

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
SIGNAL SYSTEM IMPROVEMENTS PLAN IMPLEMENTATION PHASE 1**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and Kimley-Horn and Associates, Inc. (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

**II. TERM**

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

**III. SCOPE OF SERVICES**

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in *Exhibit A* which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONSULTANT**

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed Ninety Nine Thousand Nine Hundred and Eighty Seven (\$99,987.00) as total compensation, to be paid to Consultant as further detailed in Exhibit B.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

#### **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any

other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Pflugerville  
Attn: Patricia Davis, P.E.  
City Engineer  
P.O. Box 589  
Pflugerville, Texas 78691

If intended for Consultant, to: Kimley-Horn and Associates, Inc.  
Attn: Vivek Deshpande, P.E. PTOE  
10814 Jollyville Road, Campus IV, Suite 200  
Austin, Texas 78759

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “*Signal System Improvements Plan Implementation Phase I*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

### **Insurance Requirements**

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor’s policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial (Public) Liability to include Premises/Operations	General 1,000,000 per occurrence, 2,000,000 general aggregate coverage for: Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
<b>Contractual Liability</b>		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville  
Capital Improvement Program  
P.O. Box 589  
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant’s performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant’s or its subcontractors’ performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

## **X. INDEMNIFICATION**

**10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT’s agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT’S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee,**

**consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations, and the indemnification obligation is subject to the limitations in Texas Local Government Code § 271.904.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

**10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.**

**10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).**

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

## **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: N/A. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

## **XII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIII. CONFLICT OF INTEREST**

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

### **XIV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

### **XV. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVI. LICENSES/CERTIFICATIONS**

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XVII. COMPLIANCE**

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XVIII. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XIX. LAW APPLICABLE**

**19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.**

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

## **XX. LEGAL AUTHORITY**

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

## XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

## XXV. MISCELLANEOUS CITY CODE PROVISIONS

**25.1 Representations and Warranties by Consultant.** If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

**25.2 Franchise Tax Certification.** A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

**25.3 Eligibility Certification.** Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

**25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State.** Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt

or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**25.5 Texas Family Code Child Support Certification.** Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**25.6 Texas Government Code Mandatory Provision.** The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF  
PFLUGERVILLE**

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

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(Signature)

  
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(Signature)

Printed Name: Sereniah Breland

Printed Name: Brian Boecker

Title: City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: 07/01/2020

APPROVED AS TO FORM:

  
\_\_\_\_\_

Charles E. Zech  
City Attorney  
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

## **EXHIBIT “A”**

### **SERVICES TO BE PROVIDED BY THE ENGINEER**

#### **PROJECT UNDERSTANDING**

Kimley-Horn (“the Engineer”) recently completed the Pflugerville Signal System Assessment and Improvements for City of Pflugerville (“the City”). The City desires to design and develop plans for improvements identified in Phase 1 of the previous project which consists of an Advanced Traffic Management System (ATMS), a communication system to support the ATMS, and various Intelligent Transportation System (ITS) field equipment. This project will consist of preparing plans for selection and deployment of an ATMS to control all on-system and off-system traffic signals, installation of a broadband wireless communications system, and development of conceptual schematic for a future Traffic Management Center (TMC).

#### **TASK 1 Project Management and Control**

##### **Task 1.1 Project Management and Control**

The Engineer will be responsible for the day-to-day activities of managing the project within the project schedule. Specific activities include ongoing reassessments of contract and schedule adherence.

##### **Task 1.2 Status Reports and Invoicing**

Monthly status reports will be prepared and submitted to the City in PDF format. The status reports will contain a concise report of project progress and contract fulfillment. The report will address technical progress, contract progress, and management-related topics. Monthly invoicing will be part of the status report package. The Engineer will prepare up to nine (9) status reports in accordance with the estimated project schedule.

##### **Task 1.3 Meetings**

The Engineer will schedule a project Kick-Off meeting with the City to outline overall process and identify stakeholders and contacts at other pertinent City Departments. During this meeting, reporting requirements, as they relate to invoicing and task status, will also be reviewed and agreed upon. The Engineer will create a template for the invoice format and provide the template to the City for review. In addition to the kick-off meeting, the Engineer will facilitate following meetings:

- Up to three (3) project status/technical meeting to discuss signal communication network.
- Up to three (3) coordination meetings with City staff to discuss ATMS deployment.
- Up to three (3) status meetings to discuss review comments on Plans, Specifications, and Estimate (PS&E). The Engineer will prepare agendas, materials, and meeting notes for each of these meetings.

