

PROFESSIONAL SERVICES AGREEMENT
Westside Art Trail Construction Phase Hourly Services

This Professional Services Agreement (“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 the services described in Exhibit “A” (the “Scope of Services”) for the Westside Art Trail Construction Phase Hourly Services (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 an hourly/reimbursable not-to-exceed amount of Two Hundred Twenty-Five Thousand and No/100 Dollars (\$225,000.00). 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 foregoing, 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 twelve percent (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 thirty (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 (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth below (or to such other address that may be designated by the receiving party from time to time, upon notice to all parties as provided in this section):

If intended for City, to:

Attn: Benjamin W. Williamson
City Manager
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234
benjamin.williamson@farmersbranchtx.gov

With a copy to:

Attn: Managing Superintendent of
Public Works
City of Farmers Branch, Texas
13000 William Dodson Pkwy
Farmers Branch, Texas 75234
maria.minter@farmersbranchtx.gov

P.O. Box 819010
Farmers Branch, Texas 75381

With a copy to:

Attn: Nicole Corr, City Attorney
Wyatt Hamilton Findlay, PLLC
5810 Long Prairie Road, Ste. 700-
220
Flower Mound, Texas 75028
nicole@whflegal.com

If intended for Professional:

Attn: John Ryan, P.E.

Kimley- Horn and Associates, Inc.
225 E. John W. Carpenter Freeway, Suite 1100
Irving, Texas 75062
john.ryan@kimley-horn.com

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; Notice. 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 INDEMNITEES") 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 THE CITY INDEMNITEES. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL 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 THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SERVANTS, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR

DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY THE CITY INDEMNITEES TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. Professional shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Professional's acts or omissions under this Agreement and shall see to the investigation of such claims or demand at Professional's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such investigation without relieving Professional of any of its obligations hereunder. Professional's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained under this Agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

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 Verifications by Professional. Professional's execution of this Agreement shall serve as its formal acknowledgement and written verification that:

(a) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Professional agrees that the Agreement can be terminated if Professional knowingly or intentionally fails to comply with a requirement of that subchapter;

(b) pursuant to Texas Government Code Chapter 2271, that Professional's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and

(c) pursuant to Texas Government Code Chapter 2274, that Professional's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or

entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

[SIGNATURE PAGE FOLLOWS]

SIGNED AND AGREED this _____ day of _____, 2025.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Ben Williamson, City Manager

APPROVED AS TO FORM:

Nicole Corr, City Attorney
[ap.7.31.25]

SIGNED AND AGREED this _____ day of _____, 2025.

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Douglas Arnold
Contract Specialist

ATTEST:

By: _____
Matt Pool
Assistant Secretary

EXHIBIT "A"

SCOPE OF SERVICES

Westside Art Trail Construction Phase Hourly Services

Scope of Services under this Agreement will consist of providing construction phase services for the Westside Art Trail project (plans prepared via a separate contract).

Services under this Agreement include:

1. Limited Construction Phase Services

- A. The scope of services listed may or may not be performed as part of our services. Work under this task shall only be performed at the discretion of the CITY. This task includes up to 595 hours of ENGINEER's labor plus expenses (reimbursables) and may provide the following:
- B. *Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by City.
- C. *Shop Drawings and Samples.* Consultant will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.
- D. *Substitutes and "or-equal/equivalent."* Consultant will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- E. *Meetings.* Kimley-Horn will attend 1 on-site preconstruction meeting and up to 12 monthly construction progress meetings on-site with the City and the Contractor to review the status of the construction and coordinate upcoming work or any outstanding items. Kimley-Horn will attend up to 10 various meetings as requested by the City to provide design-related support. Kimley-Horn will prepare meeting agendas and meeting notes for the meetings listed above to distribute to the project team.
- F. *Change Order Reviews.* Kimley-Horn may review proposed change orders and provide comments. Final change order review and processing will be performed by City staff. This scope assumes up to 2 change orders during construction.
- G. *Site Observation.* Kimley-Horn will perform periodic site visits (excluding planned site visits listed under Task 1.E. Site observation will be scheduled based on contractor activities at the site. Site visits will follow the guidelines established in the original contract for engineering services for this project. Site visits will be documented with observation reports to include a description of work in progress and any observations of construction issues that may require attention. Assumes 1-2 site visits per week on average for 9 months. Site visits will vary as needed per construction activities.
- H. *Substantial Completion.* Kimley-Horn will attend a substantial completion

