

## DocuSign City Council Transmittal Coversheet

PSA	6590-102
File Name	Ginnings and Alexander SRTS Improvements
Purchasing Contact	Cori Power
City Council Target Date	March 16, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-417

## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **Kimley-Horn and Associates, Inc.**, with its corporate office at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Ginnings Elementary School and Alexander Elementary School Safe Routes to School Sidewalk Improvements (the "PROJECT").

#### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$215,000 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment D.

#### **SECTION 3** **Terms of Payment**

Payments to the ENGINEER will be made as follows:

## **A. Invoice and Payment**

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment D to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

## **SECTION 4 Obligations of the Engineer**

Amendments to Section 4, if any, are included in Attachment C.

### **A. General**

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

### **B. Standard of Care**

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and

- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

### **C. Subsurface Investigations**

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

### **D. Preparation of Engineering Drawings**

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

### **E. Engineer's Personnel at Construction Site**

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.
- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

#### **F. Opinions of Probable Cost, Financial Considerations, and Schedules**

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

#### **G. Construction Progress Payments**

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that

the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

## **H. Record Drawings**

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

## **I. Right to Audit**

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

## J. INSURANCE

### (1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
  - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
  - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers

compensation and employers liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

## (2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.



- f. Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.
- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

## **K. Independent Consultant**

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

## **L. Disclosure**

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

## **M. Asbestos or Hazardous Substances**

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

## **N. Permitting Authorities - Design Changes**

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

## **O. Schedule**

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment D to this AGREEMENT.

## **P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents

shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## **SECTION 5** **Obligations of the City**

Amendments to Section 5, if any, are included in Attachment C.

### **A. City-Furnished Data**

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

### **B. Access to Facilities and Property**

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

### **C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

### **D. Timely Review**

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment D.

### **E. Prompt Notice**

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

### **F. Asbestos or Hazardous Substances Release.**

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

### **G. Contractor Indemnification and Claims**

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

### **H. Contractor Claims and Third-Party Beneficiaries**

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.

- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

#### **I. CITY's Insurance**

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

#### **J. Litigation Assistance**

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

#### **K. Changes**

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

### **SECTION 6** **General Legal Provisions**

Amendments to Section 6, if any, are included in Attachment C.

#### **A. Authorization to Proceed**

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

#### **B. Reuse of Project Documents**

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk.

The CITY shall own the final designs, drawings, specifications and documents.

### **C. Force Majeure**

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

### **D. Termination**

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

### **E. Suspension, Delay, or Interruption to Work**

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

## **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.**

## **G. Assignment**

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

## **H. Jurisdiction**

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

## **I. Severability and Survival**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

## **J. Observe and Comply**

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

## **K. Immigration Nationality Act**

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

## **L. Prohibition On Contracts With Companies Boycotting Israel**

ENGINEER acknowledges that in accordance with Chapter 2270 of the Texas Government Code, CITY is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this AGREEMENT, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the AGREEMENT.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

## **M. Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this AGREEMENT, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER, pursuant to Chapter 2252, is not ineligible to enter into this AGREEMENT and will not become ineligible to receive payments under this AGREEMENT by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

## **N. Certificate of Interested Parties Electronic Filing**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908



of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Engineer submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Engineer will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

## **O. Prohibition Against Personal Interest In Contracts**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Engineer shall complete and submit the City's Conflict of Interest Questionnaire.

## **P. Agreement Documents**

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of

this AGREEMENT:

- Attachment A - Scope of Services
- Attachment B - Compensation
- Attachment C - Amendments to Standard Agreement for Engineering Services
- Attachment D - Project Schedule
- Attachment E - Location Map

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

Duly executed by each party's designated representative to be effective on the date subscribed by the City Manager.

**ENGINEER**

DocuSigned by:  
 BY: *Scott R. Arnold*  
 AUTHORIZED SIGNATURE

Printed Name: Scott R. Arnold

Title: Vice President

817-335-6511  
 PHONE NUMBER

scott.arnold@kimley-horn.com  
 EMAIL ADDRESS

2021-717342  
 TEXAS ETHICS COMMISSION  
 1295 CERTIFICATE NUMBER

**CITY OF DENTON, TEXAS**

DocuSigned by:  
 BY: *Sara Hensley*  
 5236DB296270423...  
 INTERIM CITY MANAGER

ATTEST:  
ROSA RIOS, CITY SECRETARY

DocuSigned by:  
 BY: *Rosa Rios*  
 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

DocuSigned by:  
 BY: *Marcella Luna*  
 4B070831B4AA438...