#### **TASK 2 ATMS Deployment Plan**

The Engineer will develop specifications for use in contracting to procure the ATMS central software, ATMS local control interface, traffic signal controllers, video cameras, video camera mounting, video camera interface and servers if needed, ATMS video management software, video monitors, and the planned workstations.

## **Task 2.1 Central System Selection**

The Engineer will assist the City in evaluating up to three (3) ATMS central system software systems so that a decision for selection may be made by the City. The Engineer will facilitate a workshop session and scanning tours to help with the central system selection process.

### **Task 2.1.1 Central System Workshops**

The Engineer will facilitate a workshop session with City Staff to present up to three (3) central system software providers available on the market. The Engineer will prepare a list of the components and interfaces to be discussed at the meeting along with potential options in an outline format to facilitate discussion at the workshop.

The goal of the workshop is to establish that the functional requirements remain accurate and complete, and a central system software selection is made. In addition, the workshop will help assure a final list of components for which specifications for procurement will be written for use by the City.

### **Task 2.1.2 Scanning Tour or Central System Demonstration**

The Engineer will organize and facilitate a scanning tour or vendor demo for up to three (3) ATMS central software systems. For the scanning tour, the Engineer will prepare a brief document that summarizes each system being visited or presented with relevant facts, such as

- Central system software vendor, name of software, version number, date of deployment
- Type of traffic signal controllers and firmware
- Communication type
- Number of ITS devices (signals, cameras, DMS)

The Engineer will:

- Collect any documentation relevant to each individual system.
- Ensure that all participants have a complete set of documents.
- Follow up on any questions that the City has of a specific vendor, and develop a brief technical memorandum identifying the facts revealed. For example, the City may identify a specific functionality of interest and there is a question as to whether it could be applied in the City.

### **Task 2.1.3 Recommendations**

The Engineer will identify the recommended system, or systems, that best meet or exceed the City's current and planned needs / requirements. The recommendations will not be vendor specific but will identify the type of software that is required. The procurement process will ultimately identify which specific systems are considered and ultimately selected and deployed. The recommendations will be summarized in a technical memorandum.

## **Task 2.2 Technical Specifications**

The Engineer will develop the technical specifications for the ATMS. There are three categorical groups of technical specifications, which are: 1) the central system software, 2) communications network and interface, and 3) the field components consisting of hardened Ethernet switch and traffic signal controller.

Whenever possible, the Engineer will use TxDOT standard specifications or previously approved special provisions and/or special specifications. If a special provision and/or special specification is developed for this project, it shall be in TxDOT format and, to the extent possible, incorporate references to approved TxDOT test procedures.

### **Task 2.2.1 Technical Specifications for the central system software**

For the central system software, the specifications will cover the following elements:

- System Architecture
  - Computer equipment requirements
  - Software requirements
  - Mapping requirements
- User Interface
- Map and Real-time Displays
- Database
- Traffic Control
- Traffic analysis
- Alerts and alarms
- Reports
- Security
- Documentation
- CCTV camera interface
- Communications interface

### **Task 2.2.2 Technical Specifications for Communications Network**

The Pflugerville Signal System Assessment and Improvements project previously developed the architecture that defines the communications network and interface. The communications network is anticipated to consist of Broadband Wireless Ethernet Radios. The communications network will also consist of a variety of end equipment such as Ethernet switches and video servers. The Engineer will develop technical specifications for the wireless radios and the communication network equipment.

### **Task 2.2.3 Technical Specifications for Field Devices**

For the field components, the following three field devices are anticipated. The Engineer will develop standard specifications to be used by the City on future equipment procurements. Standard specifications will be developed for the following equipment:

- Traffic signal controller – The Engineer will develop a specification consistent with recently upgraded traffic signal controllers;
- Radar based vehicle detection system and mounting – The Engineer will develop a specification for a video server that will allow for existing video detection systems to supply real-time video from the field back to the TMC; and
- Video server- The Engineer will develop a specification for Video Imaging Vehicle Detection Systems (VIVDS) locations.
- CCTV camera (with PTZ) and mounting – The Engineer will present to the City a recommended standard specification.
- Wireless Ethernet Radio – The Engineer will develop a specification for an Ethernet Radio that will allow communication to all the signal locations.

## **Task 2.3 Traffic Management Center (TMC) Architecture**

At the final build-out stage, the City desires to have a traffic management center (TMC) room at an appropriate location. Since details about the location of a future TMC are not available at this time, the Engineer will only develop a network schematic for a conceptual layout of the TMC.

