

DocuSign City Council Transmittal Coversheet

PSA	6590-107
File Name	Bell Ave TWU Mini Roundabouts-Phase 1
Purchasing Contact	Cori Power
City Council Target Date	March 23, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-421

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: Bell Avenue TWU Mini Roundabouts – Phase 1 (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 \$109,700.00 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
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 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

BY:  _____
B1R5A80061EE4E9
 AUTHORIZED SIGNATURE

Printed Name: Scott R. Arnold


Title: Vice President

817-335-6511
 PHONE NUMBER


scott.arnold@kimley-horn.com
 EMAIL ADDRESS

2021-718096
 TEXAS ETHICS COMMISSION
 1295 CERTIFICATE NUMBER


CITY OF DENTON, TEXAS

BY:  _____
5236DB296270423...
 SARA HENSLEY, INTERIM CITY MANAGER


ATTEST:
 ROSA RIOS, CITY SECRETARY

BY:  _____
1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
 AARON LEAL, CITY ATTORNEY

BY:  _____
4B070831B4AA438...

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

DocuSigned by:
 Rebecca Diviney
SIGNATURE PRINTED NAME

Director of Capital Projects/City Engineer
TITLE

Capital Projects-Engineering
DEPARTMENT

ATTACHMENT "A"

BELL AVENUE TWU MINI ROUNDABOUTS, PHASE 1

Scope of Services

PROJECT UNDERSTANDING

The CITY and Texas Woman's University (TWU) are considering implementing interim/temporary intersection improvements at College Street and at Chapel Drive along Bell Avenue. A permanent mini roundabout is being considered at Texas Street and Bell Avenue to the south.

The ENGINEER will develop a traffic capacity memorandum, safety prediction model, and conceptual horizontal geometry layouts for mini roundabout applications at each of the three intersections. Up to two (2) alternative intersection treatments will be prepared by the ENGINEER at the Chapel Drive and the College Street intersections for the CITY's and TWU's consideration (i.e. U-Turns, raised intersection, etc.).

Based on feedback from the CITY and TWU regarding the conceptual horizontal geometric layouts, the ENGINEER will develop construction drawings for the CITY-selected improvements at College Street and at Chapel Drive as part of this agreement. The ENGINEER, if requested by the City, will provide advertising, bidding, and construction phase services as part of the temporary intersection installations.

SCOPE OF SERVICES

The ENGINEER will perform its services pursuant to the requirements delineated within this scope of services. Services consist of the following major tasks:

- Task 1. Project Management
- Task 2. Meetings
- Task 3. Data Collection
- Task 4. Conceptual Horizontal Geometry for Alternative Intersection Controls
- Task 5. College Street and Chapel Drive Temporary Intersection Final Plans
- Task 6. Bidding and Construction Phase Services
- Task 7. Implementation and Observations

TASK 1: Project Management

Task 1.1 Monthly Status Report, Invoicing, and Schedule

The ENGINEER will provide monthly status report, invoices, and schedule updates. Schedule will be prepared for design services only.

Assumptions: It is assumed the project will last 4 months.

TASK 2: Meetings

Task 2.1 Kick-Off Meeting

The ENGINEER will prepare for and attend a kick-off meeting with the CITY to discuss:

- data collection findings
- horizontal layout of each mini-roundabout location
- impacts to adjacent properties
- TWU traffic and pedestrian activity, construction and road closures.

Task 2.2 On-Site Walk-through with CITY and TWU staff

The ENGINEER will attend an on-site walkthrough with CITY and TWU staff to discuss project goals, constraints, concerns, and priority improvements. The ENGINEER will observe traffic patterns, take field measurements, and take photographs/videos to document the existing conditions of each intersection.

Task 2.3 Stakeholder Meetings

The ENGINEER will schedule and document coordination meetings with the project team and any additional CITY department members. This task consists of up to three (3) meetings.

It is anticipated that these meetings will consist of:

- One (1) collaboration meeting with TWU staff
- Two (2) design review meetings with CITY staff

Deliverables: Meeting agenda, exhibits or content material, notes

Assumptions: The ENGINEER will schedule, attend, and document a maximum of three (3) stakeholder meetings.

Task 2.4 Public Meetings

The ENGINEER will attend, present the proposed improvements, and document up to one (1) public meeting. Comments received at the public meeting and up to ten (10) days after the public meeting will be compiled in an Excel spreadsheet. Responses will be provided by the ENGINEER to each comment submitted and shared with the CITY for review and distribution.

