

CONTRACT FOR ENGINEERING SERVICES

This Contract for engineering services for the Swisher Park Improvements ("Contract") is entered into this 9TH day of APRIL, 2024, by and between The City of Oklahoma City, a municipal corporation ("City"), and Kimley-Horn and Associates, Inc. ("Engineer").

WITNESSETH:

PROJECT NO. MP-0632, PHASE 1 SWISHER PARK IMPROVEMENTS FIXED LIMIT OF CONSTRUCTION - \$1,824,500

WHEREAS, the City intends to engage the services of the Engineer to provide a preliminary report to develop the scope, extents, prioritization of the proposed improvements, and community engagement including coordination with area stakeholders for Phase 1, Swisher Park Improvements, 9400 SW 15th Street, SW 15th Street and County Line Road ("project"); and

WHEREAS, the Engineer will provide professional services for the project in accordance with this Contract, including the scope of work incorporated herein and as set forth in Exhibit A attached hereto; and

WHEREAS, this Contract may be amended in the future to engage the Engineer's services for preparation of Final Plans and Specifications, Bidding, Construction Administration and other services related to this project; and

WHEREAS, the Engineer has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, and November 18, 1986, which resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. **Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with Oklahoma and Oklahoma City law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- A. *Bidding Documents* Those documents required to construct, renovate and/or modernize the project, including but not limited to standard provisions, special provisions, drawings, plans and specifications.

- B. *City Engineer* The officer of the City of Oklahoma City or designee, e.g. “Project Manager”, in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.

- C. *Fixed Limit of Construction* Not-to-exceed amount which has been designated as the maximum amount for the construction cost of the project.

2. **Engineering Services.** The Engineer is hereby engaged and employed by the City to perform in accordance with good engineering practices and in the best interest of the City in accordance with the professional standard of care all of the work as set out herein and including Exhibit A, which is attached hereto and incorporated as a part of this Contract. The Engineer will provide services associated with research, development, design and construction, alteration, and/or repair of real property and improvements thereon, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, design development, plans and specifications, cost estimates, observations, shop drawing reviews, sample recommendations, assemble operating and maintenance manuals, site visits and other related services. In addition, the Engineer will provide:

A. Community/Stakeholder Engagement – Task 1A

See Exhibit A, related to the Scope of Work for this task.

B. Preliminary Report Services - Task 1B

- (1) Prepare and make all necessary preliminary surveys, investigations, studies, reports and preliminary general plans and specifications. The preliminary investigation shall include a topographical survey of the site, layout of any existing, proposed, and/or recommended sanitary sewers, water lines, storm sewers, all other underground obstructions, street improvements, site drainage and detention studies, as appropriate, any and/or all of which might affect the construction of the project. The City Engineer will approve the preliminary general plans and specifications. All plans shall be submitted with the appropriate title sheet as indicated on the Public Works web page: www.okc.gov/pw (OKC Autocad Standards link).

- (2) Prepare a utility and right-of-way plan showing recommended alignment for relocation of utilities and recommended right-of-way needs. The plan shall include existing and proposed easements. The plan shall show ownership of all properties affected by the project. The Engineer shall acquire the limited

ownership list. The Engineer shall complete and submit the limited ownership list within thirty (30) calendar days of the date of a written work order.

- (3) Prepare a construction cost estimate for said improvements, extensions and repairs, and an estimate of all engineering fees, testing costs, right-of-way costs, and inspection fees in connection therewith.
- (4) Hold all necessary conferences with the City and all other interested parties (inclusive is the requirement for the Engineer to ensure all utility and right-of-way/easement requirements are well established prior to Preliminary Report submittal). This includes the conduct of a Utility Conference by the Engineer at a location determined by the City.
- (5) Prepare the report for submittal to the City covering the Engineer's preliminary surveys, studies, investigations and other items as specified in the paragraph "Basic Services" A. (1), (2) and (3) and Exhibit A hereof. If applicable, the report shall include a drainage study with complete computations and calculations and shall cover the total construction work by phases or sections and shall recommend to the City the order of construction and completion of each phase of construction.
- (6) Furnish the City three (3) hard copies and one (1) PDF copy of the Preliminary Report free of cost to the City. The cost of any additional copies of Preliminary Reports as the City may require will be reimbursed at the actual cost thereof.
- (7) Geotechnical Investigation:
 - a. The Engineer will recommend to the City the name of a geotechnical investigation/services firm from the City's listing of annual on-call engineering and testing laboratory contract firms.
 - b. The Engineer will identify and coordinate all requirements for geotechnical investigation and procure all geotechnical services related thereto, including but not limited to sampling, test boring, subsurface explorations, analysis and other investigations required for determining conditions and geotechnical recommendations for foundations and paving design. Identify and coordinate sampling and analysis of water and other substances as appropriate.
 - c. The City will approve the selected laboratory and the Engineer will pay the costs of such sampling, analysis, borings, tests, or explorations and investigations.

- (8) Prepare legal descriptions for the necessary temporary and permanent easements and prepare legal descriptions necessary for property to be acquired on forms provided by the City. Additionally, provide right-of-way ownership maps showing locations and dimensions of right-of-way to be acquired and assist the City when requested in negotiations with owners of property acquired for or affected by the improvements. When requested by the City, the Engineer will provide a proposal for staking of right-of-way for right-of-way acquisition purposes. Said right-of-way staking (when authorized by the City) will be billed to the City at the actual cost thereof in accordance with Paragraph 5. Payments.
- (9) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (10) The Preliminary Report shall be recommended by the City Engineer for formal approval by the City.