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and  
business terms.

DocuSigned by:  
*Rebecca Diviney*      Rebecca Diviney  
SIGNATURE              PRINTED NAME

Director of Capital Projects/City Engineer  
TITLE

Capital Projects - Engineering  
DEPARTMENT

**ATTACHMENT “A”****SCOPE for Engineering Design Related Services for:  
Ginnings Elementary School and Alexander Elementary School  
Safe Routes to School Sidewalk Improvements**

Kimley-Horn and Associates, Inc.

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project.

**OBJECTIVE**

*The objective of this project is to design sidewalk at the following locations*

- *Approximately 5,000 linear feet of 5’ wide sidewalk on both sides of the street along Stuart Road between E Windsor Drive and Sun Valley Drive.*
- *Pedestrian crosswalks at the intersection of Stuart Road and Hercules Lane.*
- *Pedestrian connection over Cooper Creek. It is anticipated that the drainage study and report will not be required. If drainage report and study is required for this pedestrian crossing over Cooper Creek, it will be provided as a separate scope of services.*
- *Approximately 2,400 linear feet of 5’ wide sidewalk on the east side of Mulkey Lane (between Paisley Street and Wayne Street); north side of Lattimore Street (between Mulkey Lane and Pertain Street); and east side of Audra Lane between Lattimore Street and Nottingham Drive)*

*Work under this agreement consists of project management, topographic survey, conceptual design, preliminary and final design, bid phase services, environmental clearance services, and construction phase services. The work also includes assisting City with the project letting. It is our understanding that the project will be let by the City.*

**WORK TO BE PERFORMED**

- Task 1. Design Management
- Task 2. Conceptual Design (30%)
- Task 3. Preliminary Design (60%)
- Task 4. Final Design (90% and 100%)
- Task 5. Environmental Clearance Services
- Task 6. Bidding Phase Services
- Task 7. Construction Phase Services
- Task 8. Topographic Survey Services
- Task 9. TDLR Permitting

## **TASK 1. DESIGN MANAGEMENT.**

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

### **1.1. Managing the Team:**

- Lead, manage and direct design team activities
- Ensure Quality Control / Quality Assurance (QC/QA) is practiced in performance of the work.
- Communicate internally among team members
- Task and allocate team resources

### **1.2. Communications and Reporting:**

- Attend a pre-design project kickoff/charter meeting with City and TxDOT staff to confirm and clarify scope, understand City's objectives, and ensure economical and functional designs that meet City's requirements.
- Attend two (2) field meetings with City representatives prior to the 30% and 90% submittals.
- Conduct and document *monthly* project update meetings with City's Project Manager and City staff.
- Conduct review meetings with City, and TxDOT at the end of each design phase.
- Conduct QC/QA reviews and document those activities.
- Prepare invoices and submit monthly in the format requested by the City.
- Prepare and submit monthly project status reports in the format provided by the City.
- Prepare and submit baseline project schedule initially, and project schedule updates with a schedule narrative monthly.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure, and provide and obtain information needed to prepare the design
- With respect to coordination with permitting authorities, ENGINEER shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. ENGINEER shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements, as part of the design scope.

## **ASSUMPTIONS**

- One (1) pre-design project kickoff/chartering meeting
- Two (2) field review meetings
- Six (6) monthly project update meetings during design phase
- Two (2) plan review meetings
- Project design phase is estimated to be six (6) months.
- Project construction phase is estimated to be six (6) months.
- Twelve (12) monthly updates of project status reports and project schedule.

## **DELIVERABLES**

- Meeting summaries with action items
- Baseline design schedule
- Monthly schedule updates with schedule narrative describing any current or anticipated schedule changes
- Monthly project status reports
- Monthly invoices

## **TASK 2. CONCEPTUAL DESIGN (30 PERCENT).**

The Conceptual Design shall be submitted to City per the approved Project Schedule.