The CITY will coordinate and schedule the time and location of the public meeting following the completion of Task 4. The CITY will send out all public meeting notices and coordinate the mailing list.

It is anticipated that this task will consist of:

- One (1) public meeting
- Open House format with Information Stations
 - One HO-scale roll plot station
 - One flyer/brochure station
 - One video/handout station
 - One comment response station

Deliverables: Presentation, sign-in sheet, exhibits, and meeting notes.

TASK 3: Data Collection

Task 3.1 Data Research

The ENGINEER will collect data to develop a base map, this information will be utilized to analyze existing constraints and issues for the preparation of the conceptual intersection designs.

- Aerial Photography – Sourced photography for the project corridor will be collected from NearMaps.com.
- Available Record Drawings and Development Plans – The ENGINEER will collect from the CITY any available record drawings (roadway, drainage, water, sewer, etc.) within the project limits and any proposed adjacent development plans.
- Existing and Proposed Utility Information – The ENGINEER will collect from the CITY existing and proposed water, storm, and sewer utility information for project limits.

Task 3.2 Topographic and Boundary Survey

The ENGINEER will prepare a topographic survey and right-of-way determination to be used for civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.

- The intersection locations are Chapel Drive, College Street, and Texas Street. The survey limits are shown in Figures 1 & 2
- The survey will consist of: the location of the right-of-way lines and adjoining property lines with existing easements readily available in the public record (this does not include an abstract of title); CITY benchmarks; improvements and elevations; contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, franchised utility facility appurtenances, trees, shrubs, and flowerbeds; and benchmarks established with the survey.

Task 3.3 Level B SUE

The ENGINEER will, via a sub-consultant, expose certain utilities using SUE methods and collect survey data on their exposed location. This information will be used during civil engineering design. SUE quality level B is described as follows:

- Quality Level B. QL-B involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits. This activity is called "designating". The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
 - Level B SUE will be obtained for Chapel Drive and College Street only.
 - The limits of Level B SUE for Chapel Drive and College Street will be the same as the topographic survey limits listed above.
 - Level A SUE will not be obtained

Task 3.4 Project Design Parameters

The ENGINEER will coordinate with CITY staff and TWU staff to identify the following project design parameters and document them at the start of the project:

- Common design vehicle – BUS-40, City fire-truck, or other largest vehicle that would need to remain on-pavement in navigating the subject roundabouts.
- Largest anticipated vehicle – WB-62 or other largest anticipated vehicle to navigate through the intersection using truck aprons, truck blisters, or other drivable surfaces within the intersection or along the perimeter of the intersection.
- Acceptable theoretical maximum speeds through the intersection
- Pedestrian facility preferences (third party control equipment, enhanced devices/detection, crosswalk widths/treatments, bike lanes, bike ramps, etc.)
- Lane widths
- Adjacent driveway relocations
- Adjacent parking lot access and parking configurations
- Illumination levels, fixture types, other amenities
- Retaining wall treatments, colors, textures/patterns



