

**PROFESSIONAL SERVICES AGREEMENT
FOR
TRANSPORTATION MASTER PLAN**

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 **August 29, 2018** and terminate on **December 31, 2019**.

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 **Two Hundred Thirty-Four Thousand and One Hundred** and Twenty-Six Dollars (\$234,126) 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: Amy Giannini, P.E., CFM City Engineer P.O. Box 589 Pflugerville, Texas 78660
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If intended for Consultant, to:	Kimley-Horn and Associates, Inc. Attn: Jeff Whitacre 801 Cherry Street, Suite 1300 Fort Worth, Texas 76102
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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 "*Transportation Master Plan*" 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 General (Public) Liability to include coverage for:	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
Premises/Operations	Or	
Products/ Completed Operations	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. 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 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 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: Cambridge Systematics and NewGen Solutions and Strategies 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 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 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**

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

(Signature)



(Signature)

Printed Name: Sereniah Breland

Printed Name: Scott Arnold

Title: City Manager

Title: Assistant Secretary

Date: _____

Date: 8/17/2018

APPROVED AS TO FORM:

Charles E. Zech

City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Exhibit A

Scope of Services

Transportation Master Plan

PROJECT UNDERSTANDING

The Transportation Master Plan is a long-range plan that identifies transportation goals, facilities, and policies the City of Pflugerville needs to consider as it continues to be one of the fastest growing cities in America. Transportation planning is a process that defines future investments that will move people and goods to and from destinations in a safe and efficient manner. Development of the Transportation Master Plan will be a collaborative process that analyzes a variety of alternative scenarios so citizens, stakeholders, and elected officials can make informed decisions about the facilities and policies needed for a fully built-out City of Pflugerville. The analysis and process will be summarized in an Implementation Plan that will have the flexibility to adjust as the City's needs change.

SPECIFIC SCOPE OF SERVICES

- Task 1: Existing and Future Transportation Planning and Modeling ("The Map and Modeling")
- Task 2: Project Prioritization and Capital Improvement Planning ("The Projects and Scenario Planning")
- Task 3: Evaluation of Engineering Criteria ("The Policies")
- Task 4: Financial Needs and Developer Contributions ("The Funding")
- Task 5: Implementation Plan ("The Strategy")
- Task 6: Comprehensive Public Input ("The Support")
- Task 7: Project Management and Coordination Meetings

Task 1. Existing and Future Transportation Planning and Modeling ("The Map and Modeling")

Task 1.1 – Data Collection

The Consultant will coordinate with the City to obtain the following data:

- Comprehensive Master Plan
- City Hike & Bike Trail Plan
- CAMPO Regional Bicycle & Pedestrian Planning Study
- CAMPO Regional Thoroughfare Plan Study
- CAMPO MTP and TIP
- Pavement System Management Database
- Travis/Williamson County Transportation Plan
- Adjacent cities' plans
- Historic traffic counts
- Platted, master planned and other vested developments in GIS, if available;
- Available GIS base mapping data (i.e., orthophotos, intersection control, contours, lakes, streams, railroads, roads, highways, other natural features, appraisal district parcel data, available ROW information, existing utility locations, future land use maps, current zoning, FEMA flood plain data, parcel data, City Limits, ETJ, etc.). The GIS files will be in ESRI ArcGIS10.x format and projected in NAD 83 State Plane, Central Texas Zone coordinates.

Task 1.2 – Existing Conditions Review and State of the City’s Transportation

The Consultant will coordinate with the City to create an inventory of existing roadways (arterials and collectors only) based on the 2015 Transportation Master Plan. The inventory will be completed using aerial photography. This existing inventory database is anticipated to show the number of lanes, condition (ultimate or not) and if it matches the 2015 Transportation Master Plan. The Consultant anticipates spending two days (two employees) in the City verifying the existing network.

