

PROFESSIONAL SERVICES AGREEMENT
for
Drainage Criteria Manual Revisions

The City of Lewisville, Texas (the "City"), hereby engages Kimley-Horn and Associates, Inc. (the "Consultant"), to perform professional services in connection with Drainage Criteria Manual Revisions (the "Project").

I. PROJECT. The Project is described as follows:

The Project is to update the City of Lewisville Drainage Criteria Manual. The current criteria were adopted in 1988. The purpose of the Project is to produce a new criteria consistent with the North Central Texas Council of Governments (NCTCOG) iSWM certification methods.

II. SCOPE OF SERVICES.

The Consultant shall perform the services outlined in the Scope of Services, attached hereto as Attachment "C".

III. COMPENSATION.

Compensation shall be as outlined in Attachment "D", not to exceed a total amount of \$103,250.

Invoices shall be submitted by cover letter from the Consultant monthly. The letter shall certify that the invoice properly represents work actually done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

IV. INSURANCE. The Consultant agrees to maintain insurance throughout the term of the contract, in accordance with Attachment "A". All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from the Consultant. Insurance certificate must be received and approved prior to commencement of work. The Consultant shall also review and forward certificates covering sub-consultants.

V. REUSE OF DOCUMENTS. All documents, including drawings and specifications prepared by the Consultant pursuant to this Agreement, are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the City or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to the Consultant from all claims, damages,

losses and expenses including attorneys fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon the City and the Consultant.

- VI. **OWNERSHIP OF DOCUMENTS.** Original documents, plans, designs, reports and survey notes developed in connection with services performed hereunder belong to, and remain the property of the City, in consideration of which it is mutually agreed that the City will use them solely in connection with the Project, save with the express consent of the Consultant. The Consultant shall retain reproducible copies or electronic files of such documents for at least five (5) years and shall furnish copies to the City for reimbursable costs, if so requested.
- VII. **THE CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT IS CAUSED BY OR RESULTS FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT,, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY AND DEFENSE PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONSULTANTS OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE DUTY TO DEFEND SHALL NOT APPLY IN THE CASE OF A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, ITS AGENTS OR EMPLOYEES, OR OTHER ENTITY (EXCLUDING THE CONSULTANT OR ITS AGENT, EMPLOYEE, CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL) OVER WHICH THE CITY EXERCISES CONTROL, IN WHICH INSTANCE THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED BY CONSULTANT IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

- VIII. TIME OF COMPLETION.** A project schedule, shown in Attachment “B” is hereby included in this Professional Services Agreement by reference. The Consultant agrees to perform the services in accordance with the schedule, to the extent over which the Consultant has control.
- IX. TERMINATION.** This Agreement may be terminated without cause at any time prior to completion of the Consultant’s services by the City, or by the Consultant with cause, upon seven days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Paragraphs V, VI and VII above. Upon notice of termination, the Consultant shall prepare and submit to City a final invoice within 15 days.
- X. INDEPENDENT CONTRACTOR.** Consultant shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the services. No term or provision herein or act of the City shall be construed as changing that status.
- XI. CONFIDENTIAL INFORMATION.** To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
- XII. GOVERNING LAW AND VENUE.** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
- XIII. ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
- XIV. PROTECTION OF RESIDENT WORKERS.** The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Consultant shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant’s employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the City’s expense.
- XV. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a).** The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a

comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Consultant shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Consultant and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Consultant if the City determines that (a) the Consultant or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Consultant fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Consultant or its Subcontractors fail to timely notify the City of an IRCA violation.

XVI. ADA COMPLIANCE. All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.

XVII. SUCCESSORS AND ASSIGNS. The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

XVIII. DISCLOSURE. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

XIX. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

XX. PERFORMANCE: In compliance with Texas Local Government Code 271.904, the Contractor agrees to perform the services outlined herein with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and to perform the services outlined herein as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, under the schedule as referenced in Section VIII of this Agreement.

XXI. CLOSURE. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

By: _____
Donna Barron, City Manager

Date: _____

Attest: _____
Julie Worster

KIMLEY-HORN AND ASSOCIATES, INC.

By:  _____

Date: 2/14/2020

Attest:  _____

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

Attachment B

I. PROJECT SCHEDULE

- | | |
|-----------------------------------|----------------|
| 1. Evaluation and Recommendations | March 2020 |
| 2. Criteria Development | July 2020 |
| 3. Meetings | July 2020 |
| 4. Council Workshop | July 2020 |
| 5. Standard Drainage Details | July 2020 |
| 6. iSWM Certification | September 2020 |

Attachment C

II. PROJECT DESCRIPTION

Consultant shall prepare revisions to the drainage criteria manual for the City of Lewisville. The Consultant will perform the following tasks.