Figure 1 – Intersection Location Map

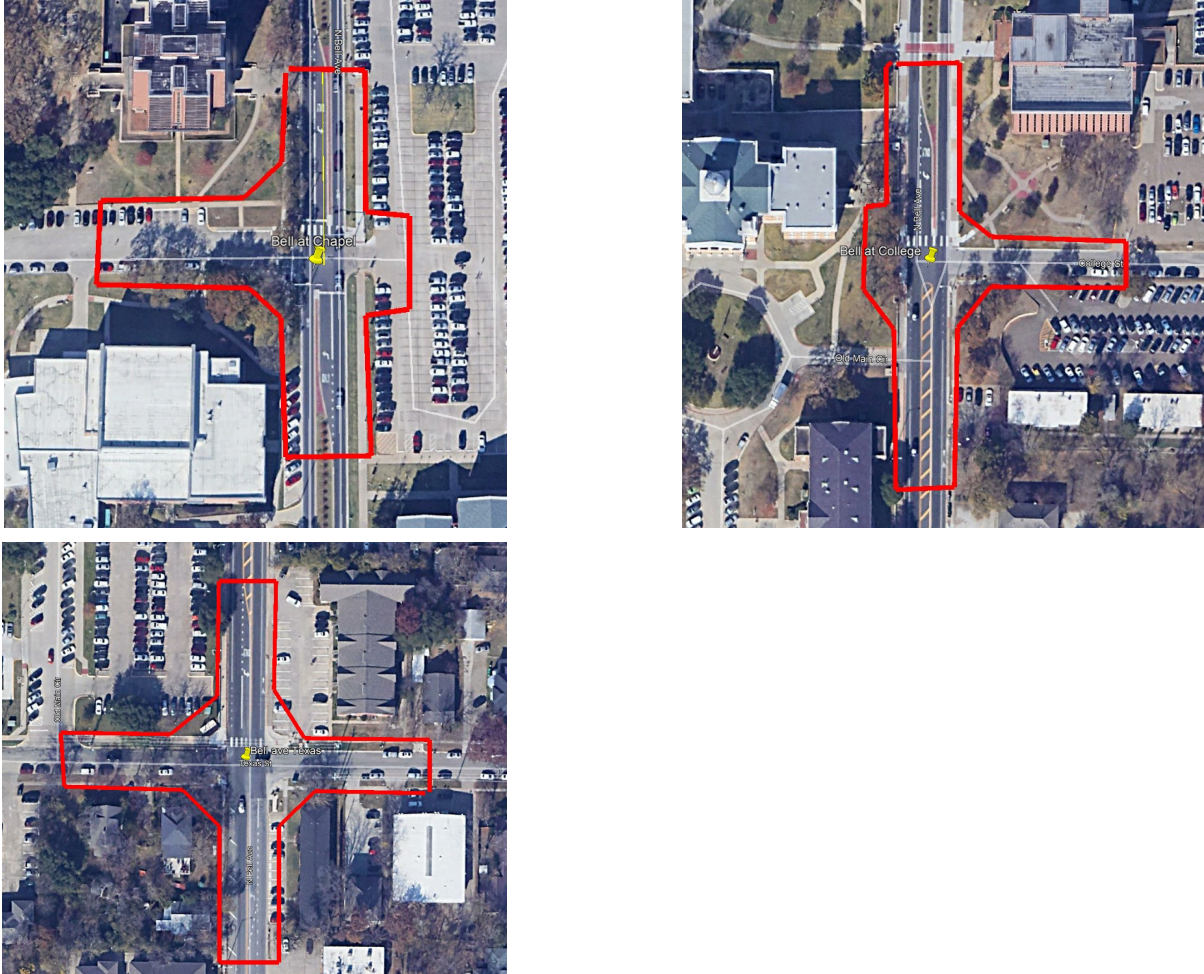


Figure 2 – Approximate Survey Limits bounded by red line work

TASK 4: Conceptual Horizontal Geometry for Alternative Intersection Controls

Task 4 will be performed after Task 3 and Task 2.1 and Task 2.2 is complete. The conceptual horizontal geometry layouts prepared will be used during the stakeholder meeting with TWU to discuss design and construction impacts. Comments provided during the meeting will be used to move forward with final plan development.

Task 4.1 Alternative Intersections Horizontal Geometries, Temporary Improvements (College Street and Chapel Drive)

The ENGINEER will develop horizontal geometric layouts of the proposed temporary mini roundabouts at College Street and Chapel Drive, as well as up to two (2) alternative intersection control scenarios. The temporary intersection improvements will be designed using non-permanent materials such as bolt-down curbs, raised pavement markers, and pavement markings. The existing curbs will remain in place, where possible.

The ENGINEER will provide the CITY with the alternative intersection control geometric layouts and present the benefits and issues associated with each. The ENGINEER will document feedback from the CITY and/or TWU staff regarding the alternative intersection

control methods presented. The ENGINEER will return a recommendation to the CITY of which alternative to move forward with field implementation after review of the CITY's and TWU's comments.

Assumptions:

1. The ENGINEER will address up to two (2) rounds of comments per each temporary intersection design.

Deliverables:

1. PDF exhibits of the proposed temporary horizontal layout alternatives for College Street and Chapel Drive.
2. PDF exhibit of the recommended temporary horizontal layout alternative for College Street and Chapel Drive.

