

**AGREEMENT BETWEEN CLIENT AND
KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this ____ day of July, 2024, by and between City of San Luis ("the Client," the "City," or the "City of San Luis, Arizona") and KIMLEY-HORN AND ASSOCIATES, INC. ("the Consultant" or Kimley-Horn).

NAME OF PROJECT: County 25th Extension to Avenue B ("the Project.")

The Client and the Consultant agree as follows:

- 1) Scope of Services and Additional Services. The Consultant will perform only the services specifically described in Exhibit A, which is made a part of this Agreement ("the Services"). If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

- 2) Client's Responsibilities. In addition to other responsibilities herein or imposed by law, the Client shall, as applicable to this Project:
 - a) Designate in writing a person to act as the Client's representative. Such person shall have complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, and all standards of development, design, or construction.
 - c) Provide the Consultant all available studies, plans, or other documents pertaining to the Project, such as survey, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d) Arrange for access to the Project site and other property as required for the Consultant to perform services.
 - e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary.
 - g) Obtain any independent accounting, legal, cost estimating and feasibility services as the Client may require.

- h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services, or any defect or nonconformance in any aspect of the Project.
- 3) Period of Services. This Agreement assumes conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work after receipt of a fully executed copy of this Agreement. The times for performance shall be extended as necessary for periods of delay or suspension resulting from circumstances the Consultant does not control. If such delay or suspension extends for more than six months for reasons beyond the Consultant's control, the rates of compensation provided for in this Agreement shall be renegotiated.
- 4) Compensation for Services.
- a) The Consultant's compensation shall be as stated herein, unless otherwise provided in Exhibit A. The Client shall pay the Consultant an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
 - b) If the Consultant's compensation is on an hourly basis, the parties may have estimated in Exhibit A costs and expenses for the various portions of the scope of Services. Services undertaken or expenses incurred by the Consultant exceeding any estimates shall be the liability of the Client.
- 5) Method of Payment.
- a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full.
 - b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c) If the Client objects to any charge on an invoice submitted by the Consultant, the Client shall so advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall be conclusively deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.

- d) If the Consultant initiates legal proceedings to collect payments for services, it may recover, in addition to all amounts due and payable, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings, including the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts.
- 6) Use of Documents. All documents, data, and programs prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.
- 7) Intellectual Property. Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates. If Consultant's services include providing Client with access to or a license for Consultant's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.

- 8) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, all opinions rendered as to costs, including but not limited to the costs of construction and materials, are solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 9) Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof or upon thirty days' written notice for the convenience of the terminating party. The Consultant will be paid for all services performed to the effective date of termination, all expenses subject to reimbursement, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 10) Standard of Care. The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

11.) Insurance

Prior to the beginning and throughout the duration of the work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth in this Section, then such coverage shall be amended to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in Section Eleven constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement, and which is applicable to a given loss, will be available to the client.

Without in any way limiting CONSULTANT's liability, CONSULTANT shall maintain, during the term of this contract, the following types and amounts of insurance:

<u>Coverage Type</u>	<u>Coverage Amounts -Minimum Limits</u>
<u>Commercial General Liability, including:</u>	\$1,000,000 Combined Single Limit, per occurrence and \$2,000,000 general aggregate
Premises and Operations	
Contractual Liability	
Personal-Injury Liability	
Independent Contractors	

Liability

Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits

<u>Comprehensive Automobile Liability</u> (including, owned, non-owned and hired autos)	\$1,000,000 Combined Single Limit, per Occurrence
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If CONSULTANT owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT's employees use personal motor vehicles in any way on this Project, then CONSULTANT shall obtain evidence of personal motor vehicle liability coverage for each such person.

<u>Workers' Compensation and Employer's Liability</u>	Statutory, \$1,000,000
<u>Professional Liability</u>	\$1,000,000 per claim and \$2,000,000 annual aggregate

Except for Workers Compensation and Professional Liability Insurance coverage, such insurance shall include additional endorsements naming CITY and its directors, officers, employees and agents as additional insured with respect to liabilities arising out of the performance of services under this Agreement. CONSULTANT shall provide CITY with certificates of insurance documenting that the CONSULTANT has obtained the above coverages. Such certificates shall include the required provisions and endorsements required by this Agreement. Such Certificates shall include a statement that insurance may not be canceled without 30 days' prior written notice to CITY by first class mail, postage prepaid, 10 days of notice in the event that cancellation is due to nonpayment of premium.

B. Certificates of Insurance and Endorsements.

CONSULTANT will file a certificate of insurance and endorsement naming CITY as an additional insured under General Liability and Auto Liability, if applicable. Such liability insurance maintained by CONSULTANT shall be primary and non-contributory, and any coverage maintained by CITY shall not be expected to contribute to any claims arising from the work under this Agreement. The CONSULTANT shall file these certificates with CITY within 10 days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by the insurance company or the insured during the term of this Agreement shall occur without 30 days' written notice to CITY prior to the effective date of such cancellation or change in coverage.

12.) 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.

13.) Construction Costs. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

14.) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

15.) Dispute Resolution. All claims arising out of this Agreement shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

16.) Construction Phase Services.

- a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
- b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
- c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for

job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

- 17.) Hazardous Substances. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

- 18.) Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. The Client shall not assign, sublet or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

- 19.) Confidentiality. The Client consents to the Consultant's use and dissemination of photographs of the Project and to its use of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

- 20.) Miscellaneous Provisions. This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be

void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.

CITY OF SAN LUIS

KIMLEY-HORN AND ASSOCIATES, INC.

SIGNED: _____

SIGNED: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Kay Maron Macuil, City Attorney

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client	City of San Luis			
Mailing Address for Invoices	P.O. BOX 1170, San Luis, AZ 85349			
Federal ID Number	86-0376164			
Contact for Billing Inquiries	Roula Encinas, Acting Finance Director			
Contact's Phone and e-mail	(928) 341-8553 rencinas@sanluisaz.gov			
Client is (check one) X	Owner <input checked="" type="checkbox"/>	Agent for Owner <input type="checkbox"/>	Unrelated to Owner <input type="checkbox"/>	<input type="checkbox"/>

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address	City of San Luis			
County in which Property is Located	Yuma County			
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name	City of San Luis			
Owner(s) Mailing Address	P.O. Box 1170, San Luis, AZ 85349			
Owner's Phone No.	928-341-8520			
Owner of Which Parcel #?	N/A			

Project Funding Identification – List Funding Sources for the Project

City of San Luis

Attach additional sheets if there are more than 4 parcels or more than 4 owners