The Consultant will develop a citywide message about the existing transportation system that will be supported by sub-elements. This summary will generally include:

- Why is this Plan Important?
- Describe how transportation strategies impact other community initiatives
- Changing landscape (demographics, employment, and funding)
- Communicate the State of the City
 - Opportunities and challenges (with a focus to technology advances)
 - Changing circumstances (demographic and employment)
 - Relative performance
- Relationship between the Transportation Master Plan as well as other city initiatives

Deliverable: Database of 2015 Transportation Master Plan Evaluation and City of Pflugerville State of City in Transportation

Assumptions: Up to forty (40) hours will be spent in field evaluations

Task 1.3 – Alignment Considerations

The Consultant will analyze alignment alternatives at a conceptual level for the Transportation Master Plan. This task anticipates looking at alignments of up to ten (10) roadways that were identified in the Transportation Master Plan. The Consultant will work with the City and use available contours, parcel data/right-of-way information, utilities and flood plain data to aid in the recommendation of alignments. The Consultant will rely on the accuracy of the data collected in Task 1.1. No roadway design or survey services are included in this scope of service.

Deliverable: Exhibit with recommended alignment modifications that will be included in the ultimate Transportation Master Plan Map

Assumptions: Anticipated alignment consideration is 4 hours per alignment (40 hours total for 10 alignments)

Task 1.4 – Intersection Improvements

The Consultant will identify intersection improvements to support the overall mobility of the City. These may include traffic signals, turn lanes, roundabouts, and innovative intersections. These improvements will be identified by a flowchart based on classification of the intersection roadways on the City’s Transportation Master Plan.

Deliverable: Exhibit with recommended intersection improvements, which will be included on the ultimate Transportation Master Plan Map

Assumptions: Planning level Analysis, no warrant studies or intersection control evaluations will be completed

Task 1.5 – Modeling

The Consultant will collect the following information for preparation of the Model:

- Existing year and forecast year model inputs from CAMPO and/or City
- Roadways and split Traffic Analysis Zones (TAZs) as necessary to add the required level of detail to the CAMPO model

- Updated socio-demographic information from the City to match the water plan forecast year demographics
- Existing model (to be released early 2019) and associated traffic counts within the City of Pflugerville to validate flows against counts using new TAZ structure and roadway network

Deliverables: Existing Year and Forecast Year Model

Assumptions: Model will be based on the currently in-development CAMPO Model, which will be completed in early 2019

The Consultant will perform the follow model applications:

- Base model run representing the currently adopted Transportation Master Plan (2015)
- Updated model run representing the updated Transportation Master Plan (anticipated 2019)
- Additional two (2) model run(s) to use for alternative alignment analysis

Deliverables: Model results and performance measures for currently adopted and updated Transportation Master Plan for the forecast year.

Assumptions: After base model is complete, each model analysis will take 20 hours to complete

Task 2. Project Prioritization and Capital Improvement Planning (“The Projects and Scenario Planning”)

Task 2.1 – Development of Project List

The Consultant will develop a list of potential transportation enhancement projects. The roadway projects will be determined in the existing and future needs assessment task that occurs in Task 1. The remaining additional projects will be identified by City staff with the Consultant's assistance. These additional projects may include:

- Segment widening
- Intersection improvements
- Operational analysis
 - Intersection improvements
 - Turn lanes
 - Corridor improvements

Deliverable: Map of potential projects

Assumptions: City will provide current project list

Task 2.2 – Project Review and Evaluation

This task will focus on development of a list of high priority roadway and intersection improvement projects for the City. This project listing will identify existing bottlenecks and potential projects for long-term transportation solutions. The intersections will be further evaluated based on model volumes, engineering judgment, or other information provided by the City.

The Consultant will use the City's project ranking system to evaluate the strategic list of projects identified in Task 2.1. The initial project list will be shortened to 30 projects prior to project ranking. It is envisioned that the ranking system will sort projects based high priority/short-term, medium, or low priority /long-term ranking.