C. Final Plan Services - Task 2 (by possible future amendment)

- (1) Prepare final plans, specifications and construction cost estimate.
- (2) After approval of the Preliminary Report in whole or in part by the City, the Engineer shall proceed as directed in writing by the City Engineer to prepare detailed plans and specifications, using wherever applicable, City standards, details and specifications for such work. The Engineer shall complete said plans and specifications for submission to the City for its approval.
- (3) Prepare and furnish the City all final plans and specifications, all necessary forms for construction proposals and advertisements for Bids, subject to approval of the City, employing wherever applicable, standard City forms, in completed form.
 - a. Scale for plan and profile sheets for preliminary and final plans shall be approved by the City Engineer prior to preparation of plans.
 - b. Aerial photographs will not be permitted for plan and profile sheets of the final construction plans.
 - c. The Engineer shall indicate on final plan and profiles all water lines, sanitary sewer lines, gas lines, oil lines, telephone conduits and all other underground obstructions, which might affect the construction of the project.
- (4) Notify all known utility companies and other entities with facilities affected by the proposed Project. Furnish one (1) copy of the plans to each of the utility companies and entities as determined necessary. Coordinate necessary utility

and facility relocations or modifications for the Project and conduct a final conference at 60% plans.

- (5) The 60% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 60% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report submittal.

Furnish the City up to two (2) copies of the project 60% plans for review along with a detailed Fixed Limit of Construction cost estimate for said improvements, extensions and repairs. This submittal does not stop, impact or otherwise delay the Engineer's contract-allotted work order time for completion and submittal of final plans and specifications. Incorporate all recommended changes prior to submittal of the 95% final plans and specifications.

- (6) The 95% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 95% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 60% plan submittal.

Upon completion of 95% final plans, the Engineer will submit "check print" sets to the Project Manager for review by appropriate departments/divisions. Upon completion of the "check print" reviews, the Engineer shall revise the plans accordingly. The Project Manager shall resolve any conflicts in comments. Upon completion of corrections, the Engineer will then submit a final plans check set (along with the annotated "check print" copies) for a "final" review by the Project Manager.

- (7) The Final Plan submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the Final plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all,

comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 95% plan submittal.

Prepare and furnish the City an electronic copy of all final plans and specifications, all necessary forms for Electronic Bidding and advertisements for Bids, subject to approval of the City, employing standard City forms, in completed form.

Furnish the City one (1) PDF of the final plans and specifications, all free of cost to the City. The cost of any additional copies of plans and specifications as the City may require will be reimbursed at the actual cost thereof.

- (8) Meet with the City or its representatives at any time requested for consultation or conference as directed in writing by the City Engineer.
- (9) Prior to the submission of Bidding Documents to the City for solicitation of Bids, the Engineer shall submit plans and specifications required for the granting of all necessary building permits.
- (10) Prepare all necessary plans, studies and applications for submission to City, State and Federal authorities as may be required for the initiation, prosecution, construction and for approval of grants and permits at no additional cost to the City.
- (11) Final design shall include the establishment of permanent horizontal and vertical alignment control points throughout the entire project limits using United States Geological Survey (USGS) data. The Engineer shall provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum.

D. Bidding Services - Task 3 (by possible future amendment)

- (1) Meet with the City or its representatives at any time requested for consultation or conference, as directed in writing by the City Engineer. In this connection, the Engineer shall hold at least one (1) Pre-Bid Conference with prospective Bidders at a location determined by the City.
- (2) Answer all City and Bidder's questions regarding the bidding of the project and, upon approval by the City Engineer, prepare an electronic copy of all addendums for distribution.
- (3) The City will receive the Bids through the Electronic Bidding System and the Engineer will receive a copy of the Bids from the City. The Engineer will review and evaluate the Bids and will make recommendations to the City for

an award. The Engineer shall assist, review and make recommendations to the City on all construction contract issues.

- (4) If Bids are received, all of which exceed the Fixed Limit of Construction, the Engineer shall revise its plans as directed by the City, pursuant to the paragraph "Fixed Limit of Construction" of this Contract.

E. Construction Administration Services - Task 4 (by possible future amendment)

- (1) The Engineer shall provide administration of the construction contract during construction and until final payment is made to the Construction Contractor. The Engineer will have the authority to act on behalf of the City only to the extent provided in this Contract, unless otherwise modified by written instrument.
- (2) Meet with the City or its representatives at any time requested for consultation or conference as directed in writing by the City Engineer.
- (3) Assist in coordination of pre-work conferences for the Construction Contractor, the City and all other interested parties. The City will issue all work orders for the project.
- (4) Establish permanent horizontal and vertical alignment control points throughout the entire project limits from which the Construction Contractor shall set its control for construction (if applicable to this project, the Engineer will also provide bridge centerline horizontal and vertical control points). Provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum. Construction staking is to be performed by the Construction Contractor. The Engineer will periodically review the Construction Contractor's construction staking survey field notes and the actual staking to verify line and grade is in accordance with the Bidding Documents.
- (5) Provide interpretation of the plans and specifications in accordance with the intent of the Bidding Documents. Such interpretations shall be made upon request of the City and its representatives or the Construction Contractor, to safeguard the City against defects and deficiencies in the construction. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the Construction Contractor. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.

- (6) Perform coordination of the work of inspection bureaus and laboratories selected by the City for the inspection and testing of construction materials. Receive reports and recommend approval or rejection of the materials based upon reports made by such laboratories or bureaus. The costs of all such tests and inspection by laboratories or bureaus will be paid by the City.
- (7) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (8) The Engineer shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer will further determine, in general, if the work is being performed in a manner indicating that the work, when completed, shall be in accordance with the Bidding Documents. However, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. The Engineer will keep the City informed of progress of the work, and will endeavor to guard the City against defects and deficiencies of the work. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (9) Review all necessary information for monthly estimates (**within seven (7) calendar days of receipt from the contractor**) of the quantity of work performed, and review the claim vouchers for payments to be made to the Construction Contractor during the progress of the work and upon completion of any and all work and report the same to the City.
- (10) Review the Construction Contractor's final request for payment (**within fourteen (14) calendar days of receipt from the contractor**) and certify that, to the best of its knowledge and industry standards, the completed work conforms to plans and specifications.
- (11) Prepare and keep a record of the work performed by any contractor on this project and file with the City a monthly progress report covering the work performed by the contractor(s). The progress report shall be attached to the Construction Contractor's claim for partial or monthly payment.
- (12) Except as otherwise provided in this contract, communications with the Engineer's consultants will be through the Engineer. Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other City

contractors will be through the City. The Engineer shall be available at all times for the purpose of communication.

