

LEGACY WEST WASTEWATER FORCE MAIN

PROJECT NO. 6775

**ENGINEERING
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **KIMLEY-HORN AND ASSOCIATES, INC.**, a **NORTH CAROLINA** Corporation licensed to do business in the State of Texas, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to perform construction administration services in connection with the **LEGACY WEST WASTEWATER FORCE MAIN** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such professional services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all Engineers who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, TO THE EXTENT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY OBLIGATIONS OWED BY THE ENGINEER,

ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, AND REPRESENTATIVES, IN THE PERFORMANCE OF THIS AGREEMENT.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Engineers; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and Engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Ownership of Documents

Reports and other documentation are the property of the Engineer; however, the Project is the property of the City and Engineer may not use this information therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise the construction drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIII. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XIV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Attn: Clay Lipscomb, P.E.
Engineering Department, Ste. 250
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Kimley-Horn and Associates, Inc.
Attn: Kyle Sanderson, Associate
12750 Merit Drive, Suite 1000
Dallas, TX 75251

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XV. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

KIMLEY-HORN AND ASSOCIATES, INC.
A North Carolina Corporation licensed to do
business in the State of Texas

DATE: _____

BY: _____
Eric Z. Smith
ASSISTANT SECRETARY

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **ERIC Z. SMITH, ASSISTANT SECRETARY**, of **KIMLEY-HORN AND ASSOCIATES, INC.**, a **NORTH CAROLINA** Corporation licensed to do business in the State of Texas, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT “A”

SCOPE OF SERVICES

LEGACY WEST WASTEWATER FORCE MAIN PROJECT NO. 6775

PROJECT DESCRIPTION:

This project includes conformance documents, construction administration, and record drawings associated with the Legacy West Wastewater Force Main. The Legacy West Wastewater Force Main was previously designed under a separate contract and includes approximately eight thousand five hundred (8,500) linear feet of 18-inch wastewater force main, three thousand two hundred (3,200) linear feet of 30-inch wastewater force main, nine hundred thirty (930) linear feet of bore with 30” (ID) steel casing, three hundred and forty (340) linear feet of tunnel and 42” (ID) tunnel liner plate, six hundred forty (640) linear feet of bore/tunnel with 48” (ID) steel casing/tunnel liner plate and associated wastewater appurtenances as detailed in the Construction Plans and Specifications. The wastewater force main begins at the Legacy West Lift Station and terminates at the Preston Road Lift Station in Plano, Texas.

BASIC SERVICES:

A. Conformance Documents

1. Kimley-Horn will prepare conformance documents for the force main project. Kimley-Horn will incorporate all addendum items into a revised plan and specifications set. Addendum items shall be incorporated electronically and shall be indicated by clouding information and noting numerically according to which number addendum the information pertains. Provide up to six (6) 34"x22" copies and ten (10) 17"x11" copies of the conformance documents. Documents will also be provided in PDF format.

B. Construction Administration

1. Pre-Construction Conference – Kimley-Horn will conduct a Pre-Construction Conference prior to commencement of Work.
2. Visits to Site and Observation of Construction - Kimley-Horn will provide on-site construction observation services during the construction phase. Kimley-Horn will make visits at intervals as directed by the City in order to observe the progress of the Work. A maximum of three (3) site visits are anticipated. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep the City informed of the general progress of the Work.

The purpose of Kimley-Horn's site visits will be to enable Kimley-Horn to better carry out the duties and responsibilities specifically assigned in this Agreement to Kimley-Horn, and to provide the City a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Kimley-Horn shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any

Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

3. Construction Progress Meetings – Kimley-Horn will coordinate and attend construction progress meetings and will prepare meeting notes for progress meetings attended. A maximum of six (6) progress meetings are assumed for budget purposes.
4. Requests for Information (RFI's) – Respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to the City as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by the City and/or NTMWD. A maximum of fifteen (15) RFI's are anticipated.
5. Work Change Directives, Field Orders, and Proposed Contract Modifications – Prepare work change directives and field orders as requested by the City/NTMWD or required by construction. Review contractor proposed contract modifications and make recommendations to the City/NTMWD. A maximum of four (4) work change directives, field orders, and/or proposed contract modifications (4 combined between the three categories) are assumed for budget purposes.
6. Shop Drawings and Samples – Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

