

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
2024-062
DESIGN OF DOWNTOWN WATER RECLAMATION
FACILITY (WRF) EXPANSION

THIS AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES (the “Agreement”) is made and entered into this 3rd day of September, 2024 (the “Effective Date”) by and between the **CITY OF FULSHEAR, TEXAS** (the “City”), a Texas municipality, and **KIMLEY-HORN AND ASSOCIATES, INC.** (the “Professional Service Provider”). Collectively, the City and the Professional Service Provider may be referred to as the “Parties.”

WHEREAS, the City wishes to obtain professional engineering services in relation to the design of the Downtown Water Reclamation Facility (WRF) Expansion as described in the attached and incorporated **Exhibit A** (the “Project”), and the City wishes to retain the services of the Professional Service Provider in connection with that Project; and

WHEREAS, the Professional Service Provider is a company authorized to do business in Texas and is qualified to perform the professional engineering services the City wishes the Professional Service Provider to perform; and

WHEREAS, the Professional Service Provider desires to render such professional engineering services for the City upon the terms, covenants, and conditions provided herein.

NOW, THEREFORE, for and in consideration of the services, payments, and other valuable consideration contained herein, the Parties agree to the following terms, covenants, and conditions:

SECTION 1. Performance by Professional Service Provider.

The Professional Service Provider is being retained to provide professional engineering services in relation to the design of the Downtown Water Reclamation Facility (WRF) Expansion.

The City has made this selection based on the Professional Service Provider’s demonstrated competence and requisite qualifications to perform the scope of work described herein. The Professional Service Provider represents that the services being provided through this Agreement are the practice of engineering and are professional services from a discipline in which the Professional Service Provider is qualified and licensed to perform the services in accordance with the standard of care as defined in Section 6(b) of this Agreement.

The City agrees to and hereby does retain the Professional Service Provider as an independent contractor. At the City’s sole discretion, the City shall be entitled to engage the Professional Service Provider to provide these professional engineering services, in accordance with the terms and conditions of this Agreement, as those professional services relate to the Project.

The Professional Service Provider agrees to perform such Services in accordance with the terms, covenants, and conditions of this Agreement.

SECTION 2. Contract Documents.

As used in this document, unless the context requires otherwise, the terms “Agreement” and “Contract” shall be interchangeable (whether or not capitalized) and shall be considered to be the entire and integrated written contract between the Parties. The Contract shall mean this document (the “primary document”) and any ancillary contract documents, including all attachments, enclosures, schedules, appendices, and exhibits.

Contract Documents include the following ancillary documents:

- **Exhibit A**, Professional Service Provider’s letter regarding the Downtown Water Reclamation Facility (WRF) Expansion to 1.1 MGD”

The ancillary documents are hereby attached and incorporated hereto by reference and made a part of this Agreement, subject to the terms and conditions contained in this primary document.

In the event of a conflict between any term or provision in this primary document and any term or provision in the ancillary documents, the term or provision in this primary document shall control unless the conflicting term or provision in this primary document is referenced, and expressly stated not to apply, in the ancillary document(s).

Any mutually agreed upon changes to the terms, conditions, covenants, and provisions of this Agreement shall be set forth in an amendment to this Agreement. The Professional Service Provider will not implement any changes or any new services until an amended agreement has been duly executed by the City.

Any pre-printed forms including, but not limited to: purchase orders, shipping instructions, or sales acknowledgment forms of either party containing terms or conditions at variance with or in addition to those set forth herein shall not in any event be deemed to modify or vary the terms of this Agreement.

SECTION 3. Scope of Services.

The Professional Service Provider shall provide the following Services to the City: A written scope of work is included in **Exhibit A**. The Professional Service Provider shall perform all work and furnish all materials as described in **Exhibit A**.

SECTION 4. Payment for Services.

The City agrees to pay the Professional Service Provider for Services provided in accordance with the following terms, covenants, and conditions:

- a. ***Contract Sum.*** The City shall compensate the Professional Service Provider for the performance of the Services per the professional services proposal in **Exhibit A** and in accordance with the Schedule and Compensation Table contained in the attached and

incorporated **Exhibit A**. The total fees paid under this Agreement shall not exceed **\$456,200.00**.

