



**TOWN OF PARADISE VALLEY**

**ENGINEERING SERVICES CONTRACT**

MOCKINGBIRD LANE DESIGN CONCEPT REPORT FOR DRAINAGE

(56<sup>TH</sup> STREET TO INVERGORDON ROAD)

PROJECT NO. 2021-03

This Engineering Services Contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the TOWN OF PARADISE VALLEY, an Arizona municipal corporation, hereinafter referred to as "**Town**," and Kimley-Horn and Associates, Inc., a(n) North Carolina corporation, authorized to do business in Arizona, hereinafter referred to as "**Engineer**," whose principal place of business is located at: 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601, each individually a "Party," together "Parties."

**RECITALS**

- A. The Town desires to contract for engineering services with Engineer for a design concept report for drainage improvements along Mockingbird Lane from 56<sup>th</sup> Street to Invergordon Road; and
- B. The Engineer is qualified to render the engineering services desired by the Town.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, the Town and Engineer agree as follows:

**1.0 Description, Acceptance, Documentation**

**1.1 Scope of Services**

The Engineer is assigned the tasks specified in the attached **Exhibit A, Scope of Work**, which is incorporated by reference and made a part of this Contract. If any provision of the Engineer's proposal, including but not limited to any limitation of liability or disclaimer of warranty language, conflicts or is in any way inconsistent with any provision of this Contract, this Contract will control.

The Engineer must obtain all necessary information to complete the tasks specified in **Exhibit A. Scope of Work**.

Performance Warranty; Standard of Care. The Engineer warrants that all work under this Contract will conform to the requirements of this Contract and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at

the same time and in the same locality.

## **1.2 Acceptance and Documentation**

- A. Each task will be reviewed and approved by the Town's Project Manager to determine acceptable completion.
- B. The Town will cooperate to provide all available necessary information to the Engineer for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, tracings, plans, specifications, maps, sketches, charts, computations, data compilations, studies, and reports, which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Project Manager before final payment is made to the Engineer. The Town may use such documents for other purposes without further compensation to the Engineer; however, any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Town's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation of the documents by Engineer for other purposes than contemplated by this Contract will entitle Engineer to further compensation as agreed upon between the Parties.

## **2.0 Fees and Payments**

### **2.1 Fee Schedule**

The amount paid to the Engineer will not exceed **\$78,825.00**. The Engineer will be compensated in accordance with the compensation schedule, including hourly rates, shown in **Exhibit A**.

### **2.2 Payment Approval**

The time spent for each task must be recorded and submitted to the Project Manager. The Engineer must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period and for three years after final payment under this Contract.

Monthly payments will be made to the Engineer on the basis of a progress report submitted by the Engineer for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Project Manager to determine acceptable completion.

The Project Manager or designee will process a partial payment request. However, not more than 90% of the total Contract price will be paid before Town's final acceptance of all completed work.

The Project Manager reserves the exclusive right to determine the amount of work performed and payment due the Engineer on a monthly basis. The Project Manager or designee will notify Engineer if the determination of completed work is different from Engineer's progress report.

All charges must be approved by the Project Manager before payment.

#### **2.2.1 Payment Terms**

The Town of Paradise Valley's payment terms for engineering work under State of Arizona A.R.S. Title 34 requirements is 14 days after invoice submittal by the Engineer and the work is certified and approved by the Town's Project Manager.

The Town has 7 days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the Town's Project Manager. Until such time as such issues are resolved and certified by the Town's Project Manager, the 14-day payment term will not have commenced.

## **2.3 Price Adjustment**

No price increases are permitted.

## **3.0 General Terms and Conditions**

### **3.1 Project Manager**

**The Project Manager for the Town will be Jason Harris.** The Project Manager will oversee the performance of this Contract, assist the Engineer in accessing the organization, audit billings, and approve payments. The Engineer must submit all reports and special requests through the Project Manager. The Town Manager has the authority to authorize Change Orders up to the limits permitted by the Town Code and Town's procurement policy.

### **3.2 Term of Contract**

This Contract shall be effective as of the date first set forth above and shall remain in full force and effect through June 30, 2021, unless terminated as otherwise provided in this Contract.

If any tasks remain incomplete after the completion time period, the Project Manager must give written approval to continue the Contract.

### **3.3 Termination or Cancellation of Contract**

The Town may terminate this Contract or abandon any portion of the project that has not been performed by the Engineer.

