

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
GRAND AVENUE PKWY & BLACK LOCUST DR. AND  
HEATHERWILDE BLVD. & CHEYENNE VALLEY DR.  
TRAFFIC SIGNAL DESIGNS**

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 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on [REDACTED] and terminate on [REDACTED].

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 1* 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 Seventy One Thousand Dollars (\$71,000.00) as total compensation, to be paid to Consultant as further detailed in **Exhibit 1**.

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 Pflugerville City Council by passage of an ordinance therefore.

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 day's 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: Tom Word Assistant City Manager P.O. Box 589 Pflugerville, Texas 78660
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If intended for Consultant, to:	Kimley-Horn and Associates, Inc. Attn: Vivek Deshpande 10814 Jollyville, Avallon IV, Suite 300 Austin, Texas 78759
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## **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 “*Grand Avenue Pkwy. & Black Locust Dr. and Heatherwilde Blvd. & Cheyenne Valley Dr. Traffic Signal Designs*” 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.

<b>Type of Insurance</b>	<b>Amount of Insurance</b>	<b>Provisions</b>
Commercial General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage
Products/ Completed Operations	Or 2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
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		
Contractual Liability		
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. We 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 Section 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 Majure - 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: The Wallace Group, Professional Service Industries, Inc. (PSI). Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, 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 Council.

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 venturers 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 has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

### **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 subject to approval by the City Council, as evidenced by passage of an ordinance.

### **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 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Pflugerville, 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 interpreted in the order of priority as appears below:

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.

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

**CITY OF  
PFLUGERVILLE**

**KIMLEY-HORN AND  
ASSOCIATES INC.**

\_\_\_\_\_  
(Signature)

Printed Name: Brandon E. Wade

Title: City Manager

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

  
\_\_\_\_\_  
(Signature)

Printed Name: Andrew VanLeeuwen

Title: Sr. Vice President

Date: 12-8-16

APPROVED AS TO FORM:

\_\_\_\_\_  
George Hyde  
City Attorney  
DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.

# **EXHIBIT 1**

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

City: **Pflugerville, Texas**  
Location(s): **Grand Avenue Pkwy at Black Locust Dr.  
Heatherwilde Blvd. at Cheyenne Valley Dr.**

Project: **Grand Avenue Pkwy & Black Locust Dr. and Heatherwilde Blvd. & Cheyenne Valley Dr.  
Traffic Signal Design**

### **SCOPE OF WORK**

Kimley-Horn (the “Engineer”) will be responsible for the proper, accurate, and adequate design and preparation of plans, specifications, and construction contract documents and for construction contract administration support for the Project. The Project generally includes Plans, Specifications, and Estimate (PS&E) for new signal installations at:

- Grand Avenue Pkwy at Black Locust Dr.
- Heatherwilde Blvd. at Cheyenne Valley Dr.

The intersections of Heatherwilde Blvd. at Cheyenne Valley Dr. and Grand Avenue Pkwy at Black Locust Dr. are both unsignalized and operate as two-way-stop control on the side street. Grand Avenue Pkwy at Black Locust Dr. is a T-intersection and Heatherwilde Blvd. at Cheyenne Valley Dr. is a four-legged intersection. Heatherwilde Blvd. is a four lane divided arterial with a speed limit of 40 mph. Grand Avenue Pkwy varies between a four lane divided and a five-lane with a center two-way-left-turn lane sections. Cheyenne Valley Dr. and Black Locust Dr. are both two-lane undivided neighborhood collector streets with posted speed limits of 30 mph.

Design services related to the design and plan production for this project will be performed in accordance with the current TxDOT Design and Construction Standards. Plans will be prepared on 11”x17” sheets per TxDOT criteria and 2014 TxDOT Specifications. .

This project will be developed utilizing Microstation V8i and Bentley Geopak V8i.

### **TASK OUTLINE**

#### **I. PROJECT MANAGEMENT**

Project management spans the entire duration of the project and involves monitoring and coordination of services provided to the City of Pflugerville (“the City”) to assure timely and efficient completion of the project. This task consists of project control and scheduling, documentation, reporting requirements, sub-consultant coordination, and quality control. The Engineer will conduct project review and project specific technical meetings under this subtask. The Engineer will attend one (1) kick-off meeting, one (1) 60% review meeting, and one (1) 90% review meeting.

#### **II. DATA COLLECTION AND SURVEY**

The Engineer will conduct field reconnaissance to verify existing conditions at each of the above locations.

The Engineer will coordinate with a Sub-Consultant to obtain topographical and sub-surface utility survey to locate the approximate horizontal location of existing underground utilities at the above locations. The intersection survey limits will be within the right-of-way (ROW), extending approx. 120 feet down each leg from the center of the intersection.