- b. Invoices.** The Professional Service Provider shall invoice the City monthly for Services rendered based on the percentage of Services completed as of the date of the invoice. The City will pay for those Services, in full, within thirty (30) days of receipt of a properly completed invoice by electronic payment or check. Invoices should be submitted to:

City of Fulshear
Attn: Accounting
P.O. Box 279
Fulshear, Texas 77441
Telephone: (281) 346-1796
Email: accounting@fulsheartexas.gov

If the City reasonably disputes any invoice, the City shall timely pay the undisputed portion and promptly notify the Professional Service Provider in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously.

- c. Budget.** The Parties understand and acknowledge that the funding of this Agreement is contained in the City's annual budget and is subject to the approval of the City's governing body in each fiscal year. The Parties further agree that should the City's governing body fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the City's governing body fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall automatically terminate as to the City, and (upon providing written notice of the termination of the Professional Service Provider), the City shall then have no further obligation to the Professional Service Provider (except for the payment obligations upon termination as defined in Section 8(c) of this Agreement). When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, the Professional Service Provider's sole and exclusive remedy shall be to terminate this Agreement.
- d. Eligible Costs.** Costs incurred prior to the Effective Date of this Agreement are not eligible for reimbursement. The City will only pay for Services rendered and shall not pre-pay for work that has not been performed. Further, there shall be no obligation whatsoever from the monies of the City other than from the monies designated for this Agreement.

SECTION 5. Time of Completion; Term; Termination.

- a. Time of Completion.** The Professional Service Provider shall begin work upon written notice from the City and the work shall be completed as stipulated in **Exhibit A**.

- b. **Term.** This Agreement will commence on the **Effective Date and shall remain in effect until completion of services** unless earlier terminated as provided herein.

SECTION 6. Representation of Professional Service Provider; Obligations of Professional Service Provider.

- a. **Representation and Warranties of Professional Service Provider.** Professional Service Provider represents and warrants that:

1. As of the Effective Date of this Agreement, the Professional Service Provider is not a party to any oral or written contract or understanding with any third-party that is inconsistent with this Agreement or would affect the Professional Service Provider's performance under this Agreement or that will in any way limit or conflict with the Professional Service Provider's ability to fulfill the terms of this Agreement. The Professional Service Provider further represents that it will not enter into any such agreement during the Term of this Agreement;
2. The Professional Service Provider will provide to the City, with each deliverable to be provided under this Agreement, a written summary sheet listing any third-party software or other intellectual property contained within the deliverable. The Professional Service Provider shall not be required to provide the City with such third-party software or intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. The Professional Service Provider represents that all work product created under this Agreement shall be original work of the Professional Service Provider or in the public domain and shall not infringe any copyright, trademark, trade secret, patent, or other intellectual property right of any third-party;
3. The Professional Service Provider and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and
4. The Professional Service Provider shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Professional Service Provider's obligations under this Agreement.

- b. **Level of Care and Skill.** Services provided by the Professional Service Provider under this Agreement shall be conducted in a manner consistent with the professional skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional practicing under the same or similar circumstances. No other representation expressed or implied, and no warranty or

guarantee is included or intended in this Agreement, or in any report, opinion, or document, prepared by the Professional Service Provider.

- c. **Work on City Premises.** Professional Service Provider will require that its employees and agents will, whenever on City premises, comply with all reasonable instructions and directions issued by the City.
- d. **Consultation, Reports.** The Professional Service Provider agrees to make available the Professional Service Provider's representative, who shall be mutually agreed upon by the Professional Service Provider and the City, for periodic meetings to review the progress of all work under this Agreement. The Professional Service Provider also shall prepare and submit to the City, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Professional Service Provider and the City, as well as copies of all documents relating to the Services performed by the Professional Service Provider.
- e. **No Israel Boycott.** The Professional Service Provider hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- f. **Foreign Terrorist Organizations.** The Professional Service Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- g. **Immigration.** Professional Service Provider represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- h. **Undocumented Workers.** Professional Service Provider certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Professional Service Provider is convicted of a violation under 8 U.S.C. § 1324a(f), Professional Service Provider shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Professional Service Provider of the violation.
- i. **Human Trafficking.** The Professional Service Provider acknowledges that the City of Fulshear is opposed to human trafficking and that no City of Fulshear funds will be used in support of services or activities that violate human trafficking laws.
- j. **Nondiscrimination Against Firearm and Ammunition Industries.** Professional Service Provider verifies that it does not have a practice, policy, guidance, or directive that

discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

- k. ***Anti-Boycott of Energy Companies.*** . Professional Service Provider verifies that it does not contract with certain foreign-owned companies in connection with critical infrastructure and will not contract with certain foreign-owned companies in connection with critical infrastructure, as those terms are defined by Chapter 2275 of the Government Code during the Term of this Agreement.
- l. ***Prohibited Access to Critical Infrastructure.*** Service Provider verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2276, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.

SECTION 7. Obligations of City.

The City agrees to make available to the Professional Service Provider, upon reasonable notice, such information, data, and documentation regarding its facilities and infrastructure as may reasonably be required by the Professional Service Provider to complete the Services.

The Professional Service Provider will rely upon the accuracy and completeness of all documents, surveys, reports, plans and specifications provided by the City or by others for whom the Professional Service Provider is not legally responsible. The City acknowledges that verifying the accuracy and completeness of such items is not part of the Professional Services Provider's scope of services unless expressly stated otherwise in a written scope of work duly authorized under this Agreement.

SECTION 8. Termination of Agreement.

- a. ***Termination.*** The City, upon giving thirty (30) days' written notice to the Professional Service Provider, may terminate this Agreement for any reason, without cause, or simply for convenience. The Professional Service Provider, upon giving thirty (30) days' written notice to the City, may terminate this Agreement for cause.
- b. ***Obligations of Professional Service Provider Upon Termination.*** Upon termination of this Agreement, the Professional Service Provider shall promptly return to the City all information, files, documentation, media, related material, and any other material that is owned by the City, as well as any work product in progress.
- c. ***Obligations of City Upon Termination.*** Upon termination of this Agreement, the City's sole obligation shall be the payment of any valid, outstanding invoices and any work that has not yet been invoiced but was performed prior to the effective date of termination. The Professional Service Provider agrees to render a final invoice to the City for Services

performed by the Professional Service Provider prior to termination of this Agreement within thirty (30) days after completion of the Services performed.

SECTION 9. Indemnification and Insurance.

- a. *Indemnification of City.*** To the extent allowed by law, Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City, its officers, agents, and employees against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but not limited to injuries resulting in death, to the extent arising from, or caused by, or incident to any wrongful or negligent act of the Professional Service Provider, the Professional Service Provider's agents, invitees, servants, and employees upon the property of the City, or arising or resulting from any intentional tort or intellectual property infringement for which the Professional Service Provider is responsible, or for any failure to pay a subcontractor or supplier relating to the performance of Services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination of this Agreement for whatever cause.
- b. *Commercial General Liability Insurance.*** Professional Service Provider must maintain comprehensive commercial general liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury, and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.
- c. *Umbrella Liability.*** Professional Service Provider must maintain umbrella liability insurance, covering the City and the Professional Service Provider for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage, including loss of use thereof, and not less than \$1,000,000 per occurrence for bodily injury, personal injury, or death. This insurance must protect against liability to any employees or servants of the Professional Service Provider and to any other person or persons whose property damage, personal injury, bodily injury, or death arises out of or in connection with the performance of Services under this Agreement and must include (i) coverage for premises and operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of the Professional Service Provider under the terms of this Agreement. Such policy must name the City (and any successor or assign designated by the City) as an additional insured.