Task 4.2 Conceptual Mini Roundabout Horizontal Geometry (Texas Street)

The ENGINEER will develop a conceptual horizontal layout of a proposed mini-roundabout at Texas Street at N Bell Ave. This layout will consist of the following elements:

1. Proposed horizontal curb geometry
2. Proposed pavement markings, words, and arrows
3. Existing right-of-way/property boundaries
4. Existing utilities
5. Truck apron width and proposed treatment color and pattern
6. Pedestrian facilities that connect to existing facilities
7. Limits of proposed construction

Assumptions:

1. The ENGINEER will address one (1) round of comments based on the initial conceptual horizontal layout at Texas Street.
2. The ENGINEER will sketch proposed right-of-way needed for the permanent mini-roundabout at Texas Street. No right-of-way documents, or activities will be provided under this agreement. Any tasks associated with obtaining right-of-way will be performed as an additional service or under a separate agreement.

Deliverables:

1. One (1) PDF exhibit showing the proposed permanent horizontal geometric layout at Texas Street and N Bell Ave.
2. Address one (1) round of comments and re-submit the exhibit.

TASK 5: Chapel Drive and College Street Temporary Intersection Final Plans

Task 5.1 Final Plans

Following the approval of the horizontal geometry under Task 4, the ENGINEER will provide a 90% and Final Submittal for the temporary improvements at Chapel Drive and College Street. A separate plan set will be developed for each location.

The 90% Design Submittal will consist of the following plan sheets:

❖ *90% Design Submittal*

- Cover Sheet/Sheet Index
- General Notes
- Quantity Summary Sheet
- Project Control Plan/Right-of-Way (ROW) strip map
 - Alignment information including coordinate data for all horizontal alignment P.C.'s, P.T.'s, and P.I.'s.
 - Bearings given on all proposed centerlines, or baselines.
 - Station equations relating utilities to paving, when appropriate.
 - Existing ROW/Easement Lines, property owners, and proposed easements/ROW.
- Existing Utility Adjustment Plan
 - Horizontal locations and vertical elevation adjustments for existing CITY utilities. This will consist of surface adjustments for storm, water, and sewer utility lid adjustments from existing grade to proposed grade.
- Traffic Control Plan

The ENGINEER will prepare a traffic control plan for a full closure for each intersection. The following sheets will be included with the traffic control plan:

 - Sequencing of construction
 - Traffic Control Plan Sheets – Provide locations and types of traffic control devices, signage, pavement markings, and erosion controls to be used for each phase.
 - Detours – The ENGINEER will prepare a traffic and pedestrian detour route as needed for each intersection.
 - The Traffic Control Plan will indicate erosion control locations as needed for each intersection.
- Removal Plan Sheets
 - Indicates locations of surface feature removals due to the construction of the temporary improvement.
 - The signal removal at Chapel Drive will be included with the Removal Plan Sheets.
- Paving Plan Layout
 - Horizontal geometry for proposed horizontal alignments, CITY and franchise utilities, curbs, sidewalks, street lights, driveways, existing right-of-way lines, easements, pavement, curbs, utility poles, mailboxes (within right-of-way),

water meters, fire hydrants, and trees (within right-of-way).

- Paving Details
 - Details for non-permanent features.
- Curb Ramp Layout and Grading – Will only be developed for curb ramps that are not CITY or TxDOT standard details.
- Storm Drain
 - It is anticipated that since there are no existing curb inlets within the limits of the intersections that no storm drain design will be required.
 - Any storm drain design will be considered an additional service.
- Pavement Marking and Signing Plan
- Erosion Control Plan
- Relocating Existing Illumination and Pedestrian Devices.
- Opinion of Probable Construction Cost (OPCC) – The ENGINEER will prepare an OPCC to be submitted with the 90% design submittal.

The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. OPCCs provided herein are based on the information known at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its OPCC.

- Project Manual – The ENGINEER will develop a project manual utilizing the CITY's standard front-end documents (contract forms and contract conditions) and technical specifications applicable to the project.

Assumptions:

1. It is assumed that retaining walls along N. Bell Avenue will not need to be modified. Any retaining wall design will be considered an additional service.

Deliverables:

1. 1 set of 11"X17" size hard copy plans for each intersection
2. Compiled PDF plan sets in 11"X17" and 22"X34"
3. OPCC
4. 1 hard copy and a compiled PDF of the Project Manual

Task 5.2 Signed and Sealed Submittal

Following the review of the 90% Design Submittal, the ENGINEER will respond to one (1) round of comments and will provide a comment response letter with the Signed and Sealed Plan Set. The submittal of the 90% comments by the CITY is an assumed notice to proceed with compiling the signed and sealed plan set.