- (13) The Engineer shall recommend to the City Engineer rejection of work that does not conform to the Bidding Documents. At any time during construction, the Engineer may be given the authority to require additional inspection or testing of the work by the City Engineer.
- (14) The Engineer shall review for conformance with Bidding Documents, and approve or take other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples. The Engineer's review of submittals will be promptly completed, but no longer than fourteen (14) calendar days from receipt of submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Contractor as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not relieve the Construction Contractor of its contractual obligation to the City as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (15) The Engineer shall reply to the Construction Contractor's requests for information, prepare clarification drawings, prepare change orders, field orders, amendments, field changes and construction change directives. The Engineer may recommend minor changes in the work, not inconsistent with the intent of the Bidding Documents. Such recommended changes shall be made by written order approved by the City Engineer and shall be binding upon the Construction Contractor.
- (16) The Engineer shall conduct observations and inspections as required to determine the quality of work to be accepted and the date or dates of final completion and acceptance. The Engineer shall receive and forward to the City all written warranties and any related documents required by the Bidding Documents and assembled by the Construction Contractor. The Engineer will recommend approval of the Construction Contractor's final certificate of payment upon completion of the work and compliance with the requirements of the Bidding Documents.
- (17) The Engineer will review daily reports furnished by the City's inspector to evaluate and determine compliance with the Bidding Documents. Significant

variations between reported conditions and the Bidding Documents shall be verified by the Engineer and resolved with the Construction Contractor and the City. The Engineer's duty to review daily reports and initiate remedial action shall not extend to the Construction Contractor's construction means, methods, techniques, sequencing or procedures or for safety precautions and programs in connection with the work.

- (18) The Engineer shall maintain a record (“log”) of all documents it receives, creates or transmits during the construction of the project. The log shall include time requirements of responses if needed.

F. As-Built Drawing Services - Task 5 (by possible future amendment)

- (1) Upon termination or completion of this Contract, the Engineer shall, at its expense, correct the original drawings, show all as-built changes based on information from as-built field surveys, reflecting the actual construction of the project and shall furnish the City, without expense, electronic files on CD ROM in the latest AutoCAD version 2013 compatible with the City of Oklahoma City’s current software and a PDF file in color. All written comments, changes or other markings on the final drawings must be highlighted in **RED** color.
 - (2) Upon termination or completion of this Contract, the Engineer shall also furnish the City, without cost to the City, all basic calculations used in the design of the structures and original field notes on all land surveys, at which time Engineer shall receive the retained portion of its fee as provided in Exhibit B of this Contract.
 - (3) The Engineer shall submit GPS permanent benchmark with as-built drawings.
 - (4) For all building/facility projects, the Engineer shall provide to the City an Operations and Maintenance (O&M) Manual (three copies) covering all systems and equipment constructed, installed or remodeled as a part of the construction project.
3. **No Extra Work**. No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless such work or service is first approved in writing by the City.
 4. **Additional Services. (by possible future amendment)** Additional Services are project-related services as enumerated in Exhibit “E,” attached hereto and made a part hereof, and are not included as Basic Services. Additional Services shall only be provided upon prior written and clearly detailed direction from the City Engineer, acting within the limits of State law, Ordinances of the City of Oklahoma City and policies established by the City Council, and upon acceptance by the Engineer. Any Additional Services performed pursuant to the above

written direction shall be paid in accordance with the Compensation and Payments paragraphs of this Contract.

5. **Compensation.** The aggregate total compensation for all engineering services under this Contract shall not exceed a total fee of \$185,000, which includes: for Basic Services an amount not to exceed \$185,000, as specifically set forth in Exhibit B, attached hereto and incorporated herein; and, for Additional Services an amount not to exceed (by possible future amendment), as specifically set forth in Exhibit E attached hereto and incorporated herein.

6. **Payments.**
 - A. Payment of claims for incremental work completed on each task may be submitted. Invoices for the amount and value of the work and services performed by the Engineer shall be submitted monthly to the City and shall meet the standards of quality as established under this Contract. Invoices will include the percentage of completion for each task and payment will be made based on the percentage of the task fee completed. The City agrees to pay the Engineer, as compensation for such engineering services as listed herein. The invoices shall be prepared and submitted by the Engineer and be accompanied by a status report identifying the task components, effort accomplished during the time period, and the percentage of completion thereof, to the City. Payment of any invoice for any work or services is not deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City or any obligation of the Engineer should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract. Surveyors or other professional consultants engaged by the Engineer for the normal structural, electrical or mechanical engineering services shall be billed to the City by the Engineer at the actual cost thereof.

 - B. The Engineer shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the City for compensation and payment. The City will review the invoice and claim voucher for payment. Should the City question or request additional documentation or disapprove all or a portion of any invoice, the Engineer will be notified so that it may provide additional documentation sufficient to demonstrate the invoice and claim should be paid, in whole or in part; provided, however, no invoices or claims shall be paid the aggregate of which are in excess of the "not to exceed" amounts or limitations established in Exhibit B, except as may be modified by written agreement between the City and the Engineer.

 - C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.

7. **Indemnity.** The Engineer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily

injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

8. **Insurance.** Prior to approval of this contract, the Engineer shall obtain insurance coverage as provided below. The Engineer must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff. The Engineer will provide the Certificate(s) of Insurance to the City and its participating trusts with the executed contract (contract will not be processed for approval without the contract-required verification of insurance indicated on the Certificate(s) of Insurance). Certificate(s) of Insurance must be insurance industry standard forms, such as ACORD.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. **Additional Insureds:** All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City and its participating trusts are named additional insureds without reservation or restriction.

