

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 5th day of September, 2023, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **KIMLEY-HORN AND ASSOCIATES, INC.** 11995 Singletree Lane, Suite 225, Eden Prairie, MN 55344 ("Consultant").

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

COLBURN DRIVE EXTENSION

The City and Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City's professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.
2. **Time for Performance of Services.** The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control.
3. **Term.** The term of this Agreement will be from September 5, 2023 through June 1, 2024, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.

4. **Compensation for Services.** City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant's hourly rates must be based on the hourly rates approved by the City.

The Agreement amount shall include all services to be rendered by the Consultant as part of this Agreement (including all travel, living and overhead expenses incurred by the Consultant in connection with performing the services herein) except for special services authorized in writing by the City. The amount stipulated shall be considered a "Not to Exceed" cost to the City.

The Consultant must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The Consultant must notify the City if the Consultant anticipates that the negotiated amount might be exceeded, in order to determine whether or not the City is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5. **Payment of Fees.** The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.
6. **Audit Disclosure.** The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination.** Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above. Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond Consultant's control), the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulation of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

In the event this Contract is terminated for cause, then the City may take over and complete the work, by contract or otherwise, and the Consultant and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the City may have.

Termination Not For Cause. The City may terminate this Contract at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property. If the Contract is terminated by the City as provided in

this paragraph, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor.** The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.
9. **Independent Contractor.** At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
10. **Assignment.** Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.
11. **Services not Provided for.** No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.
12. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.
14. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the

provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, reasonable attorney's fees, which they may suffer or for which they may be held liable, to the extent caused by the negligent or wrongful acts of the Consultant, his employees, subcontractors or anyone else for whom he is legally responsible in the performance of this Agreement.
18. **Insurance.** During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:
 - A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.
 - B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).
 - C. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.
 - D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than \$2,000,000.
 - E. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.
 - F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must

receive notice thirty (30) days prior to the cancellation or expiration any of the specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

This policy must provide, as between the City and the Consultant, that the Consultant's coverage shall be the primary coverage in the event of a loss. If the Consultant is providing either architectural or engineering services, the Consultant must also maintain during the term of this Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the City's approved form which verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun.

19. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.
20. **Whole Agreement.** This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

Kimley-Horn and Associates, Inc.

By: _____
William H. Reynolds, City Administrator

Date: _____

By:  _____
Eric Fosmo

Its: _____
Vice President

Date: 8/25/2023

By: _____
Matt Lehman, Mayor

Date: _____

August 23, 2023

Alex Jordan, P.E.
City Engineer
City of Shakopee
485 Gorman Street
Shakopee, MN 55379

Re: Proposal for Colburn Drive Extension

Dear Mr. Jordan,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter proposal to the City of Shakopee ("City" or "Client") for providing professional services for the Colburn Drive.

Project Understanding

The City of Shakopee is planning to extend Coburn Drive to the north to create a new connection to Mobile Manor Drive and construct a cul-de-sac on the southern end which will disconnect Coburn Drive from Old Brick Yard Road. Our understanding of the project improvements is provided below:

- Roadway extension of Colburn Drive West to the north and intersection with Mobile Manor Drive.
- Removal of temporary Coburn Drive West connection to Emery Way/Old Brick Yard Road
- Cul-de-sac at the south end of Colburn Drive West in accordance with City design standards.
- Drainage culvert at new entrance to Mobile Manor Drive and grading of drainage ditches/culverts along new Colburn Drive extension.
- Tie-in existing Old Brick Yard Road trail to new cul-de-sac
- Signing and stripping improvements to Mobile Manor Drive

Per discussions with City staff, we assume that there will be not City watermain or sanitary sewer improvements included with the project. Kimley-Horn has prepared this scope of services for the final design and bidding phase services.

Scope of Services

Kimley-Horn will provide the services specifically described below.

Task 1: Data Collection

A. Topographic Survey

Kimley-Horn will utilize LIDAR topographic information supplied by the City for development of the final design and bidding quantities. Kimley-Horn will obtain limited GPS topo information for design of roadway culverts and storm water improvements.

B. Geotechnical Investigation

We have assumed that no geotechnical investigation will be necessary for the project. The construction plans will be prepared with City standard pavement design insets and specifications provided by the City. If desired, the City will secure geotechnical services under a separate contract.