The schematic will NOT include details for:

- Identify approximate room dimensions;
- Location of workstations and recommended furniture;
- Location of video displays;
- Location of power, telephone, cable TV, network connections;
- Recommended color of walls and lighting requirements; and
- Location of ATMS 19" server rack.

## **TASK 3 System Component PS&E Preparation**

This task will provide for the preparation of schematic level design for the construction of communication system hardware and cabling necessary to support the City's ATMS, and TMC.

Projects for which the City will bid to a Contractor for construction, schematics will be prepared at a level of detail to facilitate traditional bid procurement requirements. Projects for which the City will construct will be at a reduced level of detail.

### **Task 3.1 Data Collection**

This task consists of the collection and organization of data by the Engineer for use in other tasks of this project. The specific type, quantity, and other requirements of the data to be collected, reduced, and organized by the Engineer are described as follows.

The Engineer will compile base maps using current aerial imagery and/or as-builts supplied by the City. No Topographic or Subsurface Utility Engineering (SUE) survey shall be obtained as part of this project. Specific field data to be compiled includes the following:

- Culvert structures
- Drainage structures
- Signal poles
- Utilities (underground & overhead)
- Driveway openings
- Curb, sidewalk and driveways
- Right-of-way or Utility Easements
- Conduit system (i.e., conduit and ground boxes)

Upon receipt of data from the City, the Engineer will perform a field review of all project intersections to confirm the accuracy of the physical features shown on the base mapping. The City will locate City owned utilities at the request of the Engineer. The Engineer will contact the utility companies identified in the Call Before You Dig program and document existing underground utilities in the vicinity of any conduit work required on the project. The Engineer will identify the proximity of overhead electrical / communication lines with respect to CCTV pole height. The Engineer will rely on information gathered during the field review under the Pflugerville Signal System Assessment and Improvements project completed in 2020 to supplement the field work as part of this task.

For budgetary purposes, this task will involve two (2) field visits.

## Task 3.2 System Component PS&E Preparation

### Task 3.2.1 Plans

This task will provide intersection schematic layouts for the addition of an Ethernet Radio, hardened Ethernet switch, Signal Controllers upgrades, CCTV (select intersections), VIVDS video server, and associated cabling needed to facilitate Ethernet communications to support the City's ATMS. Detailed schematics of field equipment layouts will be drawn using MicroStation. Final copies of sheets prepared in MicroStation shall be furnished to the City on a USB drive or PDF format. A sample plan sheet will be provided to the City for their review and approval. It will illustrate how a typical plan sheet will look depicting line styles, photography, recommended symbology for the field elements, conduit/cable schedule, conduit and junction box symbols, etc.

New and/or existing conduit infrastructure, and cable routing will be indicated on schematics using a series of photos, aerial photography, and informational callouts. The layout sheets shall indicate a north directional arrow and a bar scale, if applicable.

The Engineer will prepare construction drawings and schematics that will be used in the construction bid process.

In general, the sheets will be organized as follows:

- Title Sheet
- Detailed Index Sheet
- Location Map(s)
- General Notes and Specification Data Sheets
- Quantity Summary Sheets
- Electrical Service Details
- ITS System Layouts
- ITS Communication Layouts
- District Standard Details
- State Standard Details

Schematics prepared by the Engineer, shall be submitted for review and commented on by the City at the following stages of development:

1. 60% Submittal. Preliminary plans showing title sheet, general notes, special/standard detail drawings, as well as a design layout including street names, legend, scale, north arrow, equipment locations, preliminary traffic control plan and construction sequence plan, communications sizing and routing, and preliminary fiber termination details. The Engineer will submit a pdf copy of the plan package to the City for review.
2. 90% plans review. 90% plans will incorporate appropriate review comments from 60% plans review. In addition, these plans will include a project summary sheet (quantity summary) and a construction time estimate. The Engineer will prepare plans showing title sheet, general notes, specification list, special specifications, special/standard detail drawings, as well as design layout including street names, legend, scale, north arrow, equipment locations, preliminary traffic control plan, communication design, power distributions, and right-of-way.

The Engineer will meet with the City and conduct a field review of the plan layouts. The total number of plan packages for this submittal shall be three (3), along with the PDF.

3. 100% Submittal. Final plans will incorporate appropriate review comments from all prior plan reviews. In addition, these plans will include an updated project summary sheet (quantity summary), applicable TxDOT Standards, and the Engineer's seal.

The Engineer shall establish target dates on which the plans shall be submitted for review at the above stages of development. Plans shall be arranged per the City's published guidelines. The Engineer shall complete the revisions prior to the next submittal deadline and inform the City when the revisions on the checklist have been completed. One meeting is anticipated for each of the submittals.

