

**AGREEMENT FOR ENGINEERING SERVICES  
BETWEEN THE  
CITY OF NORTH RICHLAND HILLS  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.**

**I.**

This Agreement is executed by and between the City of North Richland Hills, a municipal corporation located in Tarrant County, Texas, acting by and through Mark Hindman, its duly authorized City Manager (hereinafter called "CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, acting by and through **REPRESENTATIVE**; its duly authorized Principal (hereinafter called "ENGINEER").

**WITNESSETH**, that CITY desires professional engineering services in connection with the **NRH2O KIDDIE AREA RENOVATION PROJECT**

**NOW, THEREFORE**, CITY and ENGINEER, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**II. PROJECT**

In this Agreement, the "PROJECT" means the engineering design of the **NRH2O KIDDIE AREA RENOVATION PROJECT** in accordance with the Public Works Design Manual, applicable CITY codes, regulations, and standards.

**III. BASIC AGREEMENT**

ENGINEER is an independent contractor and undertakes and agrees to perform professional engineering services in connection with the PROJECT, as stated in the sections to follow. It is understood and agreed that ENGINEER is not and will not by virtue of this contract be deemed to be an agent or employee of CITY and that CITY will not be entitled to direct the performance by ENGINEER's employees or subcontractors of the tasks contemplated by this contract. All engineering services shall be performed with diligence and in accordance with professional standards customarily obtained for such services in the State of Texas. For rendering such services CITY agrees to pay ENGINEER as set forth in Section VIII: "Compensation."

**IV. SCOPE OF ENGINEER'S SERVICES**

ENGINEER shall render the professional services necessary for development of the PROJECT, in accordance with the schedule in Exhibit A: "Agreement for Professional Services - Basic Scope of Services," said exhibit being attached hereto and incorporated herein for all

purposes. Scope of Engineer's Services includes tasks 1A (Coordination and Design Management), 2A (Concept Design Development), 3A (Coordination and Design Management), and 4A (Design Development). ENGINEER shall perform services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer in the Dallas/Fort Worth Metroplex area. Such services shall be of professional and technical soundness, accuracy, and adequacy of all designs, drawings, specifications, and other work and materials furnished under this Agreement.

## V. ADDITIONAL ENGINEERING SERVICES

Additional Engineering Services are defined in Exhibit A: "Agreement for Professional Services - Additional Scope of Services," attached hereto and made a part of this Agreement. Additional Engineering Services includes tasks 1B (Construction Documents), 2B (Bidding Phase and Contract Award, and 3B (Construction Contract Administration. No Additional Engineering Services are authorized unless authorization for specified additional services are provided to ENGINEER by CITY in writing and approved by CITY.

## VI. SCOPE OF CITY SERVICES

The City will furnish items and perform those services as identified in Exhibit A: "Agreement for Professional Services - Information Provided by Client," attached hereto and made a part of this Agreement.

## VII. COMPENSATION

- A. In consideration of the services described herein, CITY shall pay and ENGINEER shall receive compensation in accordance with Exhibit A: "Agreement for Professional Services - Fee and Expenses."
- B. Total payments including without limitation reimbursable expenses, to ENGINEER by CITY for the services stated in Section IV above shall not exceed **PROJECT COST (\$155,000.00)**.
- C. CITY may authorize additional services to be provided by ENGINEER as mutually agreed upon by the parties. Any authorization for additional services shall be given to ENGINEER by CITY in writing and approved by CITY.
- D. CITY and ENGINEER understand that the variables in ENGINEER's cost of performance may fluctuate. The parties agree that any fluctuation in ENGINEER's costs will in no way alter ENGINEER's obligations under this Agreement nor excuse performance or delay on ENGINEER's part.



## **II. OWNERSHIP OF DOCUMENTS**

All completed or partially completed evaluations, reports, surveys, designs, drawings and specifications prepared or developed by ENGINEER under this Agreement, including any original drawings, computer disks, mylars or blue lines, shall become the property of CITY when the Agreement is concluded or terminated, and may be used by CITY in any manner it desires; provided, however, that ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described in this Agreement.

## **IX. INDEMNITY**

ENGINEER HEREBY COVENANTS AND CONTRACTS TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ANY AND ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES, OR SUITS, TO THE EXTENT CAUSED BY ENGINEER'S NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL. ENGINEER SHALL NOT BE OBLIGATED TO INDEMNIFY OR DEFEND CITY, ITS OFFICERS, EMPLOYEES OR AGENTS IN ANY MANNER FOR THE NEGLIGENCE OF CITY, ITS OFFICERS, EMPLOYEES OR AGENTS, SUBJECT TO THE LIMITATIONS IN THE TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 130.002.

