

AGREEMENT TO PROVIDE PROFESSIONAL SERVICES ARCHITECTS AND ENGINEERS

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 20__ by and between KIMLEY-HORN AND ASSOCIATES, INC. ("PROFESSIONAL") and the CITY OF BOERNE, TEXAS, a municipal corporation of the State of Texas ("CITY"). For convenience, the PROFESSIONAL and the CITY may sometimes be referred herein collectively as "parties" and individually as a "party."

WITNESSETH

WHEREAS, CITY desires to engage the PROFESSIONAL to provide professional services as more fully described in separate Task Orders; and

WHEREAS, PROFESSIONAL agrees to provide such work and services for the CITY in accordance with the terms of this Agreement;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Employment of PROFESSIONAL.

(a) CITY agrees to engage the PROFESSIONAL and the PROFESSIONAL hereby agrees to perform the services which will be approved as separate task orders.

(b) Notwithstanding anything to the contrary contained in this Agreement, CITY and PROFESSIONAL agree and acknowledge that CITY is entering into this Agreement in reliance on PROFESSIONAL's special and unique abilities. PROFESSIONAL acknowledges that PROFESSIONAL shall be solely responsible for determining the methods for performing the services described in separate task orders. Scope of services may include on-call engineering with amounts not to exceed the table in Exhibit "B" or other engineering tasks described in separate task orders. PROFESSIONAL covenants with CITY to use its, skill, judgment, and abilities to perform the work required by this Agreement in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The PROFESSIONAL warrants, represents, covenants, and agrees that all of the work to be performed by the PROFESSIONAL under or pursuant to this Agreement shall be done (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and applicable professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be.

(c) PROFESSIONAL will be responsible for supplying all tools and equipment necessary for PROFESSIONAL to provide the services.

2. **Compensation.** The CITY agrees to pay the PROFESSIONAL the fees set forth in separate task orders and per Schedule of Hourly Rates provided as EXHIBIT A within the annual maximums established in EXHIBIT B. Within fifteen (15) days of the end of the month within which services were rendered, PROFESSIONAL shall provide City an invoice specifying the services provided during the previous month and the total amount owed by the City. Payment will be made by the CITY within thirty (30) days of receipt of an invoice from PROFESSIONAL.
3. **Changes.** CITY may, from time to time require changes in the scope of services of the PROFESSIONAL to be performed hereunder. Such changes, which are mutually agreed upon by and between CITY and the PROFESSIONAL, shall be incorporated in written amendment to this Agreement.
4. **Services and Materials to be Furnished by CITY.** CITY shall furnish the PROFESSIONAL with all available information and data PROFESSIONAL requests pertinent to the execution of this Agreement. CITY shall cooperate with the PROFESSIONAL in carrying out the work herein and shall provide adequate staff for liaison with the PROFESSIONAL.
5. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by PROFESSIONAL for which PROFESSIONAL has been compensated pursuant to this Agreement shall be the property of the CITY. PROFESSIONAL will deliver to the CITY copies of the prepared documents and materials. PROFESSIONAL shall make all documents and related data and material utilized in developing the documents available to CITY for inspection whenever requested. PROFESSIONAL may make copies of any and all such documents and items and retain same for its files. PROFESSIONAL shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than PROFESSIONAL subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
6. **Term and Termination of Agreement.** This agreement will expire on September 30, 2027. Either party may terminate this agreement at any time by providing thirty (30) days written notice to the other party.
7. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents

attached hereto, the terms of this Agreement shall control. This Agreement may not be subsequently modified except by a writing signed by both parties.

8. **CITY Not Obligated to Third Parties.** CITY shall not be obligated or liable hereunder to any party other than the PROFESSIONAL.
9. **Final Decisions.** Serving as a PROFESSIONAL to the CITY, PROFESSIONAL shall advise all parties that final decisions shall be made by the City Council and/or City Manager.
10. **Indemnification.** PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY.

THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. **Insurance.** PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter the following minimum insurance:
 - a. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate.
 - b. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.

- c. Statutory workers' compensation and employers' liability insurance as required by state law.
- d. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per occurrence/annual aggregate.

PROFESSIONAL shall provide the CITY with proof of insurance required hereunder prior to commencing work for the CITY. Such policies shall name the CITY, its officers, and employees as an additional insured (except for Workers' Compensation and Professional Liability), and shall provide for a waiver of subrogation in favor of the City. PROFESSIONAL shall provide the CITY with written notice of any coverage limit change on the insurance throughout the duration of this Agreement.

