WHEREAS, Professional desires to render services for City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination, Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, or other items prepared by Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of City in accordance with this Agreement prior to such termination.

Article II
Scope of Service

2.1 Professional shall perform the services in connection with the Project as set forth in Scope of Services. The Professional shall perform the services: (i) with the professional skill and care ordinarily provided by competent architects or engineers, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect or engineer, as the case may be.

2.2 The Parties acknowledge and agree that any and all opinions provided by Professional in connection with the Scope of Services represent the professional judgment of Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.3 Upon payment of all amounts due Professional hereunder, all materials and reports prepared by Professional in connection with this Agreement shall become the property of City. City shall have the right to publish, disclose, distribute and otherwise use such materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall upon completion of the services, or earlier termination, provide City with reproductions of all drawings, materials, specification, reports, maps, and exhibits prepared by Professional pursuant to the Scope of Services.

Article III Schedule of Work

Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, for lump sum amount of \$75,000.00. Unless otherwise provided herein, payment to Professional shall be monthly based on Professional's monthly progress report and the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to City. City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein. Notwithstanding the forgoing, City shall not be required to pay more than 90% of the total fee to be paid to Professional until all deliverables set forth in the Scope of Services have been completed and delivered to City.

4.2 Unless otherwise provided in the Scope of Services, Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article V Devotion of Time; Personnel; and Equipment

5.1 Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should City require additional services not included under this Agreement, Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement and shall be compensated for such

additional services on a pre-approved lump sum basis, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for Professional to perform the services under this Agreement, Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that Professional may deem proper to aid or assist in the performance of the services under this Agreement. Professional shall provide written notice to and approval from City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder and shall not otherwise be reimbursed by City unless provided differently herein.

5.3 Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 Professional shall submit monthly progress reports and attend progress meetings as may be required by City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by Professional to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Professional, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Attn: Benjamin W. Williamson
City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Director of Sustainability and Public
Health
City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, Texas 75234

P.O. Box 819010
Farmers Branch, Texas 75381

With a copy to:

Attn: Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

If intended for Professional:

Kimley- Horn and Associates, Inc.
Attn: Douglas Arnold, P.E., Assistant Secretary
2201 West Royal Lane, Suite 275
Irving, Texas 75063

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) commercial general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) a policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All insurance shall be endorsed to provide the following provisions: (1) name City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, Professional shall provide at least thirty (30) days' prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non- contributory with any other insurance coverage and/or self-insurance maintained by the City.

- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the requires insurance policies, Professional shall cause a certificate of insurance and policy endorsements to be issues evidencing the requires insurance herein and delivered to the City. In addition, the Professional shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein.

6.10 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLES THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, TO THE EXTENT CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B). INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY. THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVSION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all Parties.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Prohibition of Boycott Israel and Energy Companies; Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

- (b) Professional verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended,
- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

Signatures on Following Page

SIGNED AND AGREED this _____ day of _____, 2023.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Benjamin W. Williamson, City Manager

ATTEST:

By: _____
Stacy Henderson, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

SIGNED AND AGREED this _____ day of _____, 2023.

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Douglas Arnold, P.E., Assistant Secretary

EXHIBIT “A” SCOPE OF SERVICES

Scope of Services

Scope of Services under this agreement will consist of assisting the City to prepare an Active Transportation Plan. The project proposal will include existing conditions review, limited public engagement, development of bicycle and pedestrian maps, prioritization of active transportation projects, funding strategies, and developing the final plan and executive summary.

Services under this Agreement include:

1. Existing Conditions and Data Collection

A. Review of Documents and Plans

- i. Review up to three (3) peer-city active transportation plans, and other pedestrian and bicycle plans.
- ii. Review applicable City Master Plans, on-going Comprehensive Plan and public engagement materials, NCTCOG regionwide trails and on-street bikeways network map, NCTCOG sidewalk network map.
- iii. Review available public engagement results from the Comprehensive Plan, the team will develop a summary of trends observed on active transportation at the start of the process.
- iv. Review ridership data from NCTCOG’s Transit-Oriented Development (TOD) Map and Active Transportation Routes to Rail Study.