- d. **Professional Liability.** Professional Service Provider must maintain professional liability insurance. The insurance provided under this section must be in the amount of not less than \$1,000,000 per claim and must have an annual aggregate of not less than \$1,000,000.
- e. **Workers Compensation and Employer's Liability.** Professional Service Provider must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Professional Service Provider's operations on City property. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement waiving all rights against the City and the City's respective agents and employees. Professional Service Provider must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury, or death to any employee of the Professional Service Provider who may bring a claim outside the scope of the Texas Worker's Compensation laws or Federal acts applicable to the Professional Service Provider's operation on City property. Each policy must contain an endorsement waiving all rights of subrogation against the City and the City's respective agents and employees.
- f. **Waiver of Subrogation.** The Parties agree to waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or to City property, or any personal property of such party on City property, by reason of fire, windstorm, earthquake, flood, or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by the City or the Professional Service Provider, respectively, with respect thereto, regardless of the cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.
- g. **Insurance Requirements.** The phrases "Required Policy" and "Required Policies" mean each policy of insurance required to be maintained by the Professional Service Provider under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to the City but, in all events, a company with an A.M. Best Company financial rating of not less than A:XII (or a similar rating by a comparable service selected by the City should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require thirty (30) days' prior written notice to the City in the event of cancellation. Required Policies must contain cross-liability clauses, when applicable and available. The Professional Service Provider must deliver to the City a certificate of insurance for any Required Policy no later than the Effective Date of this Agreement. The required evidence of coverage must always be deposited with the City. If the Professional

Service Provider fails to do so, such failure may be treated by the City as a default by the Professional Service Provider, and the City, in addition to any other remedy under this Agreement, may purchase and maintain such Required Policy, and the Professional Service Provider must immediately reimburse the City for any premiums paid or costs incurred by the City in providing such insurance. Failure of the Professional Service Provider to reimburse the City is a default by the Professional Service Provider under this Agreement.

- h. *Indemnity for Noncompliance with Insurance Requirements.*** Professional Service Provider INDEMNIFIES and HOLDS HARMLESS the City from any loss the Professional Service Provider may suffer due to the Professional Service Provider's failure to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of the Professional Service Provider's failure to comply with the terms, conditions, and warranties of any Required Policy.
- i. *No Indemnification by the City.*** The Professional Service Provider and the City expressly acknowledge that the City's authority to indemnify and hold harmless any third-party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.

SECTION 10. Injunctive Relief.

It is hereby understood and agreed that damages shall be an inadequate remedy in the event or a breach by the Professional Service Provider of this Agreement and that any such breach by the Professional Service Provider will cause the City great and irreparable injury and damage. Accordingly, Professional Service Provider agrees that the City shall be entitled, without waiving any additional rights or remedies otherwise available to the City at law, in equity, or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by the Professional Service Provider.

SECTION 11. Assignment and Subcontracting.

- a. *Consent Required.*** Professional Service Provider must not assign or subcontract the whole or any part of this Agreement without the City's prior written consent.
- b. *Subcontracting.*** Any subcontract made by the Professional Service Provider with the consent of the City must incorporate, by reference, all the terms of this Agreement. Professional Service Provider will enter into written contracts with each of its subcontractors requiring such subcontractors to obtain and maintain appropriate and reasonable insurance coverage and requiring such subcontractors to comply with the terms of this Agreement, which shall be binding upon such subcontractors, as is reasonable, required, and appropriate.
- c. *Compliance with law.*** Professional Service Provider acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and

assignees to comply with all applicable municipal, state, and federal laws, rules, and regulations.

SECTION 12. Other Provisions.

- a. *Force Majeure.*** In the event either party is rendered unable, wholly or in part, by force majeure to carry-out any of its obligations under this Agreement, except the obligation to pay amounts owed or required to be paid pursuant to the terms of this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term “force majeure,” as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or similar civil disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and other incapacities of any party, whether similar or those enumerated or otherwise, which are not within the reasonable anticipation or control of the party claiming such inability, which such Party should not have avoided by the exercise of due diligence and care. If delays resulting from such causes increase the cost or time required by the Professional Service Provider to perform the Professional design services under this Agreement, the Professional Service Provider shall be entitled to a reasonable adjustment in schedule and, if applicable and upon written agreement of the Parties, compensation.
- b. *Status as Independent Contractor.*** The City and the Professional Service Provider are contractors independent of one another and neither party’s employees will be considered the employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third-party.
- c. *Applicable Law and Forum.*** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state or Federal courts sitting in Fort Bend County, Texas.

