

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR ENGINEERING DESIGN SERVICES TO ELIMINATE THE TWO AT-GRADE CROSSINGS AT JOHNSON LANE AND BONNIE BRAE STREET AND CREATE A NEW AT-GRADE CROSSING FOR THE BRUSH CREEK-HICKORY CREEK PHASE 1 PROJECT FOR THE TRAFFIC DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7292-020 – PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$225,000.00).

WHEREAS, on March 23, 2021, the City Council approved a pre-qualified professional services list of state certified Transportation Engineers for various improvements and public safety-related projects within the City of Denton (Ordinance 21-554), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Kimley-Horn and Associates, Inc., to provide professional design services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

PSA	7292-020
File Name	Brush Creek Railroad Crossing Design
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Kimley-Horn and Associates, Inc., with its corporate office at 421 Fayetteville Street, Suite 600 Raleigh, NC 27601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Brush Creek Railroad Crossing Design (the "PROJECT").

SECTION 1 **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$225,000 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4 Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
 - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
 - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5

Obligations of the City

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

(1) CITY acknowledges ENGINEER will perform part of the work at CITY's

facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement

cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
 - b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.
- (2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:
- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
 - b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
 - c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.
- (3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the

right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City’s Conflict of Interest Questionnaire.

R. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City

at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

S. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services

Attachment B - Compensation

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

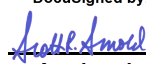
Duly executed by each party's designated representative to be effective on _____.

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Kimley-Horn Associates, Inc.

DocuSigned by:



Vice President

Authorized Agent, Title

Full Name: Scott Arnold

2025-1298100

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

Signed by:



Signature

Director
Title

Development Services
Department

Date Signed: 4/23/2025

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

BY: 

4B070831B4AA438...

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

ATTACHMENT "A"

BRUSH CREEK ROAD IMPROVEMENTS CONCEPTUAL DESIGN

Scope of Services

PROJECT UNDERSTANDING

The Scope of Services consists of conceptual design for the Brush Creek Road between US 377 and South Oakleaf Trail consisting of gull depth street construction, storm drain installation, roadway illumination, traffic signals, pavement markings and signings, quiet zone improvements, and pedestrian and bicycle facility improvements along Brush Creek Road, as defined in Attachment E.

This scope for conceptual design services and project understanding consists of the following:

- Conceptual roadway design of Brush Creek Road between South Oakleaf Trail to the Union Pacific Railroad (UPRR) Crossing to provide a 4-lane divided of the ultimate 6-lane divided thoroughfare with curb cross section consisting of two lanes each direction.
- Conceptual roadway design of Brush Creek Road from the UPRR Crossing to Fort Worth Drive (US 377) to provide 6-lane divided thoroughfare with curb cross section consisting of three lanes in each direction.
- Close the at-grade railroad crossings at Johnson Lane and Bonnie Brae Street.
- Installation of pedestrian infrastructure consisting of sidewalk and shared use path along Brush Creek Road.
- Installation of internal storm drain and culvert crossings along Brush Creek Road. Additional drainage studies will be conducted for the Brush Creek Road, Fort Worth Drive (US377) culvert crossings and Sagebrook subdivision runoff.
- Provide photometric analysis and roadway illumination for Brush Creek Road.
- Installation of a new traffic signal at the intersection of Brush Creek Road and Fort Worth Drive (US 377).
- UPRR railroad coordination and diagnostic meeting.
- Provide traffic signal pre-emption and pedestrian and bicycle facilities through railroad crossings.
- Right-of-Way (ROW) for proposed Brush Creek Road is already dedicated, and no additional ROW acquisition is required.
- Preliminary design and final design will be provided under separate scope of services.
- Environmental clearance assistance if required will be provided under separate scope of services.
- Detailed railroad quiet zone improvements design will be provided under separate scope of services.
- Sub-surface utility engineering will be provided under separate scope of services.