C. Project Site Information

The City will provide Kimley-Horn with all available utility as-built and GIS files along Colburn Drive (if any) including utilities in the adjacent portions of Mobile Manor and Old Brick Yard Road. The City will also provide:

- Right of Way plat for extension of Colburn Drive Right of Way.
- Regional XPSWMM Model and related GIS files for drainage area mapping

D. Site Visit

We will complete one (1) site visit to review site conditions. We will review and document the following:

- Review existing drainage infrastructure and grading needs.
- Driveway connections, grades, and constraints.
- Above ground private utility locations.
- Other unique features that should be captured during the filed survey.

Task 2: Prepare Construction Documents**A. Project Management and Meetings**

Kimley-Horn will provide overall project management and utilize internal project management tools to monitor budgets, staff roles, and responsibilities for the project. We will communicate project updates directly with the City's project manager. We will coordinate up to three (3) design team meetings with City staff to review plans at the 60-90 and final design stages and discuss agency coordination efforts. We have assumed that the following meetings will be necessary:

- Kick-off meeting (1)
- 60% and 90% plan, specifications review meeting (2)

B. Construction Plans

Kimley-Horn will prepare draft and final construction plans in accordance with City plan standards and prepare review sets at the 60% plan and 90% plan stages for City review. We will provide the City with one PDF set of the plans for each review submittal along with draft specifications at the 90% submittal. All electronic files will be provided at the final plan completion stage. Plans will generally include the following sheets, which will be adjusted as needed to reflect the level of detail needed for each of the planned project areas and plan submittal stage:

- Cover Sheet
- Statement of Estimated Quantities
- Removals and Existing Conditions Plan (including ROE and Parcel Boundaries and construction access points/routes)
- Construction Plans
 - Typical Section
 - Construction Plan and Profile
 - Drainage and Grading Plan, Laterals and Details
- Turf and Erosion control plans
- Cross Sections (50-foot intervals and at driveways)

C. Opinion of Probable Costs

We will prepare an initial Opinion of Probable Cost (OPC) upon completion of the 60% plan set. We will include an OPC based on estimated quantities at the 90% and final completion of plans and specifications. Upon completion of final design, we will provide the City with detailed quantities and bid items for all the improvements proposed as part of the project.

D. Specifications and Project Manual

We will prepare a project manual containing the bidding and technical specifications for the project consistent with City standard documents. We have assumed the City will provide their most recent bidding documents as a go-by to assist in the preparation.

E. Private Utility Coordination

We will complete a Gopher One Call Ticket for the project area supplemented with any available private utility information from the City and adjacent development. We will conduct one (1) virtual utility coordination meeting to discuss the project improvements and coordinate any impacts with private utility companies ahead of construction. We have assumed that no topo survey and or potholing of private utilities will be completed.

Task 3. Bidding Assistance

Kimley-Horn will prepare a draft and final advertisement for bids and submit to the City's required publication sources. We will produce an electronic version of the plans and specifications and will upload them to QuestCDN. We have assumed the project will be bid virtually via QuestCDN and no formal bid opening will be held. We will respond to contractor questions related to the project plans and specifications and prepare any necessary addenda. We have assumed up to one (1) addendum will be necessary during bidding. We will also prepare a bid tabulation and a bid summary (recommendation) letter following the bid opening and review of the submitted bids. Upon Council action to award a construction contract, we will prepare a draft and final Notice of Award letter and forward it to the selected contractor. The City will execute the contract, provide notice of award, and notice to proceed to the selected contractor.

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Previous surveys and site inspection/observation records.

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting the schedule outlined below. The schedule will be refined and adjusted as needed throughout the course of work and will be reviewed at each milestone meeting.

- On-Site Kick-off September 12th
- 60% Plan Submittal October 6th
- 90% Plan Submittal November 10th
- Final Plans and Specs December 15th
- Bid Opening January 2024
- Award of Contract by Council February 2024
- Construction Start Spring 2024

Fee and Expenses

Kimley-Horn proposes to perform all services included within this contract on an hourly (cost plus) basis using our current standard hourly rate schedule. The following is a summary of our estimated costs for the services included as a part of this contract:

Task	Description	Estimated Fee
1	Data Collection	\$3,500
2	Prepare Construction Documents	\$30,000
3	Bidding Assistance	\$3,500
Subtotal		\$37,000
Reimbursable Expenses		\$2,200
Total		\$39,200

Reimbursable expenses (copy/printing charges, plotting, mileage, delivery charges, faxes, etc.) will be charged as an office expense at 6.0% of the labor fee.

Our total estimated not-to-exceed cost for the scope of services included as a part of this contract is, therefore, \$39,200 including all labor and reimbursable expenses.

Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Michael Kirsch, PE
Project Manager



Eric Fosmo, PE
Vice President

Attached: Project Map