THE INDEMNIFIED ITEMS MAY INCLUDE, BUT IS NOT LIMITED TO, PERSONAL INJURY AND DEATH CLAIMS, AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED BY AN INDEMNIFIED PARTY OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY PROVISION.

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

Approval by CITY of contract documents shall not constitute or be deemed to be a release of the responsibility and liability of ENGINEER, its officers, agents, employees and subconsultants, for the accuracy and competency of the services performed under this Agreement, including but not limited to evaluations, reports, surveys, designs, working drawings and specifications, and other engineering documents. Approval by CITY shall not be deemed to be an assumption of such responsibility and liability by CITY for any error, omission, defect, deficiency or negligence in the performance of ENGINEER's professional services or in the preparation of the evaluations, reports, surveys, designs, working drawings and specifications or other engineering documents by ENGINEER, its officers, agents, employees and subconsultants, it being the intent of the parties that approval by CITY signifies CITY's approval of only the general design concept of the improvements to be constructed.

## **X. INSURANCE**

For the duration of this Agreement, ENGINEER shall maintain the following minimum public liability and property damage insurance which shall protect ENGINEER, its subcontractors, its subconsultants and CITY from claims for injuries, including accidental death, as well as from claims for property damage which may arise from the performance of work under this Agreement. ENGINEER shall provide a Certificate of Insurance verifying that the following minimum limits of coverage are provided:

**A. Worker's Compensation Insurance:**

Statutory requirements (\$ 300,000 minimum)

**B. Comprehensive General Liability and Bodily Injury:**

Bodily Injury \$ 500,000 per person, or  
\$ 1,000,000 per occurrence; and  
Property Damage \$ 100,000 each occurrence; or  
Combined Single Limit \$ 1,000,000 aggregate

**C. Comprehensive Automobile Liability:**

Bodily Injury \$ 500,000 per person, or  
\$ 1,000,000 per occurrence; and  
Property Damage \$ 100,000 each occurrence; or  
Combined Single Limit \$ 1,000,000 aggregate

**D. Professional Liability:**

Errors and Omissions \$ 1,000,000



The Certificate of Insurance shall contain a provision that such insurance cannot be canceled or non-renewed without thirty (30) days prior written notice to CITY.

## **XI. ARBITRATION**

No arbitration arising out of or relating to this Agreement shall occur without both parties' written approval.

## **XII. TERMINATION AND SUSPENSION**

- A. CITY may terminate this Agreement at any time for convenience or for any cause by a notice in writing to ENGINEER. Either CITY or ENGINEER may terminate this Agreement in the event the other party fails to perform in accordance with the provisions of this Agreement. Upon receipt of such notice, ENGINEER shall immediately discontinue all services and work and the placing of all orders or the entering into contracts for supplies, assistance, facilities, and materials, in connection with the performance of this Agreement and shall proceed to cancel promptly all existing contracts insofar as they are chargeable to this Agreement.
- B. If CITY terminates this Agreement under the foregoing Paragraph A, CITY shall pay ENGINEER a reasonable amount for services performed prior to such termination, which payment shall be based upon the payroll cost of employees engaged on the work by ENGINEER up to the date of termination of this Agreement and for subcontract and reproduction in accordance with the method of compensation stated in Section VIII: "Compensation" hereof. In the event of termination, the amount paid shall not exceed the amount appropriate for the percentage of work completed.

## **XIII. SUCCESSORS AND ASSIGNS**

CITY and ENGINEER each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement; except as above, neither CITY nor ENGINEER shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CITY.

## **XIV. AUTHORIZATION, PROGRESS, AND COMPLETION**

CITY and ENGINEER agree that the PROJECT is planned to be completed in accordance with the Exhibit A: "Agreement for Professional Services," which is attached hereto and made a part hereof. ENGINEER shall employ manpower and other resources and use professional skill and diligence to meet the schedule; however, ENGINEER shall not be responsible for schedule delays resulting from conditions beyond ENGINEER's control. With mutual agreement, CITY and

ENGINEER may modify the Project Schedule during the course of the PROJECT and if such modifications affect ENGINEER's compensation, it shall be modified accordingly, subject to City Council approval.

For Additional Engineering Services, the authorization by CITY shall be in writing and shall include the definition of the services to be provided, the schedule for commencing and completing the services and the basis for compensation as agreed upon by CITY and ENGINEER.