All insurance coverage of the Engineer shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. **Deductibles:** All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the

certificate of insurance. If no deductible is declared, the Engineer is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Engineer's deductible is higher than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Engineer's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Engineer under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Engineer. The Engineer alone shall be responsible for the sufficiency of its own insurance program. Should the Engineer have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Engineer should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Engineer shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Engineer shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Engineer shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Engineer. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Engineer shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
- (2) Commercial General Liability Insurance. The Engineer shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental

Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Engineer shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (4) Professional Liability Insurance. The Engineer shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and

for a period of two (2) years after the final, formal acceptance of this Project by the City.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Engineer authorizes the City and its participating trusts to confirm all information so furnished as to the Engineer's compliance with its bonds and insurance requirements with the Engineer's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Engineer shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Engineer shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Engineer hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

The Engineer must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) days written notice to the City and its participating trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Engineer's insurance company and through no fault of the Engineer, the Engineer must immediately provide written notice to the City and its participating trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must

specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Engineer shall maintain in full force in effect the required professional liability insurance stated above during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Engineer and its insurer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer and its insurer must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

9. Termination for Convenience. The City may terminate this Contract (with or without cause), in whole or in part, for the City's convenience. The City may terminate by delivery of a notice to the Engineer, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Engineer shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), deliver to the City all work performed, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the City, the City shall pay the Engineer for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the City provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph “Indemnity” or “Insurance” of this Contract.

10. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City:

The City of Oklahoma City
Department of Public Works
420 West Main Street, Seventh Floor
Oklahoma City, Oklahoma 73102
Attn: Debbie Miller, P.E., Director
Public Works/ City Engineer
Phone Number: (405) 297-2581 Fax Number: (405) 297-2117

To the Engineer:

Kimley-Horn and Associates, Inc.
4727 Gaillardia Parkway, Suite 250
Oklahoma City, OK 73142
Attn: Darran Scott
Phone Number: (405) 241-5423

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. **Stop Work.** Upon notice to the Engineer, the City may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph “Indemnity” and/or “Insurance” of this Contract.
12. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Engineer shall comply with all existing and applicable federal, Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, applicable to the work and/or services provided by this Contract. All work product provided by the Engineer must comply with and provide for compliance with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto in the use of the work product of the Engineer. All work product provided by the Engineer must specifically direct and must provide sufficient information and contacts for the Construction Contractor to timely comply with all

Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations, and all amendments and additions thereto, in the use of the work product of the Engineer and timely performance by the Construction Contractor.

13. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of five (5) years after the final acceptance of the completed project by the City, or until the final resolution of any outstanding disputes between the City and the Engineer or the contractor(s) on the project, the Engineer shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Engineer must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Engineer shall permit periodic audits by the City and City's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City and Engineer. Agreement as to the time and place for audits may not be unreasonably withheld.
14. **Reporting to the City.** The Engineer shall report to the City on a regular monthly basis and on an as needed basis.
15. **Prohibition Against Collusion.** The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Contract. The Engineer further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Engineer must execute the Anti/Non-Collusion Affidavit, attached as Exhibit C, prior to the effective date of this Contract.
16. **Sub-consultant, Subcontractor or Employee Conflict of Interest.** Any work performed by the Engineer's employees, sub-consultants or subcontractors on this project shall prohibit said persons from contracting with, working for, or otherwise assisting any potential Bidder to do any project-related work for the Bidder which may in any way be (or construed to be) a conflict of interest. It is the responsibility of the Engineer to require all employees, sub-consultants, or subcontractors engaged by the Engineer to advise the City of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or which may in any way be (or construed to be) a conflict of interest. The Engineer will also notify the City of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the City may be cause for rejection of the Bid in question and/or cancellation of the Engineer's contract.

17. **Work Orders.** The Engineer shall proceed with the provision of work and/or services for this Contract upon receipt of work orders from the City Engineer. The Engineer shall complete and submit the Community/Stakeholder Engagement, Task 1A, within ninety (90) calendar days of date of written work order from the City Engineer, and shall complete and submit the Preliminary Report Services - Task 1B within one hundred eighty (180) calendar days of date of written work order from the City Engineer (for engineering services contracts, this work order includes completion and submittal of the limited ownership list within thirty (30) calendar days of the date of the work order), and shall complete and submit the Final Plan Services - Task 2 within (by possible future amendment) calendar days of date of written work order from the City Engineer. For either Preliminary Reports/Plans or Final Plans and Specifications, the City will endeavor to review and return comments and/or corrections (if any) to the Engineer within thirty (30) calendar days from date of receipt of the documents from the Engineer. Subsequently, the Engineer shall return the corrected documents along with check print copies (if applicable) within thirty (30) calendar days from date of the City's transmittal letter directing corrections. If the Engineer cannot perform the work and/or services within the time provided, and upon the submission by the Engineer of a request in writing to the City, indicating the length of extension required to perform a task, the City Engineer may in his sole discretion grant a reasonable extension of time. The request from the Engineer shall state the reason for the extension request, along with evidence showing that the Engineer is unable to complete this work in the time specified in the work order for reasons beyond its control. The Engineer is prohibited from claiming damages for delays and extensions of time.
18. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Engineer. Reuse of said documents by the City shall be at the City's risk and responsibility and not that of the Engineer. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Engineer shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These back up CADD computer files are the property of the Engineer.
19. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations ("FAR"), the American Institute of Architects ("AIA") or any other publication, are not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
20. **Standard of Care.** In providing the work and services herein, the Engineer shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Engineer agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same

standard of expert care, skill, diligence and professional competence required of the Engineer.

