

**AGREEMENT
FOR
PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW
AND
KIMLEY-HORN AND ASSOCIATES, INC.
FOR
ON-DEMAND TRAFFIC ENGINEERING SERVICES
PROJECT 2452140**

This AGREEMENT, including Attachment A through Attachment E, between the City of Broken Arrow (OWNER) and Kimley-Horn and Associates, Inc., (CONSULTANT);

WITNESSETH:

WHEREAS, OWNER intends on-demand traffic engineering services within the City of Broken Arrow (PROJECT) for which, OWNER has requested that CONSULTANT provide certain professional services as required and,

WHEREAS, CONSULTANT is qualified and capable to provide the professional services required;

NOW, therefore, in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

This AGREEMENT shall be effective upon signature of both parties.

ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma and venue for any action concerning this Agreement shall be in the District Court of Tulsa County, Oklahoma.

ARTICLE 3 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform the SERVICES described in Attachment A, Scope of Services. If construction phase services are included, the CONSULTANT shall be the OWNER'S representative to observe, record and report with respect to all services that are required or authorized by the construction documents.

ARTICLE 4 – ORGANIZATION OF SUBMITAL DOCUMENTS

CONSULTANT shall prepare the documents as described in Attachment B as part of this Agreement.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation and Additional Services.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities and Special Conditions.

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ARTICLE 7 - STANDARD OF CARE

CONSULTANT shall perform the SERVICES undertaken in a manner consistent with the prevailing accepted standard for similar services with respect to projects of comparable function and complexity, and with the applicable state laws, as well as the specific codes, regulations, design criteria and construction specifications adopted by the OWNER and other governing policies published and generally considered authoritative by CONSULTANT'S profession that are in effect at the time of performance of these SERVICES. CONSULTANT is obligated to perform professional services in accordance with the foregoing standard with respect to the laws, codes, regulations, design criteria and construction specifications that are applicable pursuant to this AGREEMENT.

ARTICLE 8 - LIABILITY

8.1 General. Having considered the potential liabilities that may exist during the performance of these SERVICES, the benefits of the PROJECT, and CONSULTANT'S fee for the SERVICES; and in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree to allocate and limit such liabilities in accordance with Article 10.

8.2 Indemnification. CONSULTANT agrees to defend, indemnify, and hold harmless OWNER, and its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by the negligent or intentional wrongful acts, errors, or omissions of CONSULTANT, its agents or employees. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of OWNER and CONSULTANT, or their agents or employees, then they, along with OWNER's cost of defense, shall be borne by each party in proportion to each entity's own negligence.

8.3 Consequential Damages. OWNER shall not be liable to CONSULTANT for any special, indirect, or consequential damages resulting in any way from the performance of the SERVICES such as, but not limited to, loss of use, loss of revenue, or loss of anticipated profits.

8.4 Survival. Upon completion of all SERVICES, obligations, and duties provided for in this AGREEMENT, or if this AGREEMENT is terminated for any reason, the terms and conditions of this Article 8 shall survive.

ARTICLE 9 - INSURANCE

During the performance of the SERVICES under this AGREEMENT, CONSULTANT shall maintain the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate;
- (2) Automobile Liability Insurance, with a combined single limit of not less than \$1,000,000 for each person, not less than \$1,000,000 for each accident and not less than \$1,000,000 for property damage; and
- (3) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

CONSULTANT shall furnish OWNER certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days written notice to OWNER. All PROJECT sub-consultants shall be required to name OWNER as an Additional Insured and certificate holder on their certificates of insurance for the PROJECT, and shall be required to indemnify OWNER and CONSULTANT to the same extent. CONSULTANT shall be held responsible to submit certificates of insurance for sub-consultants to OWNER prior to the sub-consultant's release to commence work.

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ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the construction of the PROJECT; or (2) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services.

ARTICLE 11 - LIMITATIONS OF RESPONSIBILITIES FOR ACTS OF OTHERS

CONSULTANT shall not at any time supervise, direct, control or have authority over any work performed by any employee, contractor or other agent of OWNER. CONSULTANT shall not be responsible for the acts or omissions of any employee, contractor or other agent associated with the PROJECT except for its own employees, subcontractors and other agents.