Deliverables:

1. 1 set of 11”X17” size hard copy plans for each mini-roundabout location 90% plans were developed for.
2. Compiled PDF plan sets in 11”X17” and 22”X34”
3. OPCC
4. 1 hard copy and a compiled PDF of the Project Manual

TASK 6: Bidding and Construction Phase Services

This task will only be performed after written authorization has been received from the CITY. It is assumed that both intersection improvements (Chapel Drive and College Street) will be bid as one project. If two separate sets of bid documents are requested by the CITY the second set of bid documents will be provided as an Additional Service.

The ENGINEER will provide bidding and construction phase services for the two temporary intersection improvements.

Task 6.1 Bid Phase Services

- Pre-Bid Meeting: Attend the pre-bid meeting.
- Bid Tabulations: The ENGINEER will tabulate the bids received and evaluate compliance of bids with the bidding documents. The ENGINEER will prepare a written summary of this tabulation and evaluation and will provide a recommendation of award of contract.
- Requests for Information: The ENGINEER will respond to reasonable and appropriate Contractor requests for information during bidding in the form of an addenda. Requests for information will be received and responded to until an agreed upon date prior to the established bid opening date. The addenda will be issued to all registered plan holders.
- Bid Opening: Attend the bid opening
- Addenda: Incorporate all addenda into the contract documents and issue conformed sets.

Task Duration:

1. The ENGINEER will perform bidding services for up to fifteen (15) hours. Any additional time spent performing bid phase services will be considered additional services.

Task 6.2 Construction Phase Services

The ENGINEER will assist the CITY with construction per the following tasks. The ENGINEER will not assist the CITY with a substantial completion walkthrough, reviewing pay applications, or preparing any change orders. Any of these tasks will be considered additional services.

- Pre-Construction Conference: The ENGINEER will conduct a Pre-Construction Conference prior to commencement of construction activity.
- Visits to Site and Observation of Construction: The ENGINEER will make visits as

directed by the 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, the ENGINEER will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and the ENGINEER will keep the CITY informed of the general progress of the work.

- The ENGINEER will not supervise, direct, or have control over Contractor's work, nor shall the 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. The 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.
- The ENGINEER will attend up to 6 site visits.
- Recommendations with Respect to Defective Work: The ENGINEER will recommend to the CITY that Contractor's work be disapproved and rejected while it is in progress if, on the basis of its observations, the ENGINEER believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
- Clarifications and Interpretations: The 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 the CITY.
- Shop Drawings and Samples: The 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.
- Substitutes and "or-equal": The ENGINEER will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- Disagreements between the CITY and Contractor: The ENGINEER will, if requested by the CITY, render written decision on all claims of the CITY and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, the ENGINEER shall be fair and not show partiality to the CITY or Contractor and shall not be liable in connection with any decision rendered in good faith.
- Applications for Payment: Based on its observations and on review of applications for payment and supporting documentation, the ENGINEER will determine amounts that the ENGINEER recommends Contractor be paid. Such recommendations will be based on the ENGINEER's knowledge, information and belief, and will state whether in the ENGINEER's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the

recommendation. For unit price work, the ENGINEER's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. The ENGINEER'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.

- **Substantial Completion:** Consultant will, after notice from Contractor that it considers the Work ready for its intended use, in company with the inspector, Client and Contractor, conduct and document 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.

This task includes:

- Up to one (1) substantial completion walkthrough with the inspector, CITY, and Contractor.
 - Document remaining punch-list items.
- **Final Notice of Acceptability of the Work:** The 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 so that the ENGINEER may recommend final payment to Contractor. Accompanying the recommendation for final payment, the ENGINEER shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of the ENGINEER's knowledge, information, and belief based on the extent of its services and based upon information provided to the ENGINEER.

This task includes:

- Up to one (1) final walkthrough with the inspector, CITY, and Contractor.
 - Document any outstanding punch-list items from the substantial completion walkthrough.
 - Provide a recommendation to the Client for final payment and that the Work is complete and is generally in accordance with the Contract Documents.
- **TDLR Accessibility Review:** The ENGINEER will utilize a subconsultant that is a Registered Accessibility Specialist (RAS) for the purposes of reviewing the plans, for conformance with the Texas Accessibility Standards (TAS). The ENGINEER will coordinate with the RAS for project registration with the Texas Department of Licensing and Regulation (TDLR), and project inspection upon completion of construction. The ENGINEER will prepare plans in an effort to conform to TAS and will make one (1) round of revisions to the plans based on comments received from the RAS.
 - **Record Drawings:** The ENGINEER will revise plan sheets to show those changes during the construction process reported by the Contractor to the ENGINEER and considered to be significant.