B. Data Collection, Inventory Map, Issues Identification Map

- i. Prepare for and attend up to a two-day field and data gathering visit. Prior to the site visit, Kimley-Horn and the City will determine the roadways within the City to be inventoried. It is anticipated that the inventory will include collector streets, minor arterials, and major arterials.
- ii. Review rider data from Strava or similar mobile-based GPS activity.
- iii. Perform a level of traffic stress (comfort) analysis to assess the existing quality of bike and pedestrian transportation infrastructure.
- iv. Evaluate the quality of pedestrian experience by the presence of landscaping and lighting on sidewalks in the City.
- v. Review up to five years of available crash history (TxDOT C.R.I.S.) data to identify crash hotspots and focus on safety improvements for pedestrians and bicyclists in those areas.
- vi. Develop an existing conditions inventory that includes existing bicycle and pedestrian facilities identified in Task 1 B (i) and issues map identified from the data collection.

C. Existing Conditions Summary Memorandum

- i. Draft and design a summary of existing conditions memorandum.
- ii. Incorporate one round of comments from the City on the summary of existing conditions memorandum.

D. Task 1 Deliverables:

- i. Existing conditions inventory and issues map
- ii. Summary of existing conditions memorandum

2. Public Engagement

A. Active Transportation Plan Stakeholder Committee Meetings

- i. Prepare for and attend up to two stakeholder committee meetings. It is anticipated that the second stakeholder committee meeting will be a field walk of a few high priority corridors.

EXHIBIT “A” SCOPE OF SERVICES

- ii. Kimley-Horn will prepare meeting content, presentations, and record meeting minutes documenting outcomes. The City will identify and invite committee members and handle meeting logistics.
- B. Public Meeting
- i. Prior to the public meeting, Kimley-Horn will provide survey questions to the City to include in the existing online polling system.
 - ii. Host and attend up to one public meeting, either as a standalone event or partnered with an existing, well-attended city event. Kimley-Horn will provide up to ten meeting boards and other meeting materials. The City will be responsible for securing the meeting space and any giveaways (refreshments and snacks).
 - iii. Kimley-Horn will provide up to four updates to the websites which includes three corresponding social media posts per update. City will be responsible for updating the website content, posting on social media, and any outreach.
3. Plan Development (“The Maps”)
- A. Draft Bicycle System Plan Map
- i. Based on the collector and arterial network, we will complete a draft network with facility recommendations. This will be integrated into a GIS database and displayed on GIS maps. Bicycle infrastructure recommendations in the draft Bicycle System Plan Map may include, but are not limited to, the following:
 - i. On-street dedicated bicycle lanes
 - ii. Paved shoulders
 - iii. On-street signed bicycle routes
 - iv. On-street dedicated cycle tracks
 - v. On-street bicycle boulevards
 - vi. Trails
 - vii. Off-street side paths to increase connectivity of the on-street and off-street system
 - viii. Identification of spot locations where specific improvements are needed to address barriers and create a connected system, not only in the City limits but to other municipality systems.
- B. Draft Pedestrian System Plan Map
- i. Based on the collector and arterial network, we will complete a draft Pedestrian System Plan Map. The information will be integrated into a GIS database and displayed on GIS maps. Pedestrian infrastructure recommendations in the draft Pedestrian System Plan Map may include the following:
 - i. Installation and widening of sidewalks based on NCTCOG data
 - ii. Mid-block pedestrian crossing improvements
 - iii. Street connectivity and access management
 - iv. Signalization upgrades
 - v. Traffic calming techniques
- C. Low-Stress Connectivity Analysis
- i. A Low-Stress Connectivity Analysis will be conducted to establish stress-level ratings of the existing bike system, identify deficiencies, and develop scenarios to support a more complete, integrated, and connected low-stress network. Specific segments identified will have the greatest potential to improve the low-stress network.
- D. Task 3 Deliverables:
- i. *GIS-based map of the existing and proposed bicycle and pedestrian network*