ARTICLE 12 - OPINIONS OF COST AND SCHEDULE

Since CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet PROJECT schedules, CONSULTANT'S opinion of probable costs and of PROJECT schedules shall be made on the basis of experience and qualifications as a professional. CONSULTANT does not guarantee that proposals, bids, or actual PROJECT costs will conform to OWNER'S cost estimates or that actual schedules will conform to OWNER'S projected schedules.

ARTICLE 13 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and details, reports, etc. prepared by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project. Any reuse or adaptation without prior written verification by the CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to the CONSULTANT. OWNER shall defend, indemnify, and hold harmless the CONSULTANT against all claims, losses, damages, injuries, and expenses, including attorney's fees, arising out of or resulting from such reuse to the extent allowed by law.

ARTICLE 14 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by CONSULTANT as part of the SERVICES shall become the property of OWNER. CONSULTANT shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of CONSULTANT, but shall be provided to the OWNER, at no additional expense to the OWNER.

ARTICLE 15 - TERMINATION

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the either party to perform in accordance with the terms of this AGREEMENT. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

OWNER may suspend performance of this AGREEMENT for OWNER'S convenience upon written notice to CONSULTANT. Upon restart, an equitable adjustment may be made to CONSULTANT'S compensation, if the period of suspension has created an economic hardship for the CONSULTANT.

ARTICLE 16 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not

limited to, abnormal weather conditions such as floods, earthquakes, fire; civil disturbances such as war, riots, or other civil epidemic; power outages, strikes, lockouts, work slowdowns, or other labor disturbances; sabotage; judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this AGREEMENT.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

ARTICLE 17 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this AGREEMENT shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision which is of the essence of this AGREEMENT be determined void.

ARTICLE 19 - INTEGRATION

This AGREEMENT represents the entire and integrated AGREEMENT between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

To the extent permitted by Article 21, OWNER and CONSULTANT each binds itself and its successors and assigns to the other party to this AGREEMENT.

ARTICLE 21 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign its duties under this AGREEMENT without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this AGREEMENT. Nothing contained in this Article shall prevent CONSULTANT from employing independent sub-consultants, associates, and sub-contractors to assist in the performance of the SERVICES. However, third party entities must comply with Article 9.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

ARTICLE 23 - COMPLETION

CONSULTANT shall complete the services within the time frame outlined on Attachment E, Schedule, subject to conditions which are beyond the control of the CONSULTANT.

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ARTICLE 24 - IMMIGRATION COMPLIANCE

24.1 CONSULTANT shall demonstrate that he:

24.1.1 Has complied, and shall at all times during the term of this Contract, comply in all respects with all immigration-related laws, statutes, ordinances and regulations including without limitation, the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and the Oklahoma Taxpayer and Citizen Protection Act of 2007 (Oklahoma HB 1804) and any successor laws, ordinances or regulations (collectively, the Immigration Laws”); and

24.1.2 Has properly maintained, and shall at all times during the term of this Contract, maintain any and all employee records required by the U.S. Department of Homeland Security (“DHS”), including, without limitation, properly completed and maintained Form I-9s for each of the Consultants employees; and

24.1.3 Has verified the employment eligibility for all employees hired on or after July 1, 2008 through DHS’s E-Verify system, and shall at all times continue to verify the employment eligibility of all employees hired during the term of this Contract; and

24.1.4 Has required, and will at all times during the term of this Contract, require any sub-contractor utilized, hired or sub-contracted for by Consultant for the completion or undertaking of any duties, tasks or responsibilities under this Contract, to comply with the requirements and obligations imposed by the Immigration Laws and set forth in Paragraph (I), parts (a), (b) and (c), above, with regards to each of the sub-contractor’s employees.

24.2 CONSULTANT will indemnify, defend and hold harmless OWNER against any loss, cost, liability, expense (including, without limitation, costs and expenses of litigation and reasonable attorney’s fees) demands, claims, actions, causes of action, liabilities, suits, damages, including special and consequential damages that arise from or in connection with, directly or indirectly, CONSULTANT’S failure, deliberate or negligent, to fulfill its obligations and representations regarding verifying the employment eligibility of its employees and the employees of any subcontractor utilized by CONSULTANT as set forth more fully in Paragraph 24.1 above.