The ENGINEER will perform its services pursuant to the requirements delineated in ATTACHMENT "A". Services under this attachment consist of the following tasks:

- Task 1 – Project Management
- Task 2 – Data Collection
- Task 3 – Traffic Study
- Task 4 – Railroad Coordination and Diagnostic Meeting
- Task 5 – Conceptual Design

Task 1. Project Management

ENGINEER will manage the work outlined in this scope of services to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team:

- Lead, manage and direct design team activities
- Ensure Quality Control / Quality Assurance (QC/QA) is practiced in performance of the work.
- Communicate internally among team members
- Task and allocate team resources

1.2. Communications and Reporting:

- Attend a pre-design project kickoff meeting with CITY staff to confirm and clarify scope, understand CITY's objectives, and ensure economical and functional designs that meet CITY's requirements.
- Attend one (1) field meeting with CITY representatives prior to the conceptual design (30%).
- Conduct and document monthly project update meetings with CITY's Project Manager and CITY staff.
- Conduct review meetings with CITY at the end of the conceptual phase.
- Conduct QC/QA reviews and document those activities.
- Prepare invoices and submit them monthly in the format requested by the CITY.
- Prepare and submit baseline project schedule initially, and project schedule updates as necessary.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design. The coordination with the railroad and FRA is included separately in Task 4.
- With respect to coordination with permitting authorities, ENGINEER shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. ENGINEER shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements, as part of the design scope.

ASSUMPTIONS

- One (1) pre-design project kickoff/chartering meeting.
- One (1) field review meeting.
- Five (5) monthly project update meetings during the conceptual design phase.
- One (1) plan review meeting.
- Conceptual design phase is estimated to be six (6) months.

DELIVERABLES

- Meeting summaries with action items
- Baseline design schedule and schedule updates
- Monthly project status reports
- Monthly invoices

TASK 2. Topographic Survey Services

ENGINEER will provide survey support as follows.

2.1 Design Survey

ENGINEER will perform field surveys to collect horizontal and vertical elevations and other information needed by ENGINEER in design and preparation of plans for the project. Information gathered during the survey will consist of topographic data, elevations of all sanitary and adjacent storm sewers, rim/invert elevations, location of buried utilities, structures, trees (measure caliper and identify overall canopy), and other features relevant to the final plan sheets. Existing drainage at intersections will be verified by field surveys. Spot elevations will be shown on intersection layouts with cross slope to fit intersecting grade lines.

- The minimum survey information to be provided on the plans will consist of the following:
 - A Project Control Sheet, showing **ALL** Control Points, used or set while gathering data. Generally, on a scale of not less than 1:400:
 - The following information about each Control Point;
 - a. Identified (Existing. CITY Monument #8901, PK Nail, 5/8" Iron Rod)
 - b. X, Y, and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on CITY Datum only.
 - c. Descriptive Location.
 - Coordinates on all P.C.'s, P.T.'s, P.I.'s, Manholes, Valves, etc., in the same coordinate system, as the Control.
 - No less than two horizontal benchmarks, per line or location.
 - Bearings given on all proposed centerlines, or baselines.
 - Station equations relating utilities to paving, when appropriate.

2.2 Temporary Right of Entry Preparation and Submittal

Prior to entering property, the ENGINEER shall prepare, mail, and obtain a Temporary Right of Entry from landowners.

DELIVERABLES

- Drawing of the project layout with dimensions and coordinate list.

TASK 3. Traffic Study and Traffic Data Collection

ENGINEER will collect traffic data and prepare a traffic study as follows.

3.1 Data Collection

- 24-hour turning movement counts will be collected at the following intersections:
 - US 377 & Bonnie Brae Street
 - US 377 & Brush Creek Road
- 72-hour machine recording tube counts will be collected along:
 - Bonnie Brae Street and Johnson Lane, west of the railroad crossings
- Prior to the evaluation, ENGINEER will conduct field observations within the study area during a peak hour. For each study intersection, the following elements will be verified:
 - Number of lanes on each approach and the required or permitted usage of each lane; and
 - Current traffic control devices operation.
- The CITY will provide recently completed traffic studies in the area anticipated to impact volumes at the study intersections.