EXHIBIT “A” SCOPE OF SERVICES

4. **Implementation Plan, Recommendations Policies, Prioritized Projects**
 - A. **Project Prioritization**
 - i. Develop a draft prioritization methodology for the bicycle and pedestrian network plan improvements. We will analyze each project based on six factors:
 - i. Proximity to attractors
 - ii. Existing or potential usage
 - iii. Safety
 - iv. Street classification
 - v. Funding partnerships
 - vi. Implementation feasibility
 - ii. Work with the committee in the development of the prioritization criteria and develop a five-year capital improvement plan based on the provided budget.
 - B. **Implementation Strategy**
 - i. The action plan is the result of all the other work, with an emphasis on the projects developed in Task 3.A. Kimley-Horn will establish a methodology for implementation. The Action Plan will be summarized into a single map and corresponding table for easy reference and use. This action plan will include elements for:
 - i. Program Tracking
 - ii. Annual Reporting
 - iii. Need for Plan Update
 - C. **Policy and Program Recommendations**
 - i. Review relevant and existing City, regional, and national policies, programs, and best practices related to active transportation safety, education, engineering, enforcement, and encouragement.
 - ii. Identify and recommend the most effective policies and programs to maximize the City's investment in planned active transportation infrastructure and support the broader community goals, such as improved health outcomes, mode shift, and economic development.
 - D. **Task 4 Deliverables:**
 - i. *Five-year capital improvement list of active transportation projects*
 - ii. *Implementation Plan*
 - iii. *Complete Streets Policy*
5. **Funding Strategies**
 - A. **Active Transportation Funding Sources and Mechanisms**
 - i. Identify and recommend grant opportunities based on the following steps:
 - i. **Project/Grant Identification** – The identification step focuses on pairing the main components of a project with the most suitable grant opportunity. This involves both researching the grant opportunity in detail and having a deep understanding of the project scope to ensure the highest rate of success.
 - ii. **Project Readiness** – This step evaluates the readiness of a project to move forward if funding were to be awarded. Our team will facilitate discussions regarding items such as project timeline, federal/state design guidelines, potential ROW acquisition, utility relocation, required funding agreements, and/or public involvement.
 - iii. **Benefits Consideration** – Our team will seek to understand all potential benefits of the project and communicate that clearly and quantitatively in the grant application. This could include financial benefits, transportation equity benefits, environmental benefits, community benefits, and many other components.

EXHIBIT “A” SCOPE OF SERVICES

- B. *Task 5 Deliverables:*
 - i. *A table of available grants and detailed information about each grant.*

6. Final Plan and Executive Summary

- A. Based on input from previous surveys and feedback from the stakeholder committee, our team will develop a Draft and Final Active Transportation Plan Summary Report that will include the following chapters:
 - i. Overview
 - ii. Existing Conditions Analysis
 - iii. Public Engagement
 - iv. Methodology and Analysis
 - v. Recommended Pedestrian and Bicycle Networks
 - vi. Implementation and Prioritization Plan
- B. The review process for the report by the City is anticipated to be:
 - i. 60% technical materials – full review (occurs during other Tasks)
 - ii. 80% - word version of the report – full review.
 - iii. 95% - final draft layout – minor review.
 - iv. 100% - final plan – no comments.

Additional Services

- A. Services not specifically identified in the Scope of Services above shall be considered additional and shall be performed on an individual basis upon authorization by the City. Such services shall include, but are not limited to, the following:
 - i. Roadway Thoroughfare Plan Update;
 - ii. Traffic Data Collection and Analysis;
 - iii. ADA Compliance;
 - iv. ADA Transition Plan;
 - v. Safe Routes to School Plan Development;
 - vi. Topographic and Boundary Survey;
 - vii. Conceptual Level Design;
 - viii. Roadway Typical Sections and Renderings;
 - ix. Design Services;
 - x. Additional Stakeholder Meetings;
 - xi. Additional Public Engagement; and
 - xii. Any Additional Meetings

Schedule

Kimley-Horn will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

**EXHIBIT “A”
SCOPE OF SERVICES**

Fee and Expenses

Kimley-Horn will perform the services in the Tasks listed below for the total lump sum fee. Individual task amount are informational only. All permitting, application, and similar project fees will be paid directly by the City.

Task 1	Existing Conditions and Data Collection	\$15,000
Task 2	Public Engagement	\$17,000
Task 3	Plan Development (“The Maps”)	\$21,000
Task 4	Implementation Plan, Recommendation Policies, Prioritized Projects	\$13,000
Task 5	Funding Strategies	\$3,000
Task 6	Final Plan and Executive Summary	\$6,000

Total Lump Sum **\$75,000**

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.