21. **Fixed Limit of Construction.** If the lowest and best Bid proposed in response to the solicitation of Bids for construction of the project, in accordance with the Bidding Documents provided by the Engineer, exceeds the Fixed Limit of Construction or funds available for this project, the Engineer, at no increase or additional cost to the City, shall redesign the project and redraft the Bidding Documents so that the construction Bids pursuant to a subsequent solicitation come within the Fixed Limit of Construction.
22. **Design Corrections.** The Engineer agrees to make any necessary corrections to the designs, drawings, specifications or other documents, work or services furnished, when such documents or services contain any errors, deficiencies or inadequacies caused by the Engineer, at no cost to the City. The Engineer further agrees to be liable for any damages caused by its negligence and/or the negligent failure to timely discover and/or make such necessary corrections. The Engineer is not relieved of liability for design errors, deficiencies or inadequacies undiscovered by the City upon its review or inspection, nor is the Engineer relieved from liability for the City's lack of review or inspection of said documents.
23. **Backup Required.** In accordance with good engineering practices, the Engineer must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Engineer must timely recreate all data within the original time frame of the engineering contract at its sole cost. No extensions or additional time will be granted the Engineer for loss of data. No additional payment or reimbursement will be made to the Engineer for loss of data. The Engineer will be responsible for any and all costs, expenses, or lost opportunities incurred by The City, Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
24. **Notice of Design Limitations.** The Engineer will immediately advise the City at any time it believes that the project being designed will exceed, or is likely to exceed, the allocated cost for construction as set forth in this Contract.
25. **Sub-consultants.** The Engineer agrees to submit for approval by the City, prior to their engagement, a list of any sub-consultants or subcontractors the Engineer intends to engage to perform work and/or services and the scope of work and/or services to be performed related to this Contract. Such approval of subcontractors and sub-consultants and scope of work and/or services to be performed will not be unreasonably withheld. The Engineer must notify the City and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors and changes in the subcontractor or sub-consultant's scope of work and services related to this Contract. Approval of subcontractors or sub-consultants or their work and services will not relieve or release the Engineer from responsibility or liability to perform all work and services under this Contract and will not create any responsibility,

liability or duty upon the City as to the selection of or work and services provided by the subcontract or sub-consultant under this Contract.

26. **Nondiscrimination**. In connection with the performance of work and/or services under this Contract, the Engineer agrees as follows:
- A. The Engineer shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Engineer shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer shall agree to post, in conspicuous places, Exhibit D.
 - B. In the event of the Engineer's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City. The City may declare the Engineer ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Engineer.
 - C. The Engineer agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Engineer shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit D, prior to the effective date of this Contract.
27. **Assignment**. Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Engineer to provide professional and personal services to the City, the parties agree that the Engineer may not assign its obligations, rights or interest in this Contract except the assignment of subcontractors and sub-consultants as set forth in paragraph "Termination for Default" subparagraph B.
28. **Oklahoma City Municipal Facilities Authority (OCMFA) Unilateral Right to Assign**. Not Applicable.
29. **Termination for Default**. The City may terminate or cancel this Contract for cause, in whole or in part, for failure of the Engineer to fulfill in accordance with good engineering practices and in the best interests of the City or to promptly fulfill its obligations under this Contract.
- A. After due default notice and thirty (30) days within which to correct the default, this Contract may be terminated by the non-defaulting party upon written notice. Upon

termination for cause by the City, the City shall pay the Engineer for all work and services completed in accordance with good engineering practices and in the best interests of the City and useable by the City for the project(s) in the Notice to Proceed, up to the time of the effective date of termination.

- B. If this Contract is terminated by reason of a default of the Engineer prior to the completion of this project, regardless of the reason for said termination, the Engineer shall immediately assign to the City any contracts and/or agreements relative to this project entered into between the Engineer and its subcontractors and sub-consultants, as the City may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City, the City shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Engineer from and after the date of such assignment to and acceptance by the City. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall constitute a debt between the Engineer and the affected subcontractors or sub-consultants, and the City shall in no way be deemed liable for such sums. The Engineer shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Engineer's subcontractors and sub-consultants.
- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.

30. **Time Is of the Essence.** Both the City and the Engineer expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the City to timely object to the time of performance shall not waive any right of the City to object at a later time.
31. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Engineer for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Engineer agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
32. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
33. **Entire Agreement.** This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the City and the Engineer concerning the Contract. Neither the City nor the Engineer has made or

shall be bound by any agreement or any representation to the other concerning this Contract, which is not expressly set forth herein.

34. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Engineer. In the event the Engineer's Basic Services are increased or changed so as to materially increase the need for engineering services in excess of the not to exceed total compensation, the Engineer may seek to amend this Contract.
35. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
36. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
37. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
38. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
39. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
40. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
41. **Effective Date.** The effective date of this Contract shall be the date of execution of this Contract by the City.
42. **Local Business Utilization Report.** On December 22, 2020, the City Council approved and re-established the Small, Local and Minority Business Utilization (LBU) Program. The program encourages and promotes the use of small, local and minority business subcontractors on public construction contracts. The goal is to provide assistance, guidance, and opportunities for small, local and minority businesses to work on Trust projects.

The Engineer agrees to submit a Small, Local and Minority Business Utilization ("LBU") Report to the City within fourteen (14) days of the issuance of the Notice to Proceed, to include the following information:

- A. A list identifying each of its subconsultants or subcontractors;
- B. The location and contact information of the principal place of business of each subconsultant or subcontractor;
- C. The status of each of its subconsultants and subcontractors, and which class of business; local, small, minority, N/A etc.
- D. The general scope of work to be performed by each subconsultant or subcontractor;
- E. The dollar amount of each subcontract; and
- F. The tools and/or organizations used to locate and contact these businesses.

The Engineer further agrees to submit to the City a monthly report identifying the scope of work and amount of payments made to each subconsultant or subcontractor for the preceding month on a form provided by the City.

43. **Crime Prevention through Environmental Design** The Crime Prevention through Environmental Design (CPTED) concept suggests that natural surveillance, natural access control, and territoriality can be effectively applied to a project and its surrounding environment to provide safety for users. A CPTED design can also promote community confidence and improve natural surveillance methods to reduce/prevent common crime and vandalism.

The Engineer should implement the concepts of CPTED, where appropriate, to reduce the real and perceived areas of potential problems during the project design.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Contract was executed and approved by the Engineer this day of _____, 20____.

KIMLEY-HORN AND ASSOCIATES, INC.

ATTEST:

Scott R. Arnold
Vice President

STATE OF _____)

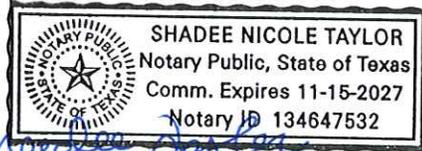
) SS

COUNTY OF _____)

This instrument was acknowledged before me on this 14 day March, 2024, by Scott Arnold, as Vice President of Kimley-Horn and Associates, Inc.