3.2 Traffic Study

- Volume Determination
 - Existing (2025)
 - The existing traffic volumes at the study intersections will be summarized for the AM and PM peak hours.
 - Future (2035)
 - A background growth rate will be determined based on historically available data within the study area.
 - Anticipated development traffic will be included as appropriate.
 - Traffic redistribution due to Bonnie Brae Street closure and Brush Creek Road construction.
- Signal Warrant Analysis
 - A signal warrant analysis will be conducted at the US 377 & Brush Creek Road considering warrants 1-3 of the TxMUTCD.
- Intersection Capacity Analysis
 - Intersection Capacity Analysis for the weekday AM and PM peak periods will be performed for the following scenarios:
 - Existing (2025) – Existing traffic volumes and roadway network.
 - No Build (2035) – Future traffic volumes and existing roadway network.
 - Build (2035) – Future traffic volumes and future roadway network.
- Document Study Results
 - An electronic (.pdf) draft report that documents the study methodology, traffic volumes, analysis results, and recommendations will be prepared and submitted to the CITY and TxDOT for review and comment. ENGINEER will

coordinate with the CITY to receive concurrence regarding the study. ENGINEER will then incorporate internal review comments and submit one (1) electronic (.pdf) copy to the CITY.

TASK 4. Diagnostic Meeting and Railroad Coordination

ENGINEER will assist CITY with the railroad coordination and diagnostic meeting to establish quiet zone for new Brush Creek Road crossings. This task will consist of the following:

- Perform quiet zone calculation for the corridor.
- Coordinate, prepare and attend the diagnostic meeting with the CITY, UPRR, and FRA.
- Prepare diagnostic meeting notes and exhibits to distribute diagnostic team for review.
- Address comments and finalize diagnostic meeting notes and exhibits.

ASSUMPTIONS

- Two (2) site visits are assumed

DELIVERABLES

- Diagnostic meeting notes and exhibits

TASK 5. Conceptual Design (30%)

The Conceptual Design shall be submitted to CITY per the approved Project Schedule.

The purpose of the conceptual design is for the ENGINEER to identify, develop, communicate through the defined deliverables, and recommend the design concept that successfully addresses the design problem, and to obtain the CITY's endorsement of this concept.

ENGINEER will develop the conceptual design of the infrastructure as follows.

5.1 Data Collection

- In addition to data obtained from the CITY, ENGINEER will research and make efforts to obtain pertinent information to aid in the coordination of the proposed improvements with any planned future improvements that may influence the project. ENGINEER will also identify and seek to obtain data for existing conditions that may impact the project including utilities, agencies (CITY, TxDOT, etc), CITY Master Plans, and property ownership as available from the Tax Assessor's office.
- The ENGINEER will consult with the CITY's Public Works Department, public utilities, private utilities, and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project.

5.2 Utility Clearance

- ENGINEER will develop the design of CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs. Where conflicts cannot be avoided, coordination of Utility Conflicts will begin at the Conceptual Design phase.

- In the case of a public utility conflict, the ENGINEER will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.

5.3 The Conceptual Design Package shall consist of the following: Preliminary cover and index of sheets showing project limits, area location map, and beginning and end station limits.

- Quantity Summary page
- Existing typical sections of the roadway to be constructed along with proposed typical sections that outline the proposed improvements. Typical sections shall consist of existing and proposed ROW, existing and proposed lane widths and direction arrows, existing and proposed curbs, sidewalks, and retaining walls.
- Conceptual roadway sheets showing existing and proposed horizontal roadway alignments, existing and proposed ROW, existing and proposed sidewalks and driveways, proposed lane dimensions and lane arrows, existing drainage structures, CITY owned and franchise utilities.
- Photometric analysis for proposed Brush Creek Road segment. Lighting fixture specifications to be provided by DME.
- Existing and proposed drainage area map.
- Documentation of key design decisions.
- Opinion of probable construction cost (OPCC). Because the ENGINEER does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The ENGINEER cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost.

ASSUMPTIONS

- Three (3) sets of 11"x17" size plans will be delivered to CITY for the 30% design.
- ENGINEER shall not proceed with Preliminary Design activities without written approval by the CITY and TxDOT of the Conceptual Design Package.