The purpose of the conceptual design is for the ENGINEER to identify, develop, communicate through the defined deliverables, and recommend the design concept that successfully addresses the design problem, and to obtain the City's endorsement of this concept.

ENGINEER will develop the conceptual design of the infrastructure as follows.

### **2.1. Data Collection**

- In addition to data obtained from the City, ENGINEER will research and make efforts to obtain pertinent information to aid in coordination of the proposed improvements with any planned future improvements that may influence the project. ENGINEER will also identify and seek to obtain data for existing conditions that may impact the project including; utilities, agencies (City, TxDOT, etc), City Master Plans, and property ownership as available from the Tax Assessor's office.
- The ENGINEER will consult with the City's Public Works Department, public utilities, private utilities, and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project.

## 2.2. Utility Clearance

- ENGINEER will develop the design of City facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs. Where conflicts cannot be avoided, coordination of Utility Conflicts will begin at the Conceptual Design phase.
- In the case of a public utility conflict, the ENGINEER will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.

## 2.3. The Conceptual Design Package shall include the following:

- Preliminary cover and index of sheets including project limits, area location map and beginning and end station limits.
- Quantity Summary page.
- Existing topography of the project area along with proposed typical sections which outline the proposed improvements. Typical sections shall include existing ROW, existing and proposed curbs, sidewalks, and curb ramps.
- Conceptual plan sheets showing existing and proposed horizontal sidewalk alignments, existing and proposed ROW, existing and proposed drainage structures, and City owned and franchise utilities.
- Documentation of key design decisions.
- Opinion of probable construction cost (OPCC).

## ASSUMPTIONS

- Three (3) sets of 11”x17” size plans will be delivered to City and TxDOT for the 30% design.
- ENGINEER shall not proceed with Preliminary Design activities without written approval by the City and TxDOT of the Conceptual Design Package.

## DELIVERABLES

- Conceptual Design Package
- Applicable TxDOT LGPP checklists.

## TASK 3. PRELIMINARY DESIGN (60 PERCENT).

Preliminary plans and specifications shall be submitted to City per the approved Project Schedule.

ENGINEER will develop the preliminary design of the infrastructure as follows.

### 3.1. The Preliminary Design Drawings and Specifications shall include the following:

- Preliminary cover and index of sheets including project limits, area location map and beginning and end station limits.
- Quantity Summary page.

- Traffic Control Plan including all construction signage and pavement markings which will be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices.
- A Project Control Sheet, showing all Control Points, used or set while gathering data. Generally, on a scale of not less than 1:400. The following information shall be indicated for each Control Point: Identified (existing City Monument #8901, PK Nail, 5/8" Iron Rod); X, Y and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on City Datum only; descriptive location.
- Updated existing and proposed typical section sheets.
- Updated sidewalk plan sheets displaying station and coordinate data for all horizontal alignment P.C.'s, P.T.'s, P.I.'s.
- No less than two bench marks plan/profile sheet.
- Bearings given on all proposed centerlines, or baselines.
- Sidewalk layout sheets including ROW lines, horizontal alignments, utilities, curbs, sidewalks, driveways, and existing and proposed contours (0.25' intervals).
- Preliminary roadway details to include curbs, curb expansion joints, curb ramps, sidewalks, and pavement details.
- Documentation of key design decisions.
- OPCC.

### 3.2. Constructability Review

- Prior to the 60 percent review meeting with the City, and TxDOT, the ENGINEER shall schedule and attend a project site visit with the City Project Manager and City staff to walk the project. The ENGINEER shall summarize the comments from the field visit and submit this information to the City, and TxDOT in writing.

### **ASSUMPTIONS**

- Three (3) sets of 11"x17" size plans will be delivered to City and TxDOT for the 60% design for review coordination.
- ENGINEER shall not proceed with Final Design activities without written approval by the City, and TxDOT of the Preliminary Design plans.

### **DELIVERABLES**

- Preliminary Design drawings
- OPCC
- Applicable TxDOT LGPP checklists.