The Engineer will coordinate with the City to mark field locates for their utilities, obtain copies of utility plans in the area, obtain copies of plans for any improvements constructed in the area, and meet with the surveyor in the field as required.

#### **III. PLANS, SPECIFICATIONS & ESTIMATE**

##### **A. SIGNAL DESIGN PLANS**

The Engineer will develop plans to install new traffic signal at the intersections of Grand Avenue Pkwy at Black Locust Dr. and Heatherwilde Blvd. at Cheyenne Valley Dr.

- (a) The signal plans will be prepared at a scale of 1"=40' and will include the following sheets.
  - (i) Existing Conditions sheet will show locations of existing traffic control devices, underground, and overhead utilities at each intersection.
  - (ii) Signal Layout sheet will show the locations of proposed signal poles, pedestrian poles, signal heads, communication equipment, electrical conduits, ground boxes, signal cabinet, new electrical service, existing utilities, right of way, and proposed roadway improvements. Locations of pedestrian poles and pedestrian access ramps will be designed in conformance with ADA requirements. Due to lateral and vertical clearance required from an overhead electric line (per the State law), the Engineer will coordinate with the City before finalizing locations of signal poles, where applicable.
  - (iii) Signal Elevation sheet will show placement of signal heads on a mast-arm and vertical clearance required for the mast-arm.
  - (iv) Conduit Chart and Electrical Wiring sheet will show the type and number of electrical wires in each conduit run. A new electrical service will be designed to support total electrical load due to the new traffic signal and safety lighting at each intersection. The electrical services will each include two separate circuits for traffic signal and illumination. The Engineer will conduct a field meeting with the City and local electric service provider to determine location of new electrical services.
  - (v) Phasing & Detection sheet will show the proposed phasing at each intersection. Phasing and signal-heads for left-turn movements will be designed in conformance with 2011 Texas MUTCD. Video detection details for each movement will also be shown.
  - (vi) Quantities sheet will be provided for the intersection.
- (b) The Engineer will use latest general notes issued by the City/TxDOT and update appropriately as required for traffic signals.

#### B. STANDARDS, SPECIFICATIONS, AND ESTIMATE

- (a) The Engineer will download the appropriate City and TxDOT standards from the City and State web site<sup>s</sup>, as appropriate. Standards that require modification will be corrected and sealed by the Engineer. All other standards will have their title blocks filled out with the applicable project data and printed for inclusion in the final plan set.
- (b) The Engineer will provide a list of applicable special specifications for traffic signals. If needed, the Engineer will develop or modify up to four (4) unique special specifications where an existing statewide specification is unavailable.
- (c) An opinion of probable construction cost will be prepared at the 90% and prior to final PS&E submittal, and supplied to the City in Microsoft Excel format.

#### IV. TRAFFIC SIGNAL TIMING

The Engineer will develop basic traffic signal timing data for the intersection of Heatherwilde Blvd. and Cheyenne Valley Dr. at the time of signal turn-on. It is assumed that this intersection will operate under stand-alone "Free" mode. The Engineer will also develop pedestrian walk and clearance times based on the length of the crosswalks; amber and all-red clearance times based on the posted speed limit.

The Engineer will develop coordinated traffic signal timing plans by time of day along Grand Avenue Pkwy at Black Locust Dr. and Picadilly Dr. The Engineer will:

- (a) Develop plans to install a GPS clock at the existing traffic signal at Grand Avenue Pkwy and Picadilly Dr.
- (b) Obtain existing AM and PM peak-hour turning movement and 24-hr count data at the above intersections from the City.
- (c) Obtain existing signal timing plans at Grand Avenue Pkwy at Picadilly Dr. from the City.
- (d) Develop traffic simulation model for the above intersections using the Synchro software tool.
- (e) Develop coordinated signal timing plans between Picadilly Dr. and Black Locust Dr. for AM, PM, and Off-Peak weekday time periods.
- (f) Implement optimized timing plans in the field at the time of signal turn-on at Grand Avenue Pkwy at Black Locust Dr.
- (g) Observe field operations and fine tune signal timings.
- (h) Summarize proposed timing plans in a technical memorandum.
- (i) Submit technical memorandum and the Synchro models to the City.

## V. BIDDING PHASE SERVICES

Traffic signals at both the locations Grand Avenue Pkwy at Black Locust Dr. and Heatherwilde Blvd. at Cheyenne Valley Dr. will be bid together as one project. The Engineer will:

- (a) Prepare contract bid documents, including bid form, specifications, special specifications, and special provisions.
- (b) Assist City staff with preparing advertisement of the bid, maintenance of a plan holder's list, coordination of the pre-bid conference and bid opening, tabulation of the bids, or award recommendation.
- (c) Attend one (1) pre-bid and one (1) bid opening meeting.