***Termination for Convenience:*** This Contract is for the convenience of the Town, and as such, may be terminated without cause after receipt by Engineer of written notice by the Town. If terminated, the Engineer must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date of the termination, the Engineer will receive a fee for the percentage of services actually completed. This fee will be in the amount mutually agreed upon by the Engineer and the Town, based on the Scope of Work. If there is no mutual agreement, the Project Manager will determine the percentage of completion of each task detailed in the Scope of Work and the Engineer's compensation will be based on this determination. The Town will make this final payment within 60 days after the Engineer has delivered the last of the partially completed items. The Engineer will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the Engineer's suppliers or Subcontractors, which the Engineer could reasonably have avoided.

***Cancellation for Cause:*** The Town may also cancel this Contract or any part of it for cause with seven (7) days' notice if the Engineer defaults, or if the Engineer fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined

by the Project Manager and failure to provide the Town, upon request, with adequate assurances of future performance are all causes allowing the Town to terminate this Contract for cause. Upon cancellation for cause, the Town will not be liable to the Engineer for any amount, and the Engineer will be liable to the Town for all damages sustained by the default which caused the cancellation.

The Engineer may also cancel this Contract for cause with seven (7) days' notice if the Town defaults, or if the Town fails to comply with any of the terms and conditions of the Contract.

If the Engineer is in violation of any Federal, State, County or Town law, regulation or ordinance, the Town may terminate this Contract immediately after giving notice to the Engineer:

If the Town cancels this Contract or any part of the Contract services, the Town will notify the Engineer in writing, and upon receiving notice, the Engineer must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Engineer must deliver to the Town all documents, including but not limited to drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the Town. Use of incomplete data will be the Town's sole responsibility.

If the Engineer fails to fulfill in a timely and proper manner its obligations, or if the Engineer violates any of the terms of this Contract, the Town may withhold any payments to the Engineer for the purpose of setoff until the exact amount of damages due the Town from the Engineer is determined by a court of competent jurisdiction.

If the Town improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

### **3.4 Funds Appropriation**

If the Town Council does not appropriate funds to continue this Contract, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees to give written notice of termination to the Engineer at least 30 days before the end of its current fiscal period and will pay to the Engineer all approved charges incurred through the end of that period.

### **3.5 Audit**

The Town may audit all of the Engineer's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

The Engineer's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the Town's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Engineer or any of his payees. The Town's authorized representative must be afforded access, at reasonable times and places, to all of the Engineer's records and personnel throughout the term of this Contract and for a period of 3 years after the final payment.

The Engineer must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written Contract

between the Engineer and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Engineer to the Town in excess of 1% of the total Contract billings, the actual cost of the Town's audit must be reimbursed to the Town by the Engineer. Any adjustments and payments made as a result of the audit or inspection of the Engineer's invoices and records will be made within a period of time not to exceed 90 days from presentation of the Town's findings to the Engineer.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

### **3.6 Ownership of Project Documents**

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the Town and must be delivered to the Project Manager before final payment is made to the Engineer.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the Town concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. In that event, the Town will release the Engineer from any liability for the preparation of final construction plans by others.

### **3.7 Completeness and Accuracy**

The Engineer will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Engineer and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Engineer. Additional construction added to the project will not be the responsibility of the Engineer unless the need for additional construction was created by any error, omission, or negligent act of the Engineer. The Town's acceptance of the Engineer's work will not relieve the Engineer of any of its responsibilities.

### **3.8 Attorneys' Fees**

Should either Party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing party will be entitled to receive from the other party all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees, as determined by the court sitting without a jury. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

### **3.9 Successors and Assigns**

This Contract will be binding upon the Engineer, its successors and assigns, including any individual, or other entity with or into which the Engineer may merge, consolidate, or be liquidated, or any individual or other entity to which the Engineer may sell or assign its assets.

### **3.10 Assignment**

Services covered by this Contract must not be assigned or sublet in whole or in part without first obtaining the written consent of the Project Manager.

### **3.11 Subcontractors**

The Engineer may engage any additional Subcontractors as required for the timely completion of this Contract. If the Engineer subcontracts any of the work required by the Contract, the Engineer remains solely responsible for fulfillment of all the terms of this Contract.

The Engineer will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the Town. The Engineer will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the Town with each progress payment. In addition, any reduction of retention, if any, by the Town will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Engineer will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Engineer. No Contract between the Engineer and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Engineer fails to make payments in accordance with these provisions, the Town may take any of one or more of the following actions and the Engineer agrees that the Town may take these actions:

- A. To hold the Engineer in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;
- C. Reject all future offers to perform work for the Town from the Engineer for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

### **3.12 Alterations or Additions to Scope of Services**

The total scope of the engineering services to be performed is stated in this Contract. Any services requested outside the Project Scope of Work are additional services. The Engineer will not perform these additional services without a written Change Order approved by the Town. It is understood and agreed by the parties that if the Engineer performs additional services without a written Change Order, the Engineer will not receive any additional compensation.