#### **TASK 4. FINAL DESIGN (90 PERCENT) AND FINAL CONSTRUCTION DOCUMENTS (100 PERCENT).**

Upon approval of the Preliminary plans, ENGINEER will prepare construction plans as follows:

- Final draft construction plans (90%) including specifications shall be submitted to City and TxDOT per the approved Project Schedule.
- Following a 90% construction plan review meeting with the City and TxDOT, the ENGINEER shall submit Final Plans (100%) to the City and TxDOT per the approved Project Schedule. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.
- A Quantity Summary page will be included in both the 90% and 100% design packages. Each design sheet of those packages shall include a quantity take off table.
- The ENGINEER shall submit an OPCC with both the 90% and 100% design packages. This estimate shall use standard TxDOT bid items.

#### **ASSUMPTIONS**

- Three (3) sets of 11”x17” size drawings will be delivered for the 90% Design package.
- Three (3) sets of 11”x17” size drawings will be delivered for the 100% Design package.

#### **DELIVERABLES**

- 90% construction plans.
- 100% construction plans and applicable letting forms and documents.
- Detailed OPCC including summaries of bid items and quantities using TxDOT’s standard bid items and format.
- Applicable TxDOT LGPP checklists.
- Original 11”x17” size cover mylar for the signatures of authorized CITY officials.

#### **TASK 5. ENVIRONMENTAL CLEARANCE SERVICES.**

The ENGINEER will complete the following tasks for the environmental clearance process:

##### **5.1 Environmental Services (Categorical Exclusions (CE))**

- Prepare Scope Development Tool
- Complete Biological Evaluation Form
- Complete Water Resources Report/Review Package
- Respond to TxDOT comments on above-referenced documents and appendices

The following studies are not included in the scope of services and are not anticipated to be required for this proposed project:

- Noise modeling
- Air quality modeling/monitoring
- Hazardous materials report
- Complete Historic and Archeological Resources Study
- Presence/absence surveys for threatened and endangered species
- Aquatic resources delineation
- U.S. Army Corps of Engineers Permitting
- Pedestrian cultural resources survey

#### **ASSUMPTIONS**

- None

#### **DELIVERABLES**

- Scope Development Tool
- Biological Evaluation Form
- Water Resources Report/Review Package
- Historic and Archeological Resources Study

### **TASK 6. BIDDING PHASE SERVICES**

ENGINEER will complete the following tasks for the bidding phase of the project.

#### **6.1. Bidding Support**

- Prepare project manual and construction specifications for project bidding.
- Attend pre-bid meeting and bid opening meeting
- Assist with bidder questions
- Prepare bid tabulations for the bid received to check the accuracy.

#### **ASSUMPTIONS**

- Two (2) meetings are assumed.

#### **DELIVERABLES**

- Bid Tabulation for received bids in PDF and Excel format

## TASK 7. CONSTRUCTION PHASE SERVICES.

ENGINEER will support the construction phase of the project as follows.

### 7.1. Construction Support

- The ENGINEER shall attend the preconstruction conference.
- *Visits to Site and Observation of Construction.* ENGINEER will make up to ten (10) visits as directed by CITY in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, ENGINEER will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and ENGINEER will keep CITY informed of the general progress of the work.

ENGINEER will not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. ENGINEER does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

- *Clarifications and Interpretations.* ENGINEER will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by CITY or TxDOT.
- *Shop Drawings and Samples.* ENGINEER will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.
- *Substantial Completion.* ENGINEER will, after notice from Contractor that it considers the Work ready for its intended use, in company with City, TxDOT, and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.
- *Final Notice of Acceptability of the Work.* ENGINEER will conduct 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.

## ASSUMPTIONS

- Four (4) site visits are assumed.
- Two (2) submittal reviews are assumed.
- Five (5) RFI's are assumed.

## DELIVERABLES

- Response to Contractor's Request for Information
- Review of shop drawings
- Final Punch List items

## TASK 8. TOPOGRAPHIC SURVEY SERVICES.

ENGINEER will provide survey support as follows.