EXHIBIT "A"

SCOPE OF SERVICES

walkthrough. This activity will include the documentation of substantial completion observations and deficiencies. This scope includes one substantial completion walk through and punch list.

- I. *Record Drawings.* Kimley-Horn will prepare Record Drawings from information provided by the Contractor depicting any changes made to the Final Drawings during construction. Kimley-Horn shall modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed. The stamp shall be signed and dated by Kimley-Horn and shall be placed on each plan sheet, whether there are any revisions on the sheet or not. Each sheet shall clearly indicate all changes which apply to that sheet by clouding and numbering, or other suitable means.
- J. *Limitation of Responsibilities.* Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of endeavoring to provide the City a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The City agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the City and Kimley-Horn for all claims and liability arising out of job site accidents; and that the City and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

2. Additional Construction Phase Services

- A. The scope of services listed may or may not be performed as part of our services. Work under this task shall only be performed at the discretion of the CITY. This task includes up to 430 hours of ENGINEER's labor plus expenses (reimbursables) and may provide the following:
- B. *Applications for Payment.* Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
- C. *Disputes between City and Contractor.* Consultant will, if requested by City, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract

EXHIBIT “A” SCOPE OF SERVICES

Documents. In rendering decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision.

- D. *Construction Schedule Review.* Consultant will perform a review of Contractor’s monthly construction schedule. An initial schedule will be reviewed for schedule health and for consistency with project phasing and contract time limits. Comments will be provided to the Contractor and City.
- E. *City and Contractor Coordination.* Kimley-Horn will perform coordination with City Staff and the Contractor on an as-needed basis regarding project documentation, project schedule, and known project issues. The purpose of this coordination will be to facilitate communication and resolution of outstanding items to promote progress of the project during construction.
- F. *Franchise Utility Coordination.* Kimley-Horn will perform coordination with City Staff and the Contractor on an as-needed basis regarding project documentation, project schedule, and known project issues. The purpose of this coordination will be to facilitate communication and resolution of outstanding items to promote progress of the project during construction.
- G. *Final Notice of Acceptability of the Work.* Kimley-Horn will coordinate a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. This scope includes one final completion walk through.
- H. *LGPP Coordination.* Kimley-Horn shall (when requested by the City) review paperwork and documentation prepared by the City for TxDOT LGP documentation.

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. Specialized testing/inspection
 - ii. Additional meetings
 - iii. Services related to warranty claims, enforcement, and inspection after final completion.
 - iv. Assist the City as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies.
 - v. Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City’s acceptance of substitutions proposed by the contractor.
 - vi. Any services not listed above.

**EXHIBIT “A”
SCOPE OF SERVICES**

Schedule

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

Fee and Expenses

Professional will perform the services in Tasks 1-2 listed below on a labor fee plus expense (reimbursable) basis with the maximum fee shown below. Kimley-Horn will not exceed the total maximum fee shown without authorization from the City. Individual task amounts are provided budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Task 1	Limited Construction Phase Services	\$ 131,000
Task 2	Additional Construction Phase Services	\$ 94,000
Total Reimbursable Fee (not-to-exceed)		\$ 225,000

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as subconsultants, express delivery services, and other direct expenses will be billed at 1.15 times cost. The reimbursable fees above include both labor and direct expenses. We have budgeted six percent (6%) of labor fee to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the City. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.