The Professional Service Provider understands, acknowledges, and agrees that the City, as a Texas municipality organized under the laws of the State of Texas, is bound by the laws of the State of Texas. To the extent, if any, that any provision of this Agreement is in conflict with the laws of the State of Texas, such provision shall be void and have no force or effect.

- d. **Public Information Act.** Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that this Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the “Texas Public Information Act”), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Service Provider is required to make any information created or exchanged with the City pursuant to this Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the City.

- e. **Notices.** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery.

IF TO CITY:

City of Fulshear
Attn: *Purchasing Coordinator*
P.O. Box 279
Fulshear, Texas 77441
Email: cleal@fulsheartexas.gov

IF TO SERVICE PROVIDER:

Kimley-Horn and Associates, Inc.
Attn: *Raul Dominguez, P.E.*
1170 Katy Freeway #800
Houston, TX 77079

- f. **Ownership of Documents.** The final sealed documents prepared by the Professional Service Provider shall be provided to the City, for the City’s use, in the form of a license permitting the City’s use and shall not be otherwise limited, so long as the City’s use is in accordance with applicable legal requirements.

Any modifications made by the City to any of the Professional Service Provider’s documents, or any use, partial use or reuse of the documents without written authorization

or adaptation by the Professional Service Provider will be at the City's sole risk and without liability to the Professional Service Provider.

- g. *Successors and Assigns.*** The City and the Professional Service Provider each bind itself and its partners, successors, executors, administrators, and assigns to the other party of the Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all terms, covenants, and conditions of this Agreement. Neither the City nor the Professional Service Provider shall assign, sublet, or transfer its interest in this Agreement without written consent of the other party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and the Professional Service Provider.
- h. *Waiver.*** No waiver by the City of any breach by the Professional Service Provider of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent set forth in writing.
- i. *Entire Agreement.*** This instrument, including attached exhibits, contains the entire Agreement between the City and the Professional Service Provider, apart from any letter proposals or proposals describing the scope of services, method of compensation, and any special contractual provision that, mutually agreed upon by the Parties, shall become part of this Agreement.
- j. *Modifications.*** No modification of this Agreement shall be effective unless in writing and signed by both parties.
- k. *Severability.*** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.
- l. *Counterparts.*** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will be deemed one and the same document. A photocopy of facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.
- m. *LIMITATION OF LIABILITY - IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CITY AND PROFESSIONAL SERVICE PROVIDER, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF PROFESSIONAL SERVICE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CITY OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CITY, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY***

WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF PROFESSIONAL SERVICE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY PROFESSIONAL SERVICE PROVIDER UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CITY OR THOSE CLAIMING BY OR THROUGH THE CITY, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CITY TO INDEMNIFY PROFESSIONAL SERVICE PROVIDER.

- n. ***Mutual Waiver of Consequential Damages.*** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages, including but not limited to loss of income or loss of profits.

IN WITNESS WHEREOF, and in acknowledgment that the Parties hereto have read and understood each and every provision hereof, the Parties have executed this Agreement on the date first set forth above.

CITY:

CITY OF FULSHEAR, TEXAS

By: _____
City Manager

PROFESSIONAL SERVICE PROVIDER:

KIMLEY-HORN AND ASSOCIATES, INC.

By:  _____
Name: Steven Freeman, P.E.
Title: Vice President

EXHIBIT A

September 3, 2024

Mr. Cliff Brouhard, PE, PTOE
City Engineer-Public Works
City of Fulshear
6611 W Cross Creek Bend Ln
Fulshear, TX 77441

Re: Exhibit A - Letter Agreement for Professional Engineering Services for the City of Fulshear Downtown Water Reclamation Facility (WRF) Expansion to 1.1 MGD

Dear Mr. Brouhard:

Kimley-Horn and Associates, Inc. ("Kimley-Horn", "Consultant", or Professional Service Provider") is pleased to submit this scope of services and associated fees for engineering services to the City of Fulshear ("Owner", "City").

Project Understanding:

The City of Fulshear is seeking to get under a new contract with Kimley-Horn for engineering services to complete the design of the Downtown Water Reclamation Facility (WRF) Expansion to 1.1 MGD. It is anticipated that the project may be advertised for construction as either one or two bid packages (construction of the package WRF and temporary lease of the package WRF).