My Commission Expires/My Commission Number:

11-15-2027 / 134647532
(Seal)



Shadee Nicole Taylor
Notary Public

IN WITNESS WHEREOF, this Contract was approved and executed by The City of Oklahoma City this 9TH day of APRIL, 2024.

ATTEST:

Amy K. Simpson
City Clerk



THE CITY OF OKLAHOMA CITY

David Holt

REVIEWED for form and legality.

Dustin H. Patten

Assistant Municipal Counselor

**EXHIBIT A
SCOPE OF WORK
PROJECT NO. MP-0632, PHASE 1
SWISHER PARK IMPROVEMENTS**

Swisher Park Improvements Phase 1- MP-0632

This project consists of providing professional services associated with the development and implementation of the new Swisher Park.

SCOPE OF SERVICES

Task 1 Community/Stakeholder Engagement and Preliminary Report

Task 1A Community & Stakeholder Engagement

- A. Online and Paper Survey
 - 1. Written needs survey (to be distributed at the public meeting)
 - 2. Digital survey to be distributed to key stakeholder groups such as neighborhood/homeowner's group, schools, churches, etc. A list of relevant stakeholder groups will be provided by the City.
- B. Public Meeting

The Consultant will conduct one (1) public meeting geographically located near Swisher Park to gather needs input from the potential park users. The City will be responsible for securing the meeting location and advertising for the meeting.
- C. Deliverables

Deliverables will include the summary of feedback and outcomes/findings to be included in the Preliminary Report
- D. Schedule

The Engineer will complete the Community & Stakeholder Engagement Task in ninety (90) days including 30 days for City review. The City review will occur concurrently with the start of the Preliminary Report Phase as described below.

Task 1B Preliminary Report

The Preliminary Report will be used to develop the scope, extents, and prioritization of the proposed improvements in the study area. This process will combine community engagement, stakeholder engagement, and committee engagement with a study area review to determine the proposed improvements. The findings and recommendations will be outlined in the Preliminary Report. As part of this task the Engineer will perform the following tasks:

- A. Coordination and Design Management
 - 1. Project Management

The Engineer will maintain project records, budgets, and communication for the duration of the project.

2. Progress Reports and Invoices
The Engineer will prepare and submit progress reports and itemized invoices to the Public Works Department. Invoices will include a summary of work performed during the previous reporting period.
3. Control and Scheduling
The Engineer will adhere to a mutually agreed upon schedule. The kickoff meeting will be used to identify subsequent meeting schedule.
4. Quality Assurance and Quality Control
The Engineer will provide continuous quality assurance and quality control of Engineer's professional services throughout the duration of the project.
5. Project Development Team Meetings
The Engineer will meet with the project team on a biweekly basis to provide updates on the progress of the project. Participants of the meeting could include the following:
 - a. Oklahoma City Parks Department Staff
 - b. Other City Staff
 - c. Other key stakeholders as requested by the Parks Department
6. Meetings/Presentations
Attend Parks Commission and other City Committee/Board meetings at key intervals to present progress and findings to various Boards and City Council. The scope includes two meetings/presentations as directed by the City.

B. Existing Site Conditions

The Engineer will evaluate site conditions, identifying physical, permitting, and similar constraints such as the following:

1. Vehicular Circulation
2. Pedestrian Circulation
3. Topography
4. Floodplain
5. Surrounding Uses/Developments
6. Existing Site Elements
7. Vegetation
8. On-Site Utilities

C. Project Definition & Project Requirements

1. The Engineer will assist the City in formally defining goals for the project. The Engineer will evaluate these goals considering budget constraints, site conditions, permitting requirements and the requirements of the potential activity user groups such as sports, aquatics, nature, trails, etc. The Engineer will assist the City in verifying or adjusting these goals as required based on these factors.
2. Specific services provide by the Engineer include the following:
 - a. Code Review – The Engineer will identify federal, state and local authorities having jurisdiction over the anticipated improvements. Current regulatory, code and permitting requirements pertaining to the Project will be identified, listed and summarized in a Code Review Section of the Preliminary Report.

- b. Sports Facility Requirements – The Engineer will work with the City to identify specific sports organizations that publish specifications and regulations as it pertains to field dimensions for each targeted sports facility type. The information will be utilized during the design charette for the master plan space allocation.
- c. Recreation Center Requirements - The Engineer will work with the City to identify the general programming/facility size of the Recreation Center. No architectural plans or internal spacing programming will be included in the report. The information will be utilized during the design charette for the master plan space allocation.
- d. Constraint Mapping – The Engineer will prepare a constraint map using all the information collected. The constraint map will serve as a base map identifying the types and extents of conditions believed to prohibit or severely limit any proposed improvement. The constraint mapping will serve as a base map for the design charette.

D. Design Charette

The Engineer will conduct a half to one day design charette with the Parks Department to facilitate and brainstorm collective ideas for Swisher Park. The Engineer will conduct the charette at either the Engineer’s office or at the City offices. At the conclusion of the design charette the Engineer will have a clear direction from the City for the development of the concept design.

E. Overall Site Concept Design

In this task, a preliminary master plan drawings and high-level opinion of probable costs will be developed.

1. Preliminary concept design drawings will include the following:

a. Sports Field Layout depicting:

- i. Sports field fencing and striping
- ii. Sports field appurtenances such as goals, bases, etc.
- iii. Turf and surfacing types, extents
- iv. Sports field lighting general layout

b. Overall Site Plan depicting:

- i. Entry drives and vehicular circulation
- ii. Entry gateways
- iii. General parking areas with approximate recommended parking counts
- iv. Allowances for access drives for fire suppression and maintenance/supply routes
- v. Trail and sidewalk circulation throughout the site and exterior connections
- vi. General footprint/location of restrooms/concession/ticketing facilities
- vii. General footprint/location of dugouts
- viii. General footprint/location of spectator seating areas
- ix. General footprint/location of covered bleachers/shade structures
- x. General footprint/location of picnic and pavilion areas

- xi. General footprint/location of maintenance/storage facility
- xii. General location of playgrounds/splashpads. Detailed layouts will not be provided. General footprint/sizes will be shown.
- xiii. General areas for natural amenities (primitive trails and associated recreational activities)
- xiv. General areas of other park amenities defined during the design charette process
- xv. Pond/borrow areas (if needed)
- xvi. Conceptual tree canopy areas. No shrub bed or detailed tree plantings will be shown.
- xvii. General location of facility entrance and signage

2. Preliminary Overall Site Concept Design Submittal

Prior to the development of the cost estimate, final rendering and computer assisted visualizations the Engineer will submit to the City a preliminary concept design for approval.