### 8.1 Design Survey

- ENGINEER will perform field surveys to collect horizontal and vertical elevations and other information needed by ENGINEER in design and preparation of plans for the project. Information gathered during the survey shall include topographic data, elevations of all sanitary and adjacent storm sewers, rim/invert elevations, location of buried utilities, structures, trees (measure caliper, identify overall canopy, and have qualified arborist identify species of trees), and other features relevant to the final plan sheets. Existing drainage at intersections will be verified by field surveys. Spot elevations will be shown on intersection layouts with cross slope to fit intersecting grade lines.
- The minimum survey information to be provided on the plans shall include the following:
  - A Project Control Sheet, showing **ALL** Control Points, used or set while gathering data. Generally, on a scale of not less than 1:400:
  - The following information about each Control Point;
    - a. Identified (Existing. City Monument #8901, PK Nail, 5/8" Iron Rod)
    - b. X, Y and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on City Datum only.
    - c. Descriptive Location.
  - Coordinates on all P.C.'s, P.T.'s, P.I.'s, Manholes, Valves, etc., in the same coordinate system, as the Control.
  - No less than two horizontal bench marks, per line or location.
  - Bearings given on all proposed centerlines, or baselines.
  - Station equations relating utilities to paving, when appropriate.

## 8.2 Temporary Right of Entry Preparation and Submittal

- Prior to entering property, the ENGINEER shall prepare, mail and obtain Temporary Right of Entry from landowners.

### **ASSUMPTIONS**

- Up to 7,400 linear feet (24 feet wide) of survey is included.

### **DELIVERABLES**

- Drawing of the project layout with dimensions and coordinate list.

## **TASK 9. TDLR PERMITTING.**

ENGINEER will provide permitting support for the CITY to obtain any and all agreements and/or permits normally required for a project of this size and type, as follows

### 9.1 Texas Department of Licensing and Regulation (TDLR)

- Identify and analyze the requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code, and become familiar with the governmental authorities having jurisdiction to approve the design of the Project.
- ENGINEER is responsible for providing plans that are in compliance with TDLR requirements.
- Submit construction documents to the TDLR
- Completing all TDLR forms/applications necessary
- Obtain the Notice of Substantial Compliance from the TDLR
- Request an inspection from TDLR or a TDLR locally approved Registered Accessibility Specialist no later than 30 calendar days after construction substantial completion. Advise the CITY in writing of the results of the inspection.
- Responding to agency comments and requests
- All costs associated with TDLR plan review and inspections are to be paid by the ENGINEER during the course of the project.

### **ASSUMPTIONS**

- Permit preparation will begin after approval of the Final Design.
- One (1) on-site meeting for the final TDLR inspection is assumed.

### **DELIVERABLES**

- A. Copies of Permit Applications
- B. Copies of Approved Permits

## **ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES**

**Additional Services not included in the existing Scope of Services** – CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Sub-surface Utility Engineering (SUE)
- Roadway design and drainage design
- Preparation of ROW acquisition or easement documents.
- Negotiation of easements or property acquisition.
- Services related to development of the CITY's project financing and/or budget.
- Construction management and inspection services
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.

## **FEE AND EXPENSES**

The ENGINEER will perform the services in Tasks 1 – 9 for the total lump sum fee of \$215,000.00. All permitting, application, and similar project fees will be paid directly by the CITY.

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 the ENGINEER project number.

**ATTACHMENT "B"**

**COMPENSATION for Engineering Design Related Services for:**

**Ginnings Elementary School and Alexander Elementary School**

**Safe Routes to School Sidewalk Improvements**

Kimley-Horn and Associates, Inc.

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be lump sum total not-to-exceed \$215,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

The total compensation for Task 1 – Task 9 shall be on a lump sum basis and not to exceed **\$215,000**.

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month.

• Task 1 – Design Management	\$ 15,000
• Task 2 – Conceptual Design (30 Percent)	\$ 40,000
• Task 3 – Preliminary Design (60 Percent)	\$ 65,000
• Task 4 – Final Design (90 Percent and 100 Percent)	\$ 30,000
• Task 5 – Environmental Clearance Services	\$ 20,000
• Task 6 – Bidding Phase Services	\$ 3,000
• Task 7 – Construction Phase Services	\$ 20,000
• Task 8 – Topographic Survey Services	\$ 20,000
• Task 9 – TDLR Permitting	\$ 2,000

***Sub-total:*      \$ 215,000**

**Grand Total      \$215,000**

ENGINEER will not exceed the total maximum fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only.