ARTICLE 25 - COMMUNICATIONS

Any communication required by this AGREEMENT shall be made in writing to the address specified below:

OWNER: City of Broken Arrow
485 N. Poplar Avenue
Broken Arrow, OK 74012
Contact: Mr. Zach Smith, P.E.
Transportation Division Manager

CONSULTANT: Kimley-Horn and Associates, Inc.
14101 Wireless Way, Building A, Suite 150
Oklahoma City, OK 73134
(405) 241-5423

Contact Name: Luke Schmidt, P.E., PTOE
Project Manager, Oklahoma City Office

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OWNER and CONSULTANT.

ARTICLE 26 – ELECTRONIC SIGNATURES

The Parties agree this transaction may be completed by electronic means and an electronic signature on this AGREEMENT will be given the same legal effect as a handwritten signature and cannot be denied enforceability solely because is it in electronic form. If CONSULTANT signs this AGREEMENT electronically and/or submits documents electronically, CONSULTANT agrees to comply with OWNER'S requirements for submission of electronically signed and/or submitted documents.

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IN WITNESS WHEREOF, the City Manager of the City of Broken Arrow, Oklahoma has hereunto set his hand, for and on behalf of the City of Broken Arrow and the CONSULTANT has signed, or caused his name to be signed, and seal affixed by proper authority, the day and year first above written and these presents have been executed in triplicate counterparts.

OWNER:

City of Broken Arrow, a Municipal Corporation

By: _____
Michael L. Spurgeon, City Manager

Date: _____

CONSULTANT:

Kimley-Horn and Associates, Inc.

By: Scott Arnold
Scott Arnold, Vice President

Date: September 12, 2024

(CORPORATE SEAL, IF APPLICABLE)

Attest: _____
City Clerk [Seal]

Date: _____

Attest: [Signature]
Notary Public

Date: September 12, 2024

Approved as to form:

D. Graham Parker
Assistant City Attorney



VERIFICATION

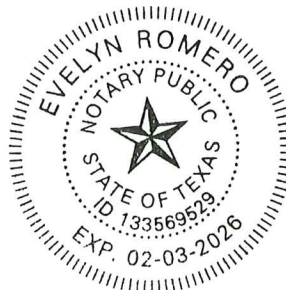
State of Texas)
) §
County of Tarrant)

Before me, a Notary Public, on this 12 day of September, 2024, personally appeared Scott Arnold, known to be to be the Vice President of Kimley-Horn and Associates, Inc., and to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

02-03-2026

[Signature]
Notary Public



**ATTACHMENT A
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
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AND
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FOR
ON-DEMAND TRAFFIC ENGINEERING SERVICES
PROJECT 2452140**

SCOPE OF SERVICES

The following scope of services shall be made a part of the AGREEMENT dated the ____ day of _____ 2024.

1.0 PROJECT UNDERSTANDING

- 1.1 CONSULTANT understands that the OWNER has retained their professional services to provide an on-demand traffic engineering advisory role to assist the City of Broken Arrow with traffic and mobility related issues. Work shall consist of, but not be limited to the following: an advisory role on potential traffic and mobility planning/implementation projects, an advisory role in responding to questions from City Council, the Traffic Advisory Committee, the general public, and internal City of Broken Arrow discussions, preparation and attendance for City Council and Traffic Advisory Committee meetings, and to review, evaluate, and provide professional opinions related to technical documents, existing traffic conditions, and future traffic/mobility conditions in the City of Broken Arrow.

2.0 PROJECT SCOPE

- 2.1 The project consists of providing an on-demand traffic engineering advisory role to assist the City of Broken Arrow with traffic and mobility related issues.

3.0 SCOPE OF SERVICES

- 3.1 **ON-DEMAND TRAFFIC ENGINEERING SERVICES:** CONSULTANT shall be responsible to perform the following tasks throughout the course of the PROJECT:
- 3.1.1 An advisory role on potential traffic and mobility planning/implementation projects in the City of Broken Arrow.
 - 3.1.2 An advisory role in responding to questions from City Council, the Traffic Advisory Committee, the general public, and internal City of Broken Arrow discussions.
 - 3.1.3 Preparation and attendance for City Council and Traffic Advisory Committee meetings.
 - 3.1.4 Review, evaluate, and provide professional opinions related to technical documents, existing traffic conditions, and future traffic/mobility conditions in the City of Broken Arrow.