Scope of Services:

Kimley-Horn will provide the services specifically set forth below with regards to the City of Fulshear Downtown Water Reclamation Facility (WRF) Expansion from 0.7 MGD to 1.1 MGD.

Task 1 –Final Engineering Report

The Consultant will prepare the final engineering report (FER) to be submitted to Texas Commission of Environmental Quality (TCEQ). The FER will be in accordance with TCEQ criteria and will contain the necessary exhibits and calculations for TCEQ approval per Chapter 217. Calculations and final design will be included for the following proposed components of the plant:

- Aeration Basins (4)
- Clarifiers (2)
- Aerobic Digesters (4)
- Extended Chlorine Contact Basin (1)
- Dechlorination Basin (1)
- Chemical Dechlorination System (1)
- Clarifier Effluent Wet well (1)

- Clarifier Effluent Pump Station (1)
- Diffusers
- Blowers (1-3) for the proposed facility expansion and one (1) additional blower for the existing 0.7 MGD plant in order to allow it to run all existing aeration basins and aerobic digesters.
- Air Piping
- Splitter Box (1)
- Existing Splitter Box Modification (1)
- Non-Potable Water System (1). Either new, modified, or relocated.
- Chemical Disinfection System (1). Either new, modified, or relocated.
- Generator. Existing generator will be evaluated to determine whether it can handle the critical loads of the full buildout 1.1 MGD WRF or if an additional generator needs to be installed to handle the additional critical loads attributed to the WRF expansion.

Task 2- Preliminary Design

The Consultant will prepare 60% plans for Client review. Plan sheets will be provided in PDF format and include the following:

- a. Civil Sheets
 - General notes
 - Site plan
 - Yard piping plan
 - Paving plan
 - Profiles
 - Grading plan
 - Details
- b. Mechanical Sheets
 - General Notes
 - Equipment Layout
 - Sections
 - Details
- c. Consultant will prepare and submit 60% plans and opinion of probable construction cost (OPCC) to the Client for review and comment.

Deliverables:

- a. PDF of plans and OPCC.

Task 3: Final Design

After the Client has approved the conceptual design from the 60% plans, the Consultant will prepare 90% plans, specifications, and preliminary engineering report for Client review. Plan sheets will be provided in PDF format and include the following:

- a. Civil Sheets
 - General notes
 - Site plan
 - Yard piping plan
 - Paving plan
 - Profiles
 - Grading plan
 - Details
- b. Mechanical Sheets
 - General Notes
 - Equipment Layout
 - Sections
 - Details
- c. Structural Sheets
 - General Notes
 - Foundation Plans
 - Structural Building Plans
 - Details
- d. Electrical Sheets
 - Site Plan
 - Sight Lighting Plan
 - Grounding Plan
 - Control and Instrumentation
 - Details

Consultant will prepare and submit 90% plans, technical specifications, and opinion of probable construction cost (OPCC) to the Client for review and comment.

Consultant will submit Summary Transmittal Letter to TCEQ. Client will review and provide comments prior to submittal

Deliverables

- a. Sealed PER: PDF format
- b. 90% WRF Plans, Specifications, and OPCC: PDF format
- c. Sealed WRF Plans & Specifications: PDF format
- d. Summary Transmittal Letter

Task 4: Geotechnical Engineering (City Approval Required)

Effort under Task 4 (Geotechnical Engineering) will not be started until written approval is provided by the City. Kimley-Horn will examine the geotechnical engineering report provided by Diversion LS consultant. If Kimley-Horn deems this geotechnical engineering report acceptable, then no effort under this task will be required. If the geotechnical engineering report is not acceptable to Kimley-Horn, then Kimley-Horn will send a request to the City to approve Task 4 in order

to retake bores at the City of Fulshear Downtown WRF and complete a new geotechnical engineering report.

Task 5: Owner's Contingency (City Approval Required)

Effort under Task 5 (Owner's Contingency) will not be started until written approval is provided by the City. The consultant will request access to this Task from the City in the event of unforeseen design changes/updates.