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 ENGINEER project number.

**ATTACHMENT “C”**  
**CHANGES AND AMENDMENTS TO STANDARD AGREEMENT for:**  
**Ginnings Elementary School and Alexander Elementary School**  
**Safe Routes to School Sidewalk Improvements**

Kimley-Horn and Associates, Inc.

No modifications to the Standard Agreement are necessary for this project.



**ATTACHMENT “D”**  
**SCHEDULE for:**  
**Ginnings Elementary School and Alexander Elementary School**  
**Safe Routes to School Sidewalk Improvements**  
 Kimley-Horn and Associates, Inc.

TASK	START	DATE
<b>Project Initiation</b>		
Design Notice to Proceed	Mar-21	Mar-21
<b>Design</b>		
Data Collection/Survey	Mar-21	Apr-21
Conceptual (30%) Submittal	Apr-21	Jun-21
City/TXDOT Review	Jun-21	Jul-21
60% Submittal	Jul-21	Sep-21
City/TXDOT Review	Sep-21	Oct-21
90% Submittal	Oct-21	Dec-21
City/TxDOT Review	Dec-21	Jan-22
Bid Package Submittal	Jan-22	Feb-22
City Review	Feb-22	Mar-22
<b>Environmental</b>		
Environmental Process	Sep-21	Dec-21
<b>Bidding</b>		
Bid Advertisement	Jun-22	Jul-22
Contractor Selection	Jul-22	Sep-22
Contractor Notice to Proceed	Sep-22	
<b>Construction</b>		
Construction	Sep-22	Jul-23

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

# ATTACHMENT “E” LOCATION MAP for: Ginnings Elementary School and Alexander Elementary School Safe Routes to School Sidewalk Improvements



## Exhibit CIQ

## CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

### For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1** Name of vendor who has a business relationship with local governmental entity. Kimley-Horn and Associates, Inc.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information in this section is being disclosed.

n/a

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**  I have no Conflict of Interest to disclose.

**5** DocuSigned by:



2/16/2021

Signature of Vendor doing business with the governmental entity

Date

## Certificate Of Completion

Envelope Id: 99F1543B2A5F4732976813BA6488F276	Status: Completed
Subject: Please DocuSign: City Council PSA Contract 6590-102 Ginnings and Alexander SRTS Improvements	
Source Envelope:	
Document Pages: 35	Signatures: 6
Certificate Pages: 7	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Cori Power
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	cori.power@cityofdenton.com
	IP Address: 198.49.140.104

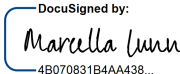
## Record Tracking

Status: Original	Holder: Cori Power	Location: DocuSign
2/12/2021 5:21:20 PM	cori.power@cityofdenton.com	

## Signer Events

Signature	Timestamp
<p>Cori Power</p> <p>cori.power@cityofdenton.com</p> <p>Senior Buyer</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.104</p> <p>Sent: 2/12/2021 5:25:40 PM</p> <p>Viewed: 2/12/2021 5:25:47 PM</p> <p>Signed: 2/12/2021 5:26:59 PM</p>

<p>Lori Hewell</p> <p>lori.hewell@cityofdenton.com</p> <p>Purchasing Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	 <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 2/12/2021 5:27:01 PM</p> <p>Viewed: 2/14/2021 11:34:51 AM</p> <p>Signed: 2/14/2021 11:35:21 AM</p>
---	--	---

<p>Marcella Lunn</p> <p>marcella.lunn@cityofdenton.com</p> <p>Deputy City Attorney</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>4B070831B4AA438...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 107.77.200.172</p> <p>Signed using mobile</p>	<p>Sent: 2/14/2021 11:35:23 AM</p> <p>Viewed: 2/15/2021 9:04:17 AM</p> <p>Signed: 2/15/2021 9:16:11 AM</p>
---	--	--