**ATTACHMENT B
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
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FOR
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PROJECT 2452140**

ORGANIZATION OF SUBMITTAL DOCUMENTS

The CONSULTANT shall prepare the following documents as described as a part of the AGREEMENT dated the ____ day of _____ 2024.

- 1.0 CONSTRUCTION PLANS:** It is not anticipated for the CONSULTANT to submit any construction plans in this project.
- 2.0 SPECIAL CONSTRUCTION SPECIFICATIONS:** It is not anticipated for the CONSULTANT to submit any special construction specifications in this project.
- 3.0 MISCELANEOUS SUPPORT SERVICES:** The CONSULTANT shall perform support services within their professional competencies that do not fall into the above-mentioned categories.

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**ATTACHMENT C
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
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COMPENSATION AND ADDITIONAL SERVICES

The following compensation and hourly rates shall apply as described in Attachment C and shall be made a part of the AGREEMENT dated the ____ day of _____ 2024.

1.0 BASIC COMPENSATION

The basic compensation for the Professional Consultant to perform all duties and responsibilities associated with the Scope of Services as described in Attachment A shall be in accordance with the following payment breakdown:

- 1.1 It is agreed that the Consultant shall be compensated at the hourly rate in accordance with an hourly rate schedule to be negotiated in the future as part of Amendment 1 of this agreement and the total compensation under this contract is Not To Exceed Fifty Thousand and 00/100 (\$50,000.00) for the entire Scope of the Professional Services rendered. The Director of Engineering and Construction or designee will issue a Notice to Proceed for each item of work identified under this agreement, following mutual agreement between the consultant and the City on the hours required for the work item. The Consultant shall submit invoices requesting payment for services rendered to Engineering and Construction staff monthly in accordance with actual progress of the work on each work item. The invoices shall be in a format satisfactory to Director of Engineering and Construction or designee. Payment will be made following the first eligible City Council meeting occurring after the date on the invoice.

2.0 ADDITIONAL SERVICES BASED ON TIME

The hourly rates set forth in future Amendment 1 shall include all salaries, benefits, overhead and other indirect costs including federal, state, and local taxes, plus profit and effective upon execution of Amendment 1.

3.0 REPRODUCTION

All charges for reproduction shall be included in Basic Compensation Fee of the Professional Consultant. No separate payment will be made for these expenses.

4.0 MILEAGE

Travel shall be reimbursed at actual costs. Local travel is not a reimbursable expense.

5.0 DIRECT COSTS

All direct costs shall be reimbursed at actual costs with a five percent (5%) markup.

6.0 ADJUSTMENT CLAUSE

The hourly rates described in this AGREEMENT shall be revised annually in July.

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**ATTACHMENT D
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ON-DEMAND TRAFFIC ENGINEERING SERVICES
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OWNER'S RESPONSIBILITIES AND SPECIAL CONDITIONS

The following list of special OWNER'S responsibilities and contract special conditions shall be made a part of this AGREEMENT dated the ____ day of _____ 2024.

1.0 OWNER'S RESPONSIBILITIES

- 1.1 OWNER shall furnish to CONSULTANT all available information pertinent to the PROJECT including previous reports and any other data relative to design of the PROJECT;
- 1.2 OWNER shall furnish to CONSULTANT all public utility information available relative to the design of the PROJECT;
- 1.3 OWNER shall furnish to CONSULTANT list of codes adopted by the municipality as well as subdivision regulations, design criteria and construction standards and specifications that may be pertinent to the design of the PROJECT;
- 1.4 OWNER shall examine all studies, reports, sketches, estimates, specifications, plan drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.

2.0 SPECIAL CONDITIONS

- 2.1 None

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**ATTACHMENT E
TO
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FOR
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PROJECT SCHEDULE

The following schedule shall be made a part of the AGREEMENT dated the ____ day of _____ 2024.

1.0 ON-DEMAND TRAFFIC ENGINEERING SERVICES PHASE:

- 1.1 Notice to Proceed:
- 1.2 On-Demand Traffic Engineering Services: 365 calendar days
- 1.3 Total: 365 calendar days

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