Task Duration:

1. The ENGINEER will perform construction phase services for up to sixty (60) hours. Any additional time spent performing construction phase services will be considered additional services.

TASK 7: Implementation and Observations

Task 7.1 Observations and Feedback

The temporary improvements will be observed over a span of 2-4 weeks to determine the validity of the improvement. The ENGINEER will gather feedback from CITY staff and TWU staff regarding each temporary condition after the observation phase is complete. The ENGINEER will prepare a memorandum documenting the comments received and provide a recommendation of how to proceed with the permanent improvements to the Chapel Drive and the College Street intersection.

Deliverables:

1. Copy of comments and feedback received by the CITY and/or TWU staff
2. Memorandum documenting the ENGINEER's recommendation for proceeding with permanent intersection solutions at Chapel Drive and at College Street

ADDITIONAL SERVICES

The following additional services are not anticipated as part of this Scope of Services agreement, however, can be provided if deemed necessary during the project development process. The ENGINEER will not provide the additional services listed below without the written consent and approval of the CITY.

- Preparation of construction and bidding documents for the Texas Street at N Bell Ave intersection. This agreement includes up to the preparation of a conceptual design for the Texas Street intersection.
- More than one set of construction and bidding documents for the two intersections (Chapel Drive and College Street)
- Geotechnical engineering
- Right-of-way acquisition documents/instruments and services
- Relocation design and coordination of existing city utilities
- Level A SUE
- Storm drain design. It is assumed the proposed improvements will not increase the impervious area of the project that would adversely impact the existing storm drain system.
- Attending or preparing any materials for community or CITY council meetings that are not included as part of this scope.
- Modeling or formal submittals to FEMA
- Design of franchise utility relocations
- Arborilogical services or the assessment of tree(s) condition
- Landscape and irrigation design
- Preparation of the contractor's SWPPP
- Services related to warranty claims, enforcement and inspection after final completion;
- Assist the CITY as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- 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; and
- Any services not listed within the Scope of Services

ATTACHMENT "B"**Bell Avenue Temporary TWU Mini Roundabouts****Compensation**

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$109,700** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

BASIC SERVICES

For Basic Services Tasks 1-7 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$109,700**.

Progress payments for Basic Services shall be paid monthly based on the actual work satisfactorily completed per month in each phase, with the following amounts of the total compensation for the Basic Services for each phase of the Project:

• Task 1 – Project Management	\$ 6,600
• Task 2 – Meetings (kick-off, stakeholders, and public meeting)	\$ 18,900
• Task 3 – Data Collection (includes survey and SUE Level B)	\$ 29,300
• Task 4 – Horizontal Geometry (Temporary and Permanent)	\$ 9,300
• Task 5 – Temporary Improvements Construction Documents	\$ 31,900
• Task 6 – Bidding and Construction Phase Services	\$ 12,300
• <u>Task 7 – Implementation and Observations</u>	<u>\$ 1,400</u>

Total \$ 109,700

ENGINEER will not exceed the total maximum labor fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice 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 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

EXTRA SERVICES

Any services not specifically provided for in the above scope and authorized by the CITY, will be billed as additional services and performed at our then current hourly rates.

ATTACHMENT “C”

CHANGES AND AMENDMENTS TO STANDARD AGREEMENT

Design Services for

Bell Avenue TWU Mini Roundabouts

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

ATTACHMENT “D”

PROJECT SCHEDULE for

Bell Avenue TWU Mini Roundabouts Task Order #1

A mutually agreed-upon project schedule will be developed and shared with CITY staff after the kick-off meeting. The schedule will include labor effort by the ENGINEER, by the ENGINEER’s contracted subconsultants, and relevant CITY review/approval timeframes. The schedule will be updated monthly and attached to each month’s invoice along with a status report for the project. The status report typically consists of one page of written narrative highlighting the efforts from the billable month, anticipated efforts the following month, and anything needed from the CITY to continue forward along the project’s timeline.