It is understood that this Agreement contemplates the full and complete Engineering services for this PROJECT including any and all services necessary to complete the work as outlined in Exhibit A: "Agreement for Professional Services." Nothing contained herein shall be construed as authorizing additional fees for services to provide complete services necessary for the successful completion of this PROJECT.

#### **XV. SUBCONTRACTS**

ENGINEER shall be entitled, only if approved by CITY, to subcontract a portion of the services to be performed by ENGINEER under this Agreement.

#### **XVI. RIGHT TO AUDIT**

ENGINEER agrees that CITY shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any directly pertinent books, design calculations, quantity take-offs, documents, papers and records of ENGINEER involving transactions relating to this Agreement. ENGINEER agrees that 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. CITY shall give ENGINEER reasonable advance notice of intended audits.

ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that CITY shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, design calculations, quantity take-offs, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that 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 article. CITY shall give subconsultant reasonable advance notice of intended audits.

## **XVII. EXHIBITS**

Both parties agree to the following exhibits and as such, the following exhibits are made a part of this Agreement:

Exhibit "A" Agreement for Professional Services  
Exhibit "B" Engineer's Response to RFQ# 24-003  
Exhibit "C" Form 1295

## **XVIII. MISCELLANEOUS**

- A. Authorization to Proceed. Signing this Agreement shall be construed as authorization by CITY for ENGINEER to proceed with the work, unless otherwise provided for in the authorization.
- B. Legal Expenses. In the event legal action is brought by CITY or ENGINEER against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions of this Agreement, the prevailing party in any litigation between the parties to this agreement shall be entitled to reasonable attorney fees. Notwithstanding the foregoing, any award of attorney's fees to be paid by CITY shall be subject to the limitations set forth in Texas Local Government Code §271.153(3) as awarded by a court of competent jurisdiction.
- C. Notices. Any notice or correspondence required under this Agreement shall be sent by certified mail, return receipt requested, or by personal delivery and shall be effective upon receipt, if addressed to the party receiving the notice or correspondence at the following address:

If to ENGINEER:

Kimley-Horn and Associates, Inc.  
Attn: Katherine Utecht, P.L.A.  
Landscape Architect  
801 Cherry Street, Unit 11, Suite 1300  
Fort Worth, Texas 76102

If to CITY:

City of North Richland Hills  
Attn: Michael Wilson, PLA  
Park Planning Manager  
4301 City Point Drive  
North Richland Hills, Texas 76180

With Copies to the City Manager and City Attorney at the same address.



- D. Independent Contractor. ENGINEER shall perform services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the CITY and ENGINEER shall have the exclusive right to control services performed hereunder by ENGINEER, and all persons performing same, and shall be responsible for the negligent acts and omissions of its officers, agents, employees, and subconsultants. Nothing herewith shall be construed as creating a partnership or joint venture between CITY and ENGINEER, its officers, agents, employees and subconsultants; and the doctrine of respondent superior has no application as between CITY and ENGINEER.
- E. Venue. This Agreement shall be governed by the laws of the State of Texas, and venue in any proceeding relating to this Agreement shall be in Tarrant County, Texas.
- F. Entire Agreement. This Agreement represents the entire agreement between CITY and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY and ENGINEER.
- G. Severability. If any provision in this Agreement shall be held illegal by a valid final judgment of a court of competent jurisdiction, the remaining provisions shall remain valid and enforceable.
- H. Disclosure. By signature of this Agreement, ENGINEER warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including but not limited to personal financial interests, direct or indirect, in property abutting the PROJECT and business relationships with abutting property owners. ENGINEER further warrants that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this Agreement and prior to final payment under this Agreement.

[Signature Page Follows]



This Agreement is executed in two (2) counterparts.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF NORTH RICHLAND HILLS  
(CITY)

KIMLEY-HORN AND ASSOCIATES, INC.  
(ENGINEER)

By: \_\_\_\_\_  
Name  
City Manager

By: Bradley J. Hill  
Name Bradley J. Hill  
Title Regional Contract Lead

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

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

ATTEST:

ATTEST:

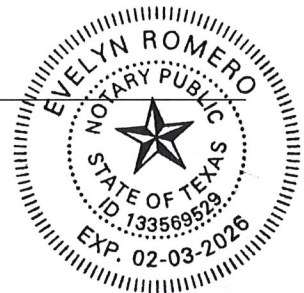
\_\_\_\_\_  
Name  
City Secretary/Chief Governance Officer

[Signature]  
John Fielder, Vice President  
Notary Public in and for the State of Texas

APPROVED TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney  
My Commission Expires:

[Signature]  
Name



**CITY SEAL**

**CORPORATE SEAL**