III. TASK SUMMARY

A. Task One – Evaluation and Recommendations – This task includes the following:

1. Data Collection – City Design Criteria
 - 1.1 This scope assumes the City will provide the Consultant with all applicable current design criteria at the time of authorization of the project.
2. Evaluate the current design criteria provided by the City.
3. Prepare a matrix of current design criteria and potential recommendations to design criteria.
4. Meet once with City staff to discuss matrix and recommendations, as well as topics to cover in the meetings during Task Three.
5. Provide updated matrix with understanding of desired criteria and recommendations following outcome of the meeting with City staff.

B. Task Two – Criteria Development – The Consultant will prepare a draft of the revised drainage criteria for the City.

1. This scope anticipates the criteria will include the following sections:
 - 1.1 General Drainage Policy
 - 1.2 Determination of Design Discharge
 - 1.3 Downstream Assessment and Detention/iSWM elements
 - 1.4 Redevelopment
 - 1.5 Street, Gutter, and Inlet Drainage and Design
 - 1.6 Storm Sewer Design
 - 1.7 Detention Facility Design
 - 1.8 Channel Design
 - 1.9 Culvert and Bridge Design
 - 1.10 Floodplain Alteration Design
 - 1.11 CDC Requirements
 - 1.12 Water Quality and Post Construction Requirements
2. Submit a pdf copy of the draft criteria to City staff for review and approval.
3. Address all staff comments at one time have receipt of all of them
4. Submit a pdf copy of the final criteria to City staff.

C. Task Three – Meetings – The Consultant will prepare for and attend up to 4 meetings with City staff and stakeholders regarding the proposed criteria. The meetings could focus on:

1. Specific criteria sections such as
 - 1.1 Redevelopment
 - 1.2 Water Quality
 - 1.3 iSWM elements
2. Meetings with multiple departments to collect feedback and discussion
3. Meetings to present criteria to outside stakeholders and collect feedback
4. Prepare up to 5 exhibits and one Powerpoint presentation for use during stakeholder meetings.

D. Task Four – Council Workshop – The Consultant will prepare for an attend one Council Workshop regarding the proposed criteria. Consultant will prepare a Powerpoint presentation for use during the workshop.

E. Task Five – Standard Drainage Details

1. Provide up to 15 standard details of the City's choosing for incorporation into the City's Standard Construction Details. Draft details will be sent to City staff for review and comment and their comments will be addressed one time. Details may include:
 - 1.1 Storm Sewer Manholes
 - 1.2 Curb Inlets
 - 1.3 Grate Inlets
 - 1.4 Wye Inlets
 - 1.5 Channel Sections
 - 1.6 Headwalls
 - 1.7 Storm Sewer Pipe Bedding and Backfill
2. Meetings with Staff will be held concurrent with Task 3 meetings.
3. It is understood that the Consultant will develop standard details for the City to use and apply at their discretion. Ultimately, the Designer of Record for projects will be responsible for adapting the details to the specific situation and will bear sole responsibility for the details they use as part of their design. Consultant will have no continuing liability for the use or misuse of the details.

F. Task Six – iSWM Certification

1. Submit one copy of the revised criteria to iSWM Implementation Subcommittee.
2. Attend one meeting with City and iSWM Implementation Subcommittee regarding Certification.
3. Address one round of comments from iSWM Implementation Subcommittee.
4. This task anticipates a maximum of 36 hours of effort.

ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

1. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:
 - 1.1 Submittals, approvals, or permits from any review agency other than specified in the scope of services.
 - 1.2 Design criteria for issues other than drainage.
 - 1.3 Additional meetings not specifically identified in the scope.
 - 1.4 Additional copies of criteria not specifically identified in the scope.
 - 1.5 Preparation of applications and supporting documents for grants.
 - 1.6 Preparation of presentations for public meetings and/or Council sessions regarding the criteria not specifically included in Scope of Services.
 - 1.7 Any item not specifically noted in the Scope of Services.
- 2 Consultant cannot guarantee specific levels of iSWM certification will be obtained.

IV. DELIVERABLES

- A. At the completion of Task One, the Consultant shall produce a word document and a pdf copy of a criteria matrix.
- B. At the completion of Task Two, the Consultant shall produce a word document and a pdf copy of the drainage design criteria.
- C. At the completion of Task Five, the Consultant shall produce a Microstation File and a pdf copy of the requested Standard Drainage Details

Attachment D

V. PROJECT BUDGET SUMMARY

1. Evaluation and Recommendations	\$ 8,000.00
2. Criteria Development	\$41,000.00
3. Meetings	\$21,000.00
4. Council Workshop	\$ 3,500.00
5. Standard Drainage Details (\$1,550 each)	\$23,250.00
6. iSWM Certification	\$ 6,500.00

Total Basic Services (Lump Sum, Amount Not to Exceed)\$103,250.00