- 12. **Client Objection to Personnel.** If at any time after entering into this Agreement, the CITY has any reasonable objection to any of PROFESSIONAL's personnel, or any personnel, professionals and/or consultants retained by PROFESSIONAL, PROFESSIONAL shall promptly propose substitutes to whom the CITY has no reasonable objection, and PROFESSIONAL's compensation shall be equitably adjusted to reflect any difference in PROFESSIONAL's costs occasioned by such substitution.
- 13. **Timeliness of Performance.** PROFESSIONAL shall perform its professional services with due and reasonable diligence consistent with sound professional practices.
- 14. **Personnel.** All of the services required hereunder will be performed by the PROFESSIONAL or under PROFESSIONAL's supervision, and all personnel engaged in the work shall be qualified to perform such services.
- 15. **Independent Contractor.** In performing the services under this Agreement, PROFESSIONAL is acting as an independent contractor. No term or provision hereof be construed as making PROFESSIONAL the agent, servant, or employee of the CITY or as creating a partnership or joint venture relationship between PROFESSIONAL and the CITY.
- 16. **Assignability.** The parties hereby agree that PROFESSIONAL may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of CITY.
- 17. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

18. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in Kendall County, Texas.
19. **No Third-Party Beneficiary.** For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY and PROFESSIONAL, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations they owe to either the CITY or the PROFESSIONAL.
20. **Exhibits.** The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.
21. **HB 89 and SB 252 Certifications.** PROFESSIONAL hereby certifies that the Contractor does not and will not boycott Israel during the term of this Agreement in accordance with Chapter 2270, Texas Government Code. Additionally, PROFESSIONAL hereby certifies that the PROFESSIONAL is not included on the website of the Texas Comptroller for entities doing business with foreign terrorist organizations pursuant to Chapter 2252, Texas Government Code.
22. **Conflicts of Interest.** By signature of this Agreement, PROFESSIONAL warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of the CITY. PROFESSIONAL further warrants 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. PROFESSIONAL warrants that it has submitted to the CITY a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.
23. **Authority to Sign.** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective principals and that such principals have duly authorized the transaction contemplated by this Agreement.
24. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, CITY and the PROFESSIONAL have executed this Agreement as of the date first written above.

CITY OF BOERNE, TEXAS

By: _____

Print Name:_____

Title:_____

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Print Name:_____

Title:_____

EXHIBIT A HOURLY RATE SCHEDULE

PROFESSIONAL agrees to perform the services at the fee shown in the following schedule of hourly rates:

Labor Category	Rate
Senior Professional - Senior Technical Expert	\$285
Senior Professional - Project Engineer IV	\$265
Senior Professional - Project Engineer III	\$235
Professional - Project Engineer II	\$210
Professional - Project Engineer I	\$190
Analyst II - EIT	\$160
Analyst I - EIT	\$145
Technical Support - Senior Designer	\$160
Technical Support - Designer II	\$130
Technical Support - Designer I	\$110
Technical Support - Accountant	\$100
Support Staff – Administrative II	\$95
Support Staff – Administrative I	\$90
Intern	\$80

Effective through June 30, 2025

Subject to annual adjustment thereafter

External Reimbursable Expenses will be charged at 10% mark-up, or per the Contract

Sub-Consultants will be billed per the Contract

EXHIBIT B ON-CALL ENGINEERING

In adherence to the terms outlined in the Agreement to Provide Professional Services (Agreement), the City of Boerne may authorize individual scopes of work for the either definite deliverable lump sum contracts or hourly on-call staff supplementation services below provided the amounts do not to exceed the total financial allocations of \$155,000 for fiscal year 2025 and \$175,000 for fiscal year 2026 and \$195,000 for fiscal year 2027.

The financial limit is dependent annually on budgetary approval by City Council, and future City Councils will not be bound by this contract. The breakdown of allocations listed below are approximate and funds may be allocated to different categories provided the total amount is not exceeded in each fiscal year.

CONSULTANT will provide engineering support services on an as-needed basis to supplement CITY staff by performing development reviews, general on-call engineering services, and traffic engineering services as follows:

Fiscal Year	Traffic Engineering	Traffic Reviews	ADA Transition Plan	Total
2025	\$45,000	\$35,000	\$75,000	\$155,000
2026	\$50,000	\$45,000	\$80,000	\$175,000
2027	\$55,000	\$55,000	\$85,000	\$195,000