Deliverable: Project map sort by high, medium, and low priority

Assumptions: Project ranking system will be provided by the City. Project ranking will be limited to 30 projects based on six measures of effectiveness

Task 2.3 – Develop Roadway and Intersection Preliminary Cost Projections

The Consultant will prepare planning-level cost projections for City-selected future capital improvement projects based on 2018 dollars, likely to be the highest-ranking projects identified in Task 2.3. These cost projections will be based on discussion with City staff, current City design guidelines, and previous Consultant experience with roadway construction costs. Due to the variety of unknowns associated with roadway project cost projections (ROW acquisition, utility relocations, etc.), the planning-level project cost projections used in this analysis should be further refined prior to being used for any future capital improvement planning within the City. The Consultant will develop costs for projects estimated to be in the 10-year CIP, which are anticipated to be high and medium projects identified in Task 2.2.

Deliverable: Project costing

Assumptions: Project costing will be limited to high and medium ranked projects

Task 2.4 – Scenario Planning

During this task, the Consultant will identify performance targets, consider transportation strategies, and analyze scenario analyses. The exact method of scenario planning will be determined by the Consultant in collaboration with the City and with input from the Project Oversight Committee (POC). The Consultant will evaluate these performance targets at the system level using a series of quantifiable metrics. These metrics will be limited to six criteria.

In this task, the Consultant will evaluate up to three (3) transportation investment scenarios to determine which combination most closely aligns with desired system performance targets. The evaluation of the scenarios will be based on comparisons of each scenario against the chosen metrics. This process will include a variety of methods to determine relative performance sufficient to provide a comparison between of each scenario (comparative analysis). Spatial analysis methods and travel demand modeling (3 run scenarios) will be used to complete this task. The exact methods will be influenced by the availability of data, level of detail requested, and timeline provided. The Consultant will summarize the evaluations in narrative, visual, and quantitative formats for eventual inclusion in the plan document (Scenario Planning Report Card). The performance of each scenario also will be accompanied by a summary of the major policy changes required to implement each scenario.

Once the evaluation of scenarios has occurred and the community and POC have weighed in on the evaluation of the scenarios, the Consultant will develop a preferred scenario. The preferred strategy will be presented to the City and POC for review and comment.

Deliverable: Scenario Planning Report Card; Preferred Scenario Plan

Assumptions: Three (3) scenarios evaluated with six metrics; each modeling scenario will take 20 hours to complete

Task 3. Evaluation of Transportation Codes (“The Policies”)

Task 3.1 – Review of Transportation Policies and Codes

The Consultant will review transportation policies and codes that apply to the development of transportation systems. The team will compile a list and reference each policy or ordinance that is applicable to the project. Inconsistencies and gaps in the list will be identified. Based on the results of the evaluation, the Consultant will meet with City staff to compare evaluations and recommendations. In this meeting, the Consultant will discuss which documents to recommended to keep as-is, revise, remove, or replace. This evaluation will create a list of implementation items to be updated to enhance the transportation systems identified in Tasks 1 and 2.

Deliverable: Review of transportation policies and codes

Assumptions: Documents to be reviewed will be provided to Consultant

Task 3.2 – Cross Section Evaluation

The Consultant will review the cross sections developed as part of the previous Transportation Master Plan.

The Consultant will work with the City to revise the cross sections to consider context, number of lanes, multi-modal plans, and right-of way constraints. Roadways with existing right-of-way constraints will be identified as constrained/established corridors during Task 1 and associated with alternate cross sections that are “right sized” to the available space.

Deliverable: Updated cross sections – reflected on the map in Task 1

Task 4. Financial Needs and Developer Contributions (“The Funding”)

Task 4.1 – Transportation Funding 101 Workshop

The Consultant will complete a Transportation Funding 101 workshop. As part of the session, the Consultant will outline the City’s preferred funding philosophy, including the City’s desire to use debt and/or other funding options such as federal transportation monies and/or grants, etc. The goal of this workshop will be to determine the general principles that should be used to develop a capital funding plan and discuss with the City the potential funding options and sources available to minimize the overall impact of the CIP implementation on taxpayers. Transportation impact fees and the implementation of a transportation utility are two key elements that will also be considered as part of the Infrastructure Funding Workshop.