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 the ENGINEER, the CITY, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. ENGINEER will exercise reasonable efforts to overcome the challenges presented by current circumstances, but ENGINEER will not be liable to CITY for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

Attachment E

Bell Avenue TWU Mini Roundabouts



Chapel Dr

Chapel Drive

Administration Dr

N Bell Ave

Grove St

College Street

Pirtle St

Flame St

Schmitz Ave

Texas Street

Texas St

Mingo Rd



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 7th 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:



2/18/2021

Signature of person doing business with the governmental entity

Date

Certificate Of Completion

Envelope Id: E679532DDA3F4C4BA85E58304261D33A	Status: Completed
Subject: Please DocuSign: City Council PSA Contract 6590-107 Bell Ave TWU Mini Roundabouts-Phase 1	
Source Envelope:	
Document Pages: 38	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

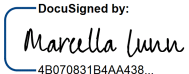
Record Tracking

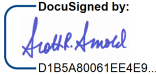
Status: Original	Holder: Cori Power	Location: DocuSign
2/12/2021 5:34:26 PM	cori.power@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Cori Power cori.power@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	Completed Using IP Address: 198.49.140.104	Sent: 2/12/2021 5:38:14 PM Viewed: 2/12/2021 5:38:20 PM Signed: 2/12/2021 5:38:52 PM

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 2/12/2021 5:38:55 PM Viewed: 2/14/2021 11:31:41 AM Signed: 2/14/2021 11:32:20 AM
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Marcella Lunn marcella.lunn@cityofdenton.com Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 107.77.200.172 Signed using mobile	Sent: 2/14/2021 11:32:22 AM Viewed: 2/15/2021 9:31:24 AM Signed: 2/15/2021 9:34:12 AM
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Scott R. Arnold Scott.arnold@kimley-horn.com Vice President Kimley-Horn and Associates, Inc. Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 3/27/2020 10:55:11 AM ID: a1f38400-e5cc-4b57-8548-4dd7e031355d	 Signature Adoption: Uploaded Signature Image Using IP Address: 52.144.111.97	Sent: 2/15/2021 9:34:17 AM Viewed: 2/18/2021 2:58:25 PM Signed: 2/18/2021 2:58:50 PM
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Signer Events

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

Signature

DocuSigned by:

 CE9F2B4E4B6745F...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.104

Timestamp

Sent: 2/18/2021 2:58:54 PM
 Viewed: 2/18/2021 3:14:53 PM
 Signed: 2/18/2021 3:15:58 PM

Electronic Record and Signature Disclosure:

Accepted: 2/18/2021 3:14:53 PM
 ID: d080af4c-617a-486a-8fac-bccc033141c4

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: 2/18/2021 3:16:03 PM
 Viewed: 3/24/2021 7:56:55 AM
 Signed: 3/24/2021 7:57:13 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:

 5236DB296270423...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 3/24/2021 7:57:17 AM
 Resent: 3/24/2021 10:08:45 AM
 Viewed: 3/24/2021 10:12:26 AM
 Signed: 3/24/2021 10:12:32 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:

 1C5CA8C5E175493...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 3/24/2021 10:12:35 AM
 Viewed: 3/24/2021 12:25:43 PM
 Signed: 3/24/2021 12:26:05 PM

Electronic Record and Signature Disclosure:

Accepted: 3/24/2021 12:25:43 PM
 ID: d4e66805-4a86-4c68-befb-75afc7addec6

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 5:38:55 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>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 2/18/2021 3:16:02 PM
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 2/18/2021 3:16:03 PM Viewed: 2/18/2021 3:17:48 PM
<p>Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 3/24/2021 12:26:08 PM
<p>Cathy Welborn Cathy.Welborn@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 3/24/2021 12:26:09 PM
<p>Tracy Beck Tracy.Beck@cityofdenton.com Project Mngr Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 3/18/2021 6:29:33 PM ID: ab4003d0-7899-49c6-947e-ced05cf09ea9</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 3/24/2021 12:26:10 PM
<p>Rachel Wood Rachel.Wood@cityofdenton.com Deputy Director of Facilitation City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 3/24/2021 12:26:12 PM
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div>	Sent: 3/24/2021 12:26:14 PM
Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	2/12/2021 5:38:14 PM
Certified Delivered	Security Checked	3/24/2021 12:25:43 PM
Signing Complete	Security Checked	3/24/2021 12:26:05 PM
Completed	Security Checked	3/24/2021 12:26:14 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

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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"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

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