Major revisions requested after the final review stage will be negotiated with the City. Changes to quantities, item numbers, and notes shall be considered as minor changes and may be required at any time prior to construction.

#### **Task 3.2.2 CCTV Surveillance**

The Engineer will design for mounting CCTV cameras on signal pole structures identified by the City. The Engineer will design the camera placements to view as much of the corridor elements as possible and will notify the City if locations require additional height to achieve adequate CCTV coverage.

The Engineer will indicate the location of CCTV equipment and associated conduit on plan layout sheets. The Engineer will indicate itemized quantities of CCTV equipment in a quantity summary table.

#### **Task 3.2.3 Wireless Ethernet Radios**

The Engineer will design for installation of Wireless Ethernet Radios and antennas on signal poles. The Engineer will design the radio placements to allow line of sight or a communication link to an appropriate Water Tower or adjacent signal for repeater location.

The Engineer will indicate the location of Ethernet radio and Switch equipment and associated conduit on plan layout sheets. The Engineer will indicate itemized quantities in a summary table.

#### **Task 3.2.4 Preparation of Estimates**

The Engineer will prepare an Engineer's Opinion of Probable Construction Costs (OPCC) for the project at the interim and final deliverable stage. The Engineer will use TxDOT bid items to the extent possible. The Engineer will review past projects let by TxDOT and/or the City utilizing similar bid items for this project and determine an average industry standard estimate for each specific bid item. The OPCC will be revisited and adjusted accordingly during each submittal review phase. The final estimates submitted to the City will be prepared with Excel, and an electronic copy of all spreadsheets shall be provided in PDF format. The Engineer will determine the estimated cost of specialty items. Because the Engineer does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Engineer cannot and does not guarantee that proposals, procurement or actual costs will not vary from its opinions of cost.

**Signal System Improvements Plan Implementation Phase 1**

<b>EXHIBIT B. FEE SCHEDULE SIGNAL SYSTEM IMPROVEMENTS PLAN IMPLEMENTATION PHASE 1</b>								
TASK #	TASK DESCRIPTION		Senior Professional II	Senior Professional I	Professional	Analyst	Admin	SUBTOTAL HOURS
<b>TASK 1</b>	<b>PROJECT ADMINISTRATION</b>							
Subtask 1.1	Project Control and Management			10				10
Subtask 1.2	Status Reports and Invoicing			6		9	9	24
Subtask 1.3	Meetings		6	18	6	6		36
		Subtotal =	6	34	6	15	9	70
<b>TASK 2</b>	<b>ATMS DEPLOYMENT PLAN</b>							
Subtask 2.1	Central System Selection							
Subtask 2.1.1	Central System Workshops			8	10			18
Subtask 2.1.2	Scanning Tour or Central System Demonstration		3	12	6			21
Subtask 2.1.3	Recommendations		2	6	14	6		28
Subtask 2.2	Technical Specifications							
Subtask 2.2.1	Technical Specifications for the central system software		4	10	15			29
Subtask 2.2.2	Technical Specifications for Communications Network		2	8	15			25
Subtask 2.2.3	Technical Specifications for Field Devices		2	8	20			30
Subtask 2.3	Traffic Management Center (TMC) Room		2	5	10	15		32
		Subtotal =	15	57	90	21	0	183
<b>TASK 3</b>	<b>SYSTEM COMPONENT PS&amp;E PREPARATION</b>							
Task 3.1	Data Collection			10	20	70		100
Task 3.2	System Component PS&E Preparation							
Subtask 3.2.1	60% Plans Submittal		4	6	20	40		70
	90% Plans Submittal		4	6	10	30		50
	100% Plans Submittal		4	6	10	20		40
Subtask 3.2.2	CCTV Surveillance			2	5	10		17
Subtask 3.2.3	Wireless Ethernet Radios		2	4	10	15		31
Subtask 3.2.4	Preparation of Estimates		2	6	10			18
		Subtotal =	16	40	85	185	0	326
	<b>Grand Total Hours =</b>		37	131	181	221	9	579
	<b>Hourly Rates* =</b>		\$ 255.00	\$ 210.00	\$ 165.00	\$ 145.00	\$ 95.00	
	<b>Subtotal Labor Costs =</b>		\$ 9,435.00	\$ 27,510.00	\$ 29,865.00	\$ 32,045.00	\$ 855.00	
	<b>Grand Total Labor Costs =</b>	\$	99,710.00					
	<b>Subconsultant Costs* =</b>	\$	-					
	<b>Expenses** =</b>	\$	277.00					
	<b>GRAND TOTAL COST =</b>	\$	99,987					