

STATE OF TEXAS

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COUNTY OF DALLAS

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**AGREEMENT FOR PROFESSIONAL SERVICES**

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 ("Professional") (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 the professional engineering and landscape architectural services described in Exhibit "A" (the "Scope of Services") in connection with the development of **Denton Drive Trail Connector Project** (the "Project"); 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 the Scope of Services.

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.

### **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, not to exceed a total of FORTY-FOUR THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$44,800.00). 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.

4.3 City shall be required to pay interest in the amount of 12% per annum or the maximum rate allowed by law, whichever is less, on amounts set forth in invoices that are not in dispute and remain unpaid for more than 30 days after City's receipt of the invoice for such services.

### **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:

Attn: Charles S. Cox, City Manager  
City of Farmers Branch, Texas  
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, TX 75234

P.O. Box 819010  
Farmers Branch, TX 75381

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard Street, Suite 1800  
Dallas, Texas 75201

If intended for Professional:

Kimley-Horn and Associates, Inc.  
Attn: Patrick B. Hart, Vice President  
13455 Noel Road  
Two Galleria Tower, Suite 700  
Dallas, Texas 75240

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance:

(1) a 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;

(2) 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;

(3) 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

(4) 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 policies of insurance shall be endorsed and contain 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 at least thirty (30) days prior written notice to City for cancellation of the insurance;

(3) provide for a waiver of subrogation against 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. Professional shall provide written notice to City of any material change of or to the insurance required herein.

(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.

(d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by City.

6.10 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF PROFESSIONAL PURSUANT TO

THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). 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 PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties hereto 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. 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.

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Charles S. Cox, City Manager

**ATTEST:**

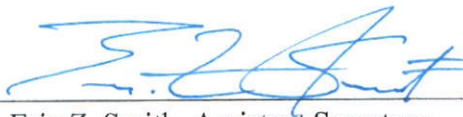
\_\_\_\_\_  
Amy Piukana, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**SIGNED AND AGREED** this 7<sup>th</sup> day of March, 2019.

**KIMLEY-HORN AND ASSOCIATES, INC.**

By:   
Eric Z. Smith, Assistant Secretary

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

The Scope of Services as outlined on the following pages is based upon Kimley-Horn's (the "Professional") meetings and conversations with the City of Farmers Branch, Texas (the "City").

#### **Project Understanding**

The Professional understands that the City intends to finalize an approximately 0.8 miles trail alignment to a 30% Construction Document Level for the Denton Drive Trail Connector (the "Project") beginning at the southern city limits on Denton Drive and continuing north to Rossford Street. This project will connect to the proposed City of Dallas/Dallas County veloweb trail connector at the southern city limits. To the north, it will connect to an existing City of Farmers Branch trail at Rossford Street. For an approximate 0.17 miles segment of the trail between Farmers Branch and the DART Station, the trail will merge with the proposed Westside Trail Phase 3. The Denton Drive Trail Connector is a segment of North Central Texas Council of Governments (NCTCOG) Regional Veloweb and must be in general accordance to the published NCTCOG construction standards.

The Professional shall prepare all work in general accordance with the latest published version of applicable Dallas County procedures, specifications, manuals, guidelines, standard drawings, standard specifications or previously approved special provisions and special specifications consisting of: Guidelines for federal funding, American Association of State Highway and Transportation Officials (AASHTO), Guide for the Development of Bicycle Facilities, (latest Edition), the Texas Manual on Uniform Traffic Control Devices (TMUTCD), Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the North Central Texas Council of Governments Public Works Construction Standards.

#### **City's Responsibilities**

The Professional understands that the City will provide the following information, upon which we may rely, for our use in completing this Scope of Services:

- A) Any existing R.O.W. maps of the project area.
- B) Any City of Farmers Branch design requirements or standards applicable to the project.
- C) Any available record drawings and information on any existing City or TXDOT facilities within the project limits.
- D) Any available plans of existing or proposed utilities, parking, and streets within or adjacent to the site.
- E) Attendance and guidance at regularly scheduled project meetings.
- F) A current geo-technical report for the project.

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

#### **Professional Services**

The Professional will provide the following basic services as set forth below:

#### **Task I Project Coordination and Design Management**

The Professional will serve as the lead design consultant and design team manager. Items of work included in this task are:

- A) Assisting the City in defining the project scope, design budgets, and assignment of design team responsibilities.
- B) Manage and direct the design team during the design phase.
- C) Communicate regularly with the City.

#### **Task II Data collection**

The Professional will:

- A) Conduct one site visit to document the existing observable above-ground conditions within the various corridor alignments for use during the Pre-Design Phase of the project.
- B) Review the information provided by the City, including the previously prepared plans and other documents.
- C) Work to obtain Record Drawings for existing water, sanitary sewer, storm drainage, and roadway improvements on or immediately adjacent to the trail corridor.
- D) Work to obtain current engineering design guidelines, applications, and checklists published by the local jurisdiction to be used for the design of the Project.

#### **Task III Pre-Design Phase**

The Professional will prepare a preliminary plan alignment for the trail in conjunction with up to six (6) preliminary cross sections, and a preliminary opinion of probable construction cost (OPCC) analysis.

The Professional has no control over the cost of labor, materials, equipment, or over the future 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 the Professional at the time and represent only the Professional's judgment as a design professional. The Professional cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.