<p>Scott R. Arnold</p> <p>Scott.arnold@kimley-horn.com</p> <p>Vice President</p> <p>Kimley-Horn and Associates, Inc.</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by:</p>  <p>D1B5A80061EE4E9...</p> <p>Signature Adoption: Uploaded Signature Image</p> <p>Using IP Address: 52.128.53.55</p>	<p>Sent: 2/15/2021 9:16:14 AM</p> <p>Viewed: 2/16/2021 11:00:58 AM</p> <p>Signed: 2/16/2021 11:01:38 AM</p>
---	---	---

**Electronic Record and Signature Disclosure:**  
Accepted: 3/27/2020 10:55:11 AM  
ID: a1f38400-e5cc-4b57-8548-4dd7e031355d



**Signer Events**

Rebecca Diviney  
Rebecca.Diviney@cityofdenton.com  
Director of Capital Projects/City Engineer  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
*Rebecca Diviney*  
CE9F2B4E4B6745F...  
Signature Adoption: Pre-selected Style  
Using IP Address: 47.222.28.222

**Timestamp**

Sent: 2/16/2021 11:01:42 AM  
Viewed: 2/17/2021 1:13:30 PM  
Signed: 2/17/2021 1:14:00 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 2/17/2021 1:13:30 PM  
ID: 30fd9daf-a4f8-42e8-8e2a-ae9e2006a67a

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton  
Security Level: Email, Account Authentication (None)

**Completed**  
Using IP Address: 198.49.140.104

Sent: 2/17/2021 1:14:05 PM  
Viewed: 3/17/2021 8:21:26 AM  
Signed: 3/17/2021 8:22:47 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sara Hensley  
sara.hensley@cityofdenton.com  
Interim City Manager  
City of Denton  
Security Level: Email, Account Authentication (None)

DocuSigned by:  
*Sara Hensley*  
5236DB296270423...  
Signature Adoption: Pre-selected Style  
Using IP Address: 172.108.130.126  
Signed using mobile

Sent: 3/17/2021 8:22:52 AM  
Viewed: 3/17/2021 9:28:19 AM  
Signed: 3/17/2021 9:28:33 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Rosa Rios  
rosa.rios@cityofdenton.com  
City Secretary  
Security Level: Email, Account Authentication (None)

DocuSigned by:  
*Rosa Rios*  
1C5CA8C5E175493...  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.104

Sent: 3/17/2021 9:28:37 AM  
Viewed: 3/17/2021 9:30:34 AM  
Signed: 3/17/2021 9:31:18 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 3/17/2021 9:30:34 AM  
ID: 0890d706-b6f3-420b-b165-790800dca79e

**In Person Signer Events      Signature      Timestamp**

**Editor Delivery Events      Status      Timestamp**

**Agent Delivery Events      Status      Timestamp**

**Intermediary Delivery Events      Status      Timestamp**

**Certified Delivery Events      Status      Timestamp**

**Carbon Copy Events      Status      Timestamp**

Cheyenne Defee  
cheyenne.defee@cityofdenton.com  
Contract Administrator  
City of Denton  
Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 2/12/2021 5:27:01 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
<p>Sherry Thurman sherry.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 2/17/2021 1:14:04 PM
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 2/17/2021 1:14:05 PM Viewed: 2/17/2021 1:45:55 PM
<p>Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 3/17/2021 9:31:21 AM
<p>Cathy Welborn Cathy.Welborn@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 3/17/2021 9:31:22 AM Viewed: 3/17/2021 9:47:23 AM
<p>Robin Davis Robin.Davis@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 3/17/2021 9:31:23 AM Viewed: 3/17/2021 10:11:27 AM
<p>Rachel Wood Rachel.Wood@cityofdenton.com Deputy Director of Facilitation City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 3/17/2021 9:31:24 AM
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<b>COPIED</b>	Sent: 3/17/2021 9:31:25 AM

Witness Events	Signature	Timestamp
----------------	-----------	-----------

Notary Events	Signature	Timestamp
---------------	-----------	-----------

<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	2/12/2021 5:25:40 PM
Certified Delivered	Security Checked	3/17/2021 9:30:34 AM
Signing Complete	Security Checked	3/17/2021 9:31:18 AM
Completed	Security Checked	3/17/2021 9:31:25 AM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
-----------------------	---------------	-------------------

<b>Electronic Record and Signature Disclosure</b>
---

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.



**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.