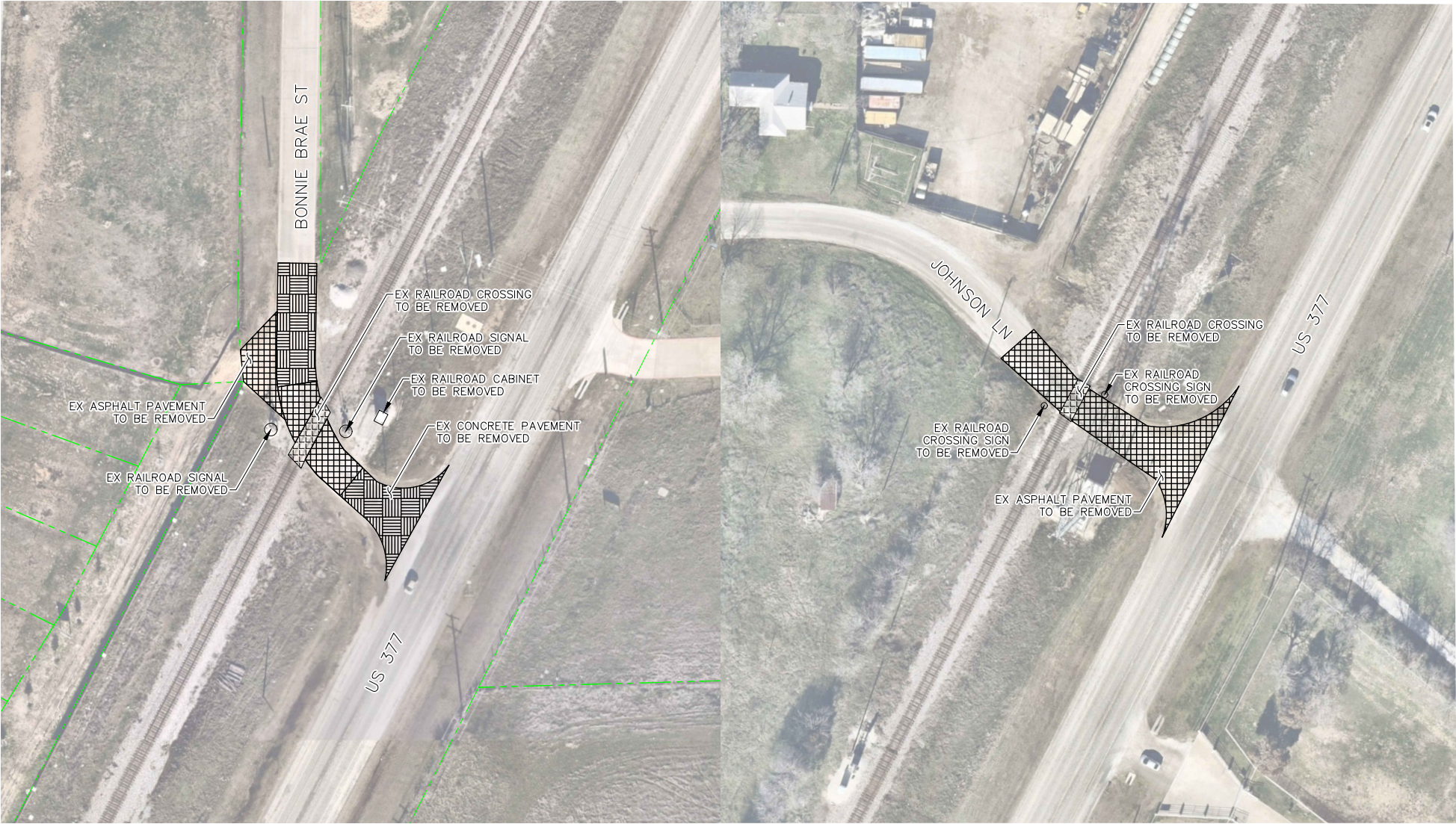
ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Preliminary and final design phases.
- Environmental clearance phase.
- Detail quiet zone improvements design.
- Designing of pedestrian and bypass gates at railroad crossings.
- Additional roadway design beyond included scope.
- Preparation of ROW and easement documents.
- Negotiation of easements or property acquisition.
- Services related to development of the CITY's project financing and/or budget.
- Construction management and inspection services.
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Additional environmental clearance services beyond the scope included. These services may consist of following but not limited to these activities.
 - Noise modeling
 - Air quality modeling/monitoring
 - Cultural resources field studies/surveys
 - Public meeting
 - Community Impact Assessment
 - U.S. Army Corps of Engineers Permitting



BRUSH CREEK ROAD (BETWEEN S OAKLEAF TRL AND US 377) EXHIBIT FOR COSTING



BRUSH CREEK ROAD (US 377 AT BONNIE BRAE ST AND JOHNSON LN) EXHIBIT FOR COSTING

ATTACHMENT "B"

BRUSH CREEK ROAD IMPROVEMENTS CONCEPTUAL DESIGN

Compensation

Total compensation for the ENGINEER completed under the terms of this agreement **shall be lump sum total not-to-exceed \$225,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

The total compensation for Conceptual Design Services Task 1 – Task 5 shall be on a lump sum basis and not to exceed **\$225,000**.