F. Overall Site Rendered Master Plan & Computer Assisted Visualizations

The Engineer will provide a digitally rendered site plan suitable to be printed on a 30"x40" board of the proposed concept plan. In addition to the overall rendered site plan the Engineer will provide the following computer-assisted visualization renderings:

- 1. Two (2) bird's eye perspectives of selected areas of the site. The perspectives will not include the entire site to reduce the amount of modeling required. No detailed areas are included in the scope due to the conceptual level of detail of the plan. If perspectives of the entire site or detailed areas are desired, they will be considered additional services.

G. Cost Estimate

The Engineer will develop and provide an Opinion of Probable Cost (estimate) for construction for the overall site master plan. The estimate shall include a level of detail appropriate with this stage in the development of the design. The estimate may include allowances or lump sum estimates for areas of the site such as the sports fields. The estimate shall cover only the construction costs. Additional funds may be required to cover contingencies, off-site utility improvements, utility relocations, right-of-way costs, permit fees, inspection, sampling/material testing, construction administration, and unforeseen field conditions.

H. Overall Site Concept Design Summary

As part of the Preliminary Report for the final submission the Engineer will include the following:

- 1. Existing Conditions Plan
- 2. Constraints Mapping
- 3. Project Definition
- 4. Project Requirements
- 5. Public Engagement Summary
- 6. Charrette Results
- 7. Rendered Overall Site Conceptual Plan
- 8. Perspective Renderings

9. Opinion of Probable Costs

I. Preliminary Report for Phase 1 of Construction

The Overall Site Concept Design will be used to guide the recommendations for the Phase 1 of Construction. The Preliminary Report will identify the Phase 1 priority project to be further evaluated, designed, and documented. The anticipated construction budget for Phase 1 is approximately \$1,824,500. The Preliminary Report for the Phase 1 of construction will include the following:

1. Survey and Geotechnical Services (not included in scope)
 - a. Due to the unknown extents of the Phase 1 priority project, the Engineer will utilize the City provided survey to develop the preliminary report. Within the report, areas of the site needing further survey (if any) will be identified for the final design to be completed in Task 2. Survey services are not included in this task.
 - b. Due to the unknown extents of the Phase 1 priority project, the Engineer will identify any geotechnical needs required for the final design to be completed in Task 2. Geotechnical services are not included in this task.
2. Executive Summary
3. Project description and general location
4. Existing conditions review utilizing information gathered during this task
5. Preliminary Recommendations and Design
 - a. Proposed improvements to include the potential elements serving the surrounding neighborhood such as a park entrance, small parking lot, walking trails, playground, etc.
6. Decision Matrix
7. Prepare a preliminary Opinion of Probable Construction Cost (OPCC) for the recommended improvements.
8. Meetings
 - a. Prepare for and attend up to two (2) meetings/presentations which may include:
 - i. Design kickoff meeting
 - ii. Final review/comment review meeting

J. Schedule

The Engineer will complete the Preliminary Engineering Report Task in one hundred eighty (180) days including 30 days for City review.

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**EXHIBIT B
COMPENSATION
PROJECT NO. MP-0632, PHASE 1
SWISHER PARK IMPROVEMENTS**

Under the terms of this Contract, the Engineer agrees to perform the work and services described in this Contract. The City agrees, in accordance with the limitations and conditions set forth in the Contract, to pay an amount not to exceed \$185,000 which includes: for Basic Services an amount not to exceed \$185,000 as specifically set forth in this Exhibit B; and, for Additional Services an amount not to exceed (by possible future amendment) as specifically set forth in Exhibit E.

B.I. Basic Work and Services

Compensation for basic services may not exceed \$185,000, and in no event may the Engineer receive compensation in excess of the amount listed for each task for performance of its basic services.

The Engineer may receive up to the following amounts of the not to exceed amounts for services rendered upon the completion of the following tasks. Partial payments of the not to exceed amounts for each task may be invoiced for incremental work completed. Not to exceed amounts below are accumulative for successive tasks.

Task 1A an amount not to exceed:
\$17,600

Completion of Community/Stakeholder Engagement for the project.

Task 1B an amount not to exceed:
\$167,400

Completion and recommendation by the City Engineer for approval by the City of the Preliminary Report for the project.

Task 2 an additional amount not to exceed:
(by possible future amendment)

Completion and acceptance by the City of the final plans and specifications for the project.

Task 3 an additional amount not to exceed:
(by possible future amendment)

Award of the construction contract to the successful Bidder.

Task 4 an additional amount not to exceed:
(by possible future amendment)

Upon completion and final acceptance by the City of the completed project. Said amount is to be paid proportionately to the level of completion of project construction. The proportionate amount is to be consistent with

the Construction Contractor's percentage of completion.

Task 5 an additional amount not to exceed:
(by possible future amendment)

Upon satisfactory completion and acceptance of the project as-built drawings.

[the remainder of this page intentionally left blank]

EXHIBIT D
NONDISCRIMINATION CERTIFICATE
PROJECT NO. MP-0632, PHASE 1
SWISHER PARK IMPROVEMENTS

State of Texas)
County of Tarrant) SS.)