Task 6: Bid Phase Services (Hourly)

The Consultant will finalize the project manual/bid document that includes the necessary technical documents and specifications required for bidding. This project manual/bid document will include the construction drawings and specifications suitable for bidding and construction. Final construction documents will be signed and sealed by an engineer licensed in Texas and issued for construction. The Consultant will compile the final bid document which will consist of drawings, specifications, bid tables and supporting documents for bidding purposes. It is anticipated that the project may be advertised for construction as either one or two bid packages (construction of the package WRF site work and temporary lease of the package WRF).

Services that are considered part of this task could include:

- Attend one (1) in person meeting with the Client to review Bid Documents & Schedules.
- Development of a Bid Schedule.
- Responding to Bidder's questions.
- Issuing Bidding Addendums.
- Attend and participate in Bid Opening.

It is expected that the City will solicit the bids and advertise in the newspaper of record. The Consultant will provide a recommendation letter and bid tabulation. The City will select bidder.

Task 7: Construction Phase Services (Hourly)

Consultant will provide **12 months** of the construction phase services specifically stated below:

Pre-Construction Conference. Consultant will **attend** a Pre-Construction Conference before the start of construction.

Site Visits and Construction Observation. Consultant will make **up to 3 visits** to the site to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work.

Consultant will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. Consultant does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.

Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.

Construction Meetings. Consultant will conduct **up to 12 monthly** construction meetings for the anticipated **12 month** construction schedule.

Recommendations with Respect to Defective Work. Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

Clarifications and Interpretations. Consultant will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client.

Change Orders. Consultant may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Shop Drawings and Samples. Consultant will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Substitutes and "or-equal/equivalent." Consultant will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.

Inspections and Tests. Consultant may require special inspections or tests of Contractor's work, and may receive and review certificates of inspections within Consultant's area of responsibility. Consultant's review will be solely to determine

that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Consultant is entitled to rely on the results of such tests.

Disputes between Client and Contractor. Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.

Applications for Payment. Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

Substantial Completion. When requested by Contractor and Client, Consultant will 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.

Final Notice of Acceptability of the Work. Consultant will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor.

Record Drawings. As an additional service if required, Consultant will prepare a record drawing showing significant changes reported by the Contractor or made to the design by Consultant. Record drawings are not guaranteed to be as-built, but will be based on information made available.

Task 8: Reimbursable Expenses (To be Reimbursed at Cost)

Direct reimbursable expenses such as express delivery services, fees, air travel, local mileage, and other direct expenses will be billed at cost.



Schedule:

Kimley-Horn will provide the tasks as expeditiously as practical with a goal of meeting the following schedule:

- Preliminary Design of City of Fulshear Downtown WRF Expansion: twelve (12) weeks from Notice to Proceed
- Preliminary Engineering Report and Final Design of City of Fulshear Downtown WRF Expansion: ten (10) weeks from approval of 60% design



Terms and Compensation:

Kimley-Horn will perform the above scope of services for the total lump sum fee below.

Design of City of Fulshear Downtown WRF Expansion to 1.1 MGD

Task 1 Final Engineering Report	\$20,000 (Lump Sum)
Task 2 Preliminary Design	\$188,700 (Lump Sum)
Task 3 Final Design	\$126,800 (Lump Sum)
Task 4 Geotechnical Engineering (City Approval Required)	\$9,700 (Lump Sum)
Task 5 Owner's Contingency (City Approval Required)	\$16,000 (Lump Sum)
Task 6 Bid Phase Services	\$15,000 (Hourly)
Task 7 Construction Phase Services	\$76,000 (Hourly)
Task 8 Reimbursable Expenses (To be Reimbursed at Cost)	\$4,000 (Estimated Lump Sum)

Total	\$456,200 (Estimated)
-------	------------------------------

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

Hourly tasks will be invoiced according to the rate schedule in effect at the time services are provided. Actual invoiced amounts for hourly tasks will be based on the effort expended.

Classification	Rate
Analyst	\$165 - \$250
Professional	\$235 - \$300
Senior Professional I	\$260 - \$360
Senior Professional II	\$345 - \$380
Senior Technical Support	\$160 - \$285
Support Staff	\$110 - \$150
Technical Support	\$125 - \$155

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



By: Kenneth Cargill, P.E.
Assistant Secretary



Raul Dominguez, P.E.
Project Manager