Deliverable: Presentation for Transportation Fund 101

Assumptions: One-day workshop with two presenters

Task 5. Implementation Plan (“The Strategy and Report”)

Building on Tasks 1–4 and Task 6, the Consultant will establish a methodology for implementation. As with the system-level evaluation methods, the implementation plan will use a diversified approach that considers transportation performance metrics as well as influencing factors related to transportation objectives, land use, and economic vitality. This implementation plan will be quantitatively based using available data and summarized in the planning document.

The Transportation Master Plan documentation will be summarized in a concise report detailing: study overview, plan goals and objectives, existing transportation conditions, travel demand modeling, project list development and prioritization, scenario planning, engineering criteria recommendations, and implementation plan. The Transportation Master Plan will be summarized on a single map depicting roadway and intersections throughout the City.

Deliverable: Report

Assumptions: Report will be electronic; 10 printed copies (Magazine Format)

Task 6. Comprehensive Public Input (“The Support”)

Task 6.1 – Development of a Public Engagement Plan

The Consultant will develop a plan for community and stakeholder outreach and a strategy for communication. The Public Engagement Plan (PEP) will incorporate outreach and engagement methods that foster meaningful participation and provide needed input for the successful development and implementation of the Transportation Master Plan. The PEP will also identify a list of key stakeholders. The strategy will leverage existing communication channels and identify any supplemental strategies needed to educate and engage the community on the project. The Consultant will work closely with participating staff, to ensure communication and outreach strategies are integrated and coordinated with related efforts. The PEP will be presented with the Project Management Plan to the Study Oversight Committee.

Deliverable: Public Engagement Plan

Task 6.2 – Project Oversight Committee

Over the course of the project, the Consultant will conduct five (5) meetings with the Project Oversight Committee. Meeting topics are summarized below:

Meeting 1 | Kick-Off Meeting / Public Engagement Plan

Meeting 2 | Goals, Objectives, and Existing Conditions

Meeting 3 | The Map and Projects

Meeting 4 | Policy / Transportation Funding

Meeting 5 | Implementation Plan

Deliverable: Committee Presentations

Assumptions: One (1) employee traveling and one (1) local employee for each POC

Task 6.3 – Online Involvement

The Consultant will provide content to the City for use in online engagement or social media, such as Facebook. Public meeting materials will be prepared that can be easily uploaded to the City's website. Before the first public meeting, the Consultant will create a survey to disseminate to residents and business owners about the transportation conditions in the Pflugerville area. The feedback will be gathered early to help guide the recommendations developed throughout the planning process. The Consultant will use a web-based interactive mapping tool (such as WikiMap) to collect detailed user input on a wide range of project elements, from existing conditions to desire projects to comments on proposed recommendations.

Deliverable: Survey; web-based interactive map

Assumptions: Online material will be provided monthly with material for each week (four [4] posts); two (2) iterations of web-based mapping; 1 (one) survey

Task 6.4 – Public Meetings

The Consultant will conduct two (2) public meetings during the project schedule. Each meeting will serve a unique purpose for gathering feedback and presenting information.

Deliverable: Open House Format Public Meeting

Assumptions: Two (2) employees at Public Meetings

Task 6.5 – Council Meetings

The Consultant will conduct two (2) Council workshop meetings during the project schedule.

Deliverable: Council Workshop

Assumptions: One (1) employee at Council Workshop

Task 7. Project Management

Task 7.1: Work Plan

The Consultant will prepare a Project Management Plan. This will provide a brief understanding of the project, highlight the project team members involved, and include a milestone schedule that assigns target dates to each subtask. Project contacts, data exchange protocols, and invoicing procedures will also be discussed in this document. This up-front documentation will facilitate smooth communication between the project team, the public, community stakeholders, and the City of Pflugerville.

Task 7.2: Progress Reports and Invoices

The Consultant will review the project schedule and prepare monthly progress reports for review by the City's Project Manager. This is assumed to be a twelve (12)-month project. Invoices for all work completed during the period will be submitted monthly (with a progress report) for work performed.