To accomplish this, the Professional will conduct up to three (3) coordination meetings with City representatives.

Meetings: 3 meetings of 3 hours each (preparation, meeting, and post meeting time).

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**Task VI Preliminary Design (30% Construction Documents)**

Upon completion of the Pre-Design Phase Task and based upon review comments received from the City staff, the Professional will prepare 30% Construction Documents. This will consist of the following tasks:

- A) Preparation of 30% level plans that will include horizontal alignment and layout of the trail corridor and typical cross sections.
- B) Preparation of a revised opinion of probable construction cost.
- C) Meet with City representatives to present the 30% Level plans to obtain any City comments.
- D) Finalize the 30% Level package to reflect changes and comments determined by consensus at a meeting with City representatives.

Meetings: 1 meeting of 3 hours (preparation, meeting, and post meeting time).

**Task V – Traffic Link Capacity Comparison**

Through a data collection subconsultant, new bidirectional Seven-day Machine Counts will be made at the two intersections: Farmers Branch Lane/Denton Drive and Rossford Street/Denton Drive. The Professional will determine the recommended locations for the seven-day counts. Such counts will typically not be made on a week that includes a holiday.

Average daily volumes will be calculated from the bidirectional Seven-day Machine Counts. Using daily capacity values from the North Central Texas Council of Governments (NCTCOG), volume to capacity (v/c) ratios and level of service (LOS) will be determined for the existing lane configuration and the proposed lane configuration.

The Professional will summarize the findings of the data collection in a short technical memorandum (approximately 1 page in length) detailing the results of the link capacity comparison.

**Task VI – Design Survey**

The survey area will include Denton Drive, the R.O.W., and the area ten feet outside of the R.O.W. to the east and west from the southern city limit line at Denton Drive, north to Havenhurst Street. The survey will include but not limited to the following items:

- A) Existing property corners, property lines, easement lines and right-of-way lines
- B) Existing pavement (including material type), curbs, sidewalks, barrier free ramps, etc.
- C) Existing storm sewer inlets, manholes, junction boxes (including culvert sizes, material type and invert elevations)
- D) Storm sewer outfalls, bridges, and erosion control
- E) Existing driveway culverts and swales including flow lines
- F) Visible utility manholes, vaults, water valves, water meters, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
- G) Traffic signal poles, cabinets, and other signal equipment
- H) Signs (excluding temporary signs)
- I) Buildings and permanent structures

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- J) Retaining walls
- K) Fence limits and material types (excluding temporary fences)
- L) Other applicable physical features inside of project limits that could impact design
- M) Establish horizontal control points tied to previous survey coordinate system to confirm that the Professional's datum and former datum will be the same
- N) Establish a vertical control benchmark circuit tied to the City of Farmer Branch or prior control network
- O) Prepare a final topographic drawing to be used for in-house engineering in digital format (including contours and break lines) showing the features located in the field

**Exclusions**

Any items requested by the City that are not outlined in the above scope will be considered excluded from this Agreement and may be provided only if requested and authorized in writing by the City.

The Professional can provide the following services, but they are not included in the limited scope of this Agreement:

- Computer Graphic modeling of the corridor
- Construction Documents beyond the 30% Level
- Bid Phase Services
- Construction Phase Services
- Structural Design
- LOMR/CLOMR studies, reports and permitting
- Geo-technical Investigations and Recommendations
- Franchise Utility Coordination
- Structural Design Services for Bridges and Vertical Elements Over 5 Feet High Traffic Impact Studies or Signal Design
- Preparation of Traffic control plans
- Revisions due to changes in regulations
- Revisions to CD's after design approval other than clarifications
- Archaeological Survey
- Submittal, Permitting Fees, or Impact Fees
- Construction Staking
- Utility Design
- Roadway Design
- Detailed Cost Estimates (As Prepared by an Estimating Service)
- Preparation of Record Drawings
- Environmental Assessments or Impact Statements/ Environmental Clearance
- Wetlands and jurisdictional waters permitting /delineation
- Lighting Design
- Traffic Control Plans

**Fee and Billing**

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The Professional will perform the Basic Services and Reimbursable Expenses as described in the Scope of Services for a total lump sum fee of \$44,800. All permitting, application, and similar project fees will be paid directly by the City.

Fees will be invoiced monthly in the Professional's format via e-mail, based as applicable, upon the percentage of services performed or actual services performed, and expenses incurred as of the invoice date. Payment will be due within 30 days of your receipt of the invoice.

Fees by task are as follows:

<b>Task</b>	<b>Fee Type</b>	<b>Fee</b>
Task I – Project Coordination and Design Management	Lump Sum	\$5,600
Task II – Data Collection	Lump Sum	\$3,100
Task III – Pre-Design Phase	Lump Sum	\$6,100
Task VI – Preliminary Design (30% CDs)	Lump Sum	\$7,500
Task V – Traffic Link Capacity Comparison	Lump Sum	\$6,700
Task VI – Design Survey	Lump Sum	\$15,800
<b>Total</b>	<b>Lump Sum</b>	<b>\$44,800</b>

**Additional Services**

No additional services shall be provided without prior written authorization from the City. Should additional services be required, the Professional will work with the City to develop a lump sum fee.

**Schedule for Completion**

The Professional will work with the City to develop a mutually acceptable project schedule.

**Insurance**

Insurance shall be as per City of Farmers Branch requirements.