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month.

• Task 1 – Project Management	\$ 12,000
• Task 2 – Topographic Survey Services	\$ 20,000
• Task 3 – Traffic Study and Traffic Data Collection	\$ 25,000
• Task 4 – Railroad Coordination and Diagnostic Meeting	\$ 18,000
• <u>Task 5 – Conceptual Design (30%)</u>	<u>\$ 150,000</u>

Lump Sum Total \$ 225,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Individual task amounts are provided for budgeting purposes only. The ENGINEER reserves the right to reallocate amounts among tasks as necessary.

All permitting, application, and similar project fees will be paid directly by the CITY.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and ENGINEER project number.

EXTRA SERVICES

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

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

Kimley-Horn and Associates, Inc

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

n/a

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relations hip with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

☐

Yes


☐

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by:



4/23/2025

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: 79182862-F5DE-4167-92F8-AEB2EC86A132

Subject: Please DocuSign: City Council Contract 7290-020 Brush Creek Railroad Crossing Design

Source Envelope:

Document Pages: 31

Signatures: 4

Certificate Pages: 6

Initials: 1

AutoNav: Enabled

Envelope Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:

Gabby Leeper

901B Texas Street

Denton, TX 76209

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

4/17/2025 8:53:13 AM

Holder: Gabby Leeper

Gabby.Leeper@cityofdenton.com

Location: DocuSign

Signer Events

Gabby Leeper

gabby.leeper@cityofdenton.com

Senior Buyer

City of Denton

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Signature

Completed

Using IP Address: 198.49.140.104

Timestamp

Sent: 4/17/2025 9:14:27 AM

Viewed: 4/17/2025 10:09:49 AM

Signed: 4/17/2025 10:10:43 AM

Lori Hewell

lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Sent: 4/17/2025 10:10:46 AM

Viewed: 4/17/2025 4:27:45 PM

Signed: 4/17/2025 4:28:13 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

marcella.lunn@cityofdenton.com

Senior Deputy City Attorney

City of Denton

Security Level: Email, Account Authentication
(None)

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

Signature Adoption: Pre-selected Style

Using IP Address: 72.158.228.14

Signed using mobile

Sent: 4/17/2025 4:28:16 PM

Viewed: 4/22/2025 8:50:35 PM

Signed: 4/22/2025 8:52:16 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Scott Arnold

scott.arnold@kimley-horn.com

Vice President

Kimley-Horn and Associates, Inc.

Security Level: Email, Account Authentication
(None)

DocuSigned by:
Scott Arnold
D1B5A80061EE4E9...

Signature Adoption: Uploaded Signature Image

Using IP Address: 130.41.174.195

Sent: 4/22/2025 8:52:19 PM

Viewed: 4/22/2025 8:54:43 PM

Signed: 4/23/2025 7:15:36 AM

Electronic Record and Signature Disclosure:

Accepted: 3/27/2020 10:55:11 AM

ID: a1f38400-e5cc-4b57-8548-4dd7e031355d

Signer Events	Signature	Timestamp
Scott McDonald scott.mcdonald@cityofdenton.com Director Security Level: Email, Account Authentication (None)	<div>Signed by:  D4585119F060407...</div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/23/2025 7:15:40 AM Viewed: 4/23/2025 7:31:41 AM Signed: 4/23/2025 7:32:15 AM

Electronic Record and Signature Disclosure:
Accepted: 4/23/2025 7:31:41 AM
ID: cb684411-6c61-4cf8-a79d-309def30ae98

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton

Sent: 4/23/2025 7:32:19 AM

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lauren Thoden
lauren.thoden@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton

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Sent: 4/17/2025 10:10:45 AM

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton

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Sent: 4/23/2025 7:32:18 AM
Viewed: 4/23/2025 9:10:34 AM

Security Level: Email, Account Authentication (None)

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Charlie Rosendahl charlie.rosendahl@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 1/21/2025 11:05:46 AM ID: 1356d426-3998-4ef1-9268-36b9a25f220c		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/17/2025 9:14:27 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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