## VI. CONSTRUCTION PHASE SERVICES

The Engineer will:

- (a) Requests for Information - RFIs (**3 per signal** assumed): Respond to reasonable and appropriate Contractor RFI and issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by County.
- (b) Review Contractor Submittals and Shop Drawings (**8 per signal** assumed): 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, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- (c) Plan Revisions for Field Changes (**4 sheets per signal** assumed): Engineer will provide minor revisions to plans in order to address differing site conditions, third party accommodation, or other owner directed changes. Revisions to plans will include revision clouds around any changes, will include descriptions and quantities of changes, CAD files, and will be sealed by a professional engineer.
- (d) Attend Meetings (**6 hours per signal** assumed): Engineer will attend meetings at the project site and progress meetings as requested.
- (e) Geotechnical Services: Engineer will coordinate with a Sun-Consultant to provide the following geotechnical services:
  - (i) Pier Observation – Includes full-time monitoring during pier hole drilling to verify bearing strata, depth of penetration, pier depth, pier shaft diameter, bell size (if applicable), verification of rebar size and number of bars, cleanliness and plumbness of hole, groundwater observations, time of concrete placement and making concrete test cylinders. This includes site visits for each pier drilled.
  - (ii) Concrete Testing – Includes an observation of concrete during placement including slump tests, air content, temperature, and making test cylinders. Test cylinders will be made at each 50 cubic yards or fraction thereof on each day's pour or as specified in the plans. Test cylinders will be picked up and transported to the testing laboratory the following day after concrete is placed and cylinders broken at 7 days and 28 days or as specified in the plans. Unless job control is specified, concrete that is delivered to the job and is out of specifications will not be accepted or rejected by the engineering technician. The Contractor will be notified of deficiencies immediately and it be his/her responsibility to accept or reject. If job control is specified, then the technician will take responsibility of accepting or rejecting the delivered concrete which includes controlling the amount of water added to the concrete truck.
- (f) Prepare Record Drawings for the signal designs.

## VII. DELIVERABLES

- 1. 60% Plans Submittal
  - (a) Existing Conditions
  - (b) Proposed Signal Layout
  - (c) Signal Elevation
  - (d) Phasing and Detection
- 2. 90% Plans Submittal
  - (a) Address any comments from City's 60% review
  - (b) Title Sheet & Index



- (c) General Notes
  - (d) Existing Conditions
  - (e) Proposed Signal Layout
  - (f) Signal Elevation
  - (g) Electrical Wiring
  - (h) Phasing and Detection
  - (i) Signing and Markings
  - (j) Estimated Quantities
  - (k) City/TxDOT Standards
  - (l) Preliminary Cost Estimate
3. 100% Plans Submittal
    - (a) Address any comments to plan sheets from 90% submittal
    - (b) Draft bid documents (specs, special provisions, notes, bid forms)
    - (c) Estimated construction time estimate
    - (d) Final cost estimate
  4. Technical memorandum for signal timing and Synchro models
  5. Record Drawings

## VIII. SCHEDULE

Task	Time	Week																										
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17-20	21-36	37								
Kick-off Meeting	1 Day																											
Field Recon and Survey	3 Wks																											
60% Plans	3 Wks																											
City Review	2 Wks																											
90% Plans	4 Wks																											
City Review	2 Wks																											
Final PS&E	1.5 Wks																											
Bidding Phase	4 Wks																											
Construction Phase Services	12 Wks																											
Develop Signal Timings	1 Wk																											
Record Drawing	1 Wk																											
Implement Signal Timings	1 Day																											

## ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Obtain 24-hr or peak-period turning movement traffic counts
- Temporary traffic signal design.
- Traffic signal warrant study.
- Illumination design except intersection safety lighting mounted on top of signal poles.
- Traffic signal communication system.
- Preparation of ROW easement exhibit outside of those prepared by the surveyor.
- Application and permitting fees.
- As-built surveys of constructed improvements.
- Attendance at public meetings or City Council, Planning & Zoning meetings.
- Coordination with TxDOT or other approving agencies.
- Any additional meetings not listed in the scope of services.

## FEE SCHEDULE

Kimley-Horn will perform the services in Tasks I – V for the total lump sum labor fee as shown below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the City.

### Lump Sum

Task I	Project Management	\$ 6,000
Task II	Data Collection	\$ 1,340
	<i>Survey Sub-Consultant</i>	\$ 9,460
Task III	Plans, Specifications, and Estimate	\$ 27,500
Task IV	Traffic Signal Timing	\$ 7,000
Task V	Bidding Phase Services	\$ 6,700

Kimley-Horn will perform the services in Task VI on a labor fee plus expense basis with the maximum labor fee shown below.

Task VI	Construction Phase Services	\$ 7,600
	<i>Geotechnical Services Sub-Consultant</i>	\$ 5,400

**Total Fee** **\$ 71,000**

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only.