Task 7.3: Coordination Meetings

The Consultant will have monthly coordination calls or web meetings with the project team throughout this project. Meeting summaries will be submitted within ten (10) days. Nine (9) coordination meetings will be held. Travel for three (3) meetings was included. Note, some meetings may occur on the same trip as the Project Oversight Committee meetings.

Exhibit B

Payment Terms

Payment is a lump sum in the amount listed in Article IV of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services.

Transportation Master Plan

TASK DESCRIPTION	KIMLEY-HORN							Subtotal Hours	Cost of Labor	Sub Finance New Gen	Sub Modeling Cambridge	Expenses	Total Cost
	Project Manager	Principal in Charge	Senior P.E.	P. E.	Analyst	Acct'g Admin	Clerical						
Fully Loaded Rates*	\$188.36	\$214.34	\$172.12	\$126.66	\$110.42	\$103.92	\$68.20						
Task 1: Existing and Future Transportation Planning and Modeling													
1.1 Data Collection	1				3		4	8	\$ 792				
1.2 Existing Conditions Review and State of the City's Transportation	20			20	80			120	\$ 15,134			\$ 1,000	
1.3 Alignment Considerations	6			10	40			56	\$ 6,814				
1.4 Intersection Improvements	10		20	20	60			110	\$ 14,484				
1.5 Modeling	6	4			6			16	\$ 2,650		\$ 41,800		
Subtotal =	43	4	20	50	189	0	4	310	\$ 39,874	\$ -	\$ 41,800	\$ 1,000	\$ 82,674
Task 2: Project Prioritization and Capital Improvement Planning													
2.1 Development of Project List	6			10	20			36	\$ 4,605				
2.2 Project Review and Evaluation	6	4		10	20			40	\$ 5,463				
2.3 Develop Roadway and Intersection Preliminary Cost Projections	6		20	20	60			106	\$ 13,731				
2.4 Scenario Planning	10	4		30	120			164	\$ 19,791		\$ 13,200		
Subtotal =	28	8	20	70	220	0	0	346	\$ 43,590	\$ -	\$ 13,200	\$ -	\$ 56,790
Task 3: Evaluation of Transportation Codes													
3.1 Review of Transportation Policies and Codes	20	4		10	40			74	\$ 10,308				
3.2 Cross Section Evaluation	6	4		6	20			36	\$ 4,956				
Subtotal =	26	8	0	16	60	0	0	110	\$ 15,264	\$ -	\$ -	\$ -	\$ 15,264
Task 4: Financial Needs and Developer Contributions													
4.1 Transportation Funding 101 Workshop	20							20	\$ 3,767	\$ 6,600			
Subtotal =	20	0	0	0	0	0	0	20	\$ 3,767	\$ 6,600	\$ -	\$ -	\$ 10,367
Task 5: Implementation Plan													
	20		20	20	60		20	140	\$ 17,732		\$ 3,300	\$ 500	
Subtotal =	20	0	20	20	60	0	20	140	\$ 17,732	\$ -	\$ 3,300	\$ 500	\$ 21,532
Task 6: Comprehensive Public Input													
6.1 Development of Public Engagement Plan	4				6			10	\$ 1,416				
6.2 Project Oversight Committee	20				20			40	\$ 5,976			\$ 2,500	
6.3 Online Involvement	8			10	30			48	\$ 6,086				
6.4 Public Meetings	30			20	60			110	\$ 14,809				
6.5 Council Workshops	10							10	\$ 1,884			\$ 1,000	
Subtotal =	72	0	0	30	116	0	0	218	\$ 30,170	\$ -	\$ -	\$ 3,500	\$ 33,670
Task 7: Project Management													
7.1 Work Plan	4				6			10	\$ 1,416		\$ 550		
7.2 Progress Reports and Invoicing	6				6	12		24	\$ 3,040				
7.3 Coordination Meetings	9				18		5	32	\$ 4,024		\$ 3,300	\$ 1,500	
Subtotal =	19	0	0	0	30	12	5	66	\$ 8,479	\$ -	\$ 3,850	\$ 1,500	\$ 13,829
Grand Total Hours =	228	20	60	186	675	12	29	1210					\$ 234,126