In connection with the performance of work under this Contract, the Engineer agrees as follows:

- A. The Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). The Engineer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer and sub-consultants shall agree to post in a conspicuous place, Exhibit D.
- B. In the event of the Engineer's noncompliance with this Nondiscrimination Certificate, the Contract may be canceled, terminated or suspended by the City. The Engineer may be declared, by the City, ineligible for further contracts until satisfactory proof of intent to comply shall be made by the Engineer and/or sub-consultants.
- C. The Engineer agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above clause and agree to abide by its requirements.

Printed name of the Engineer: Kimley-Horn and Associates, Inc.

Signature of executing individual: *Scott R. Arnold*

Title: Vice President

801 Cherry Street, Unit 11, Suite 1300 Fort Worth, Texas 76102

Address of the Engineer 817-335-6511 Zip Code

817-335-6511

(A.C.) Tel. Number and (FAX No.)

Signed and sworn to before me on this 14 day of March, 20 24, by Scott Arnold

Shadee Taylor
Notary Public

My Commission Expires/Commission Number:
11-15-2027 / 134647532 (Seal)

CS 10/22/18

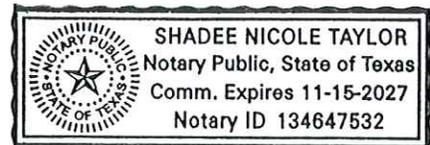


EXHIBIT E
ADDITIONAL SERVICES
PROJECT NO. MP-0632, PHASE 1
SWISHER PARK IMPROVEMENTS

Additional Services shall only be provided upon prior written and clearly detailed direction of the City Engineer. The Engineer may be directed to perform any, all or none of the following Additional Services that may include, but not be limited to, the following:

1. Expenses of reproductions for reports, plans and specifications beyond basic services requirements.
2. Provide assistance, analysis and coordination for work or services to be performed under separate contracts or performed by the Trust's own forces, which work or services are outside the scope of this Project, but affect this Project.
3. Provide analysis and services relative to future facilities, systems improvements, and equipment that are not intended to be constructed during the construction of this Project.
4. Provide design required for the selection, procurement or installation of furniture, fixtures and related equipment for this Project beyond basic services requirements.
5. Make revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals previously given or are required by the enactment or revision of codes, laws or regulations occurring subsequent to the preparation of such documents.
6. Provide geotechnical investigation/services utilizing architectural and testing laboratories that have annual on-call contracts with the Trust, beyond basic services requirements.
7. Produce miscellaneous presentation materials beyond Basic Services requirements.
8. Provide compensation of fees for grants, permits and applications necessary for the design and/or construction of this Project not required at the time of effective date of this Contract.
9. Provide staking of right-of-way for right-of-way acquisition purposes.
10. Prepare documents required for right-of-way/easement acquisitions.
11. Provide right-of-way/easement acquisition services.
12. Provide drone flight services, 1 Flight before, 1 flight during, and 1 flight after construction.

The FAA requires a field observer if the FAA Remote Pilot does not have a line of sight along the flight path. It is the Engineer's responsibility to ensure

the Drone Operator meets FAA regulations on all flights.

All projects require, at a minimum, three flights flown along the same path, before, during and after construction, unless the project is scoped with specific flight requirements. The target flight height for Roadway project is 75-foot minimum and 125-foot maximum, with variances allowed for site specific needs.

Video Editing will consist of the following:

1. Each video should contain a still title screen at the beginning of the flight video that lists:
 - a. Project Number
 - b. Project Location
 - c. Engineering Firm Name
2. 4K video with a 1080 minimum resolution
13. Provide design required for the selection, procurement, installation and approval of Public Arts.
14. Provide survey for design changes beyond basic services requirements.

Compensation for Additional Services: Included in the not to exceed total compensation is an allowance for Additional Services in an amount not to exceed (by possible future amendment). This allowance is to be used and paid to the Engineer in the manner established in this Contract, unless other compensation means are agreed to in writing by the City Engineer. The Additional Services compensation may only be used after the Engineer has performed Additional Services upon prior written authorization by the City Engineer. Invoices submitted for Additional Services shall represent only hours actually worked on this project by the Engineer's employees and the Engineer's consultant's employees and shall be accounted for separately for each Additional Service performed.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/13/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Edgewood Partners Ins. Center/Greyling 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	CONTACT NAME: Jerry Noyola PHONE (A/C. No. Ext): 7702207699 E-MAIL ADDRESS: greylingcerts@greyling.com		FAX (A/C. No): 7702207699													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : National Union Fire Ins Co of Pittsburg</td> <td>19445</td> </tr> <tr> <td>INSURER B : Allied World Assurance Co (U.S.) Inc.</td> <td>19489</td> </tr> <tr> <td>INSURER C : New Hampshire Insurance Company</td> <td>23841</td> </tr> <tr> <td>INSURER D : Lloyd's of London</td> <td>85202</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : National Union Fire Ins Co of Pittsburg	19445	INSURER B : Allied World Assurance Co (U.S.) Inc.	19489	INSURER C : New Hampshire Insurance Company	23841	INSURER D : Lloyd's of London	85202	INSURER E :		INSURER F :
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INSURED Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	KIMLASS															

COVERAGES

CERTIFICATE NUMBER: 594958780

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			GL5268169	4/1/2023	4/1/2024	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			CA4489663 CA2970071	4/1/2023 4/1/2023	4/1/2024 4/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			03127930	4/1/2023	4/1/2024	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC015893685 (AOS) WC015893686 (CA)	4/1/2023 4/1/2023	4/1/2024 4/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liab			B0146LDUSA2304949	4/1/2023	4/1/2024	Per Claim Aggregate \$2,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: MP-0632 Ph 1 Swisher Park Improvements; Darran Scott. The City of Oklahoma City and its participating trusts are named as Additional Insureds with respects to General & Automobile Liability where required by written contract. The above referenced liability policies with the exception of workers compensation and professional liability are primary & non-contributory where required by written contract. Waiver of Subrogation in favor of Additional Insured(s) where required by written contract & allowed by law. Separation of Insureds applies to the General Liability Policy.

CERTIFICATE HOLDER**CANCELLATION**

City of Oklahoma City
 420 W. Main Street, 7th Floor
 Oklahoma City OK 73102

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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