This task also includes administrative responsibilities associated with maintaining the online ShareFile site used for distribution of documents, updating and distribution of shop drawing logs, and coordination with Contractor, City, TxDOT, NTTA, NTMWD, and Subconsultants. Providing hard copies of the submittals is not included in this task. A maximum of 80 submittals are assumed for budget purposes.
7. Substitutes and "or-equal." – Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
8. Substantial Completion – After notice from Contractor that it considers the entire Work ready for its intended use, in company with the City, NTMWD

(where required), and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. One walkthrough is anticipated.

9. Limitation of Responsibilities – Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of the Contractor's subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor.

C. Record Drawings

1. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor. Kimley-Horn will be provided the Contractor's revisions and shall not be responsible for verifying their completeness or accuracy. Submit one blackline set to the City and a two (2) CD-ROM disks containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de- speckling, de- shading, de-skewing, etc.). Each file shall be named in numeric order.

SPECIAL SERVICES:

- A. **None**

EXHIBIT "B"

SCHEDULE OF WORK

**LEGACY WEST WASTEWATER FORCE MAIN
PROJECT NO. 6775**

Kimley-Horn is prepared to begin our services immediately upon authorization.

ACTIVITY	COMPLETION TIME (Calendar Days)
A. Conformance Documents	7
B. Construction Administration	*
C. Record Drawings	21

*Construction Administration, to be provided by Kimley-Horn, will follow the Contractor's construction schedule.

EXHIBIT "C"

COMPENSATION AND METHOD OF PAYMENT

**LEGACY WEST WASTEWATER FORCE MAIN
PROJECT NO. 6775**

Kimley-Horn will provide Basic Services Tasks A and C for a lump sum fee.

Kimley-Horn will provide Basic Service Task B on a hourly not to exceed basis inclusive of expenses. Labor fee will be billed according to the attached rate schedule, which is subject to annual adjustment. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A 4.6% fee will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client.

	WORK STAGE SUBMITTAL OR COMPLETION	TOTAL
	Basic Services	
A.	Conformance Documents	\$3,600
B.	Construction Administration	\$77,500
C.	Record Drawings	\$8,200
	Total Basic Fee	\$89,300
	Special Services	
A.	None	-
	Total Special Services	-
	Total Fee	\$89,300

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional I	\$230 - \$250
Senior Professional II	\$190 - \$240
Professional	\$150 - \$205
Analyst	\$145 - \$165
Designer	\$170 - \$180
Technical Support	\$65 - \$160
Clerical/Administrative Support	\$70 - \$125

Effective July 2016

EXHIBIT "D"

CONSULTANTING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Consultant (hereinafter called "Consultant") shall not start work under this contract until the Consultant has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Consultant will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."
- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Consultant from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Consultant's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Consultant shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.
- 1.6 Consultant agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Consultant fail to provide acceptable evidence of current

insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Consultant, and the Consultant shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Consultant. Consultant may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Consultant's Insurance - "Occurrence" Basis:

- 2.1 The Consultant shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Consultant from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.
 - 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Consultant's Insurance – Claims Made

Professional Errors and Omissions

The Consultant shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

CONSULTANTING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of **Kimley-Horn and Associates, Inc.**, a corporation organized under the laws of the State of North Carolina, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **Kimley-Horn and Associates, Inc.**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate

against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;

- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
- (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); **or** my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an “employer” under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I also understand and acknowledge that a violation of Section 11.02 of the City Charter or Section 2-11(F) of the City Code of Ordinances, if applicable, at any time during the term of this contract may render the contract voidable by the City.

Kimley-Horn and Associates, Inc.

By: _____
Signature

Eric Z. Smith
Print Name

Assistant Secretary
Title

Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2016.

Notary Public, State of Texas