### **3.13 Modifications**

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all parties to this Contract.

### **3.14 Conflict of Interest**

The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Engineer any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Town will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission,

percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

Under A.R.S. § 38-511, as amended, the Town may cancel any contract it is a party to within three years after its execution and without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the Town or its departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event the Town elects to exercise its rights under A.R.S. § 38-511, as amended, the Town agrees to give notice to Engineer.

The Engineer will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the Town's publication of documents for bidding.

**3.15 Force Majeure**

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

**3.16 Taxes**

The fee listed in this Contract includes all taxes applicable to the services authorized. The Town will have no obligation to pay additional amounts for taxes of any type.

**3.17 Advertising**

No advertising or publicity concerning the Town's use of the Engineer's services will be undertaken without first obtaining written approval of the Town Manager.

**3.18 Counterparts**

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

**3.19 Entire Agreement**

This Contract contains the entire understanding of the parties and no representations, or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

**3.20 Arizona Law; Venue**

This Contract must be governed and interpreted according to the laws of the State of Arizona and any legal proceeding, including but not limited to lawsuits, pertaining to this Contract may be brought only in courts in Maricopa County, Arizona.

**3.21 Equal Employment Opportunity**

During the performance of this Contract, the Engineer will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

**No Preferential Treatment or Discrimination:**

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the Town will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

### **3.22 Compliance with Federal and State Laws**

The Engineer accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Engineer accepts the applicability to it of A.R.S. §34-301 and 34-302. The Engineer will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

**Under the provisions of A.R.S. §41-4401, the Engineer warrants to the Town that the Engineer and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Engineer and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).**

A breach of this warranty by the Engineer or any of its subcontractors will be considered a material breach of this Contract and may subject the Engineer or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The Town retains the legal right to inspect the papers of any employee of the Engineer or any subcontractor who works on this Contract to ensure that the Engineer or any subcontractor is complying with the warranty given above.

The Town may conduct random verification of the employment records of the Engineer and any of its subcontractors to ensure compliance with this warranty. The Engineer agrees to indemnify, defend and hold the Town harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The Town will not consider the Engineer or any of its subcontractors in material breach of this Contract if the Engineer and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Engineer enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The Engineer will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Engineer's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the Town.

### **3.23 Compliance with Americans with Disabilities Act**

Engineer acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Engineer will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Engineer agrees not to discriminate against

disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Engineer, its employees, agents or assigns will constitute a material breach of this Contract.

### **3.24 Boycott of Israel Prohibited**

To the extent Title 35 is applicable to the Contract, the Contractor warrants that it is not and will not participate in prohibited activity in contravention of A.R.S. § 35-393.01.

### **3.25 Evaluation of Engineer's Performance**

The Engineer will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (line work, lettering, etc.)
- Working relationship with Town staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

An evaluation may be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

### **3.26 Notices**

All notices or demands required by this Contract must be given to the other party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other person(s) or address a Party may substitute by giving written notice as required by this section.

#### **On behalf of the Engineer:**

Kimley-Horn and Associates, Inc.  
Chris Woolery, P.E.  
7740 North 16<sup>th</sup> Street, Suite 300  
Phoenix, AZ 85020  
Ph: (602) 944-5500

#### **On behalf of the Town:**

Town of Paradise Valley  
Engineering / Public Works Department  
6401 East Lincoln Road  
Paradise Valley, AZ 85253  
ATTN: Paul Mood, Town Engineer  
Ph: (480)348-3573

**With required copy to:**

Town Manager  
Town of Paradise Valley  
6401 East Lincoln Drive  
Paradise Valley, Arizona 85253

Town Attorney  
Town of Paradise Valley  
6401 East Lincoln Drive  
Paradise Valley, AZ 85253

If hand delivered, Notices are received on the date delivered. If delivered by certified or registered mail, Notices are received on the date indicated on the receipt. Notice by facsimile or electronic mail is not adequate notice.

**3.27 Independent Contractor**

The services the Engineer provides to the Town are that of an Independent Contractor, not an employee, or agent of the Town. The Town will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

Town will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

**3.28 Ineligible Bidder**

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

**3.29 Indemnification**

To the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the Town and each council member, officer, employee, volunteer or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Engineer, its officers, employees, agents, or any tier of subcontractor in connection with Engineer's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

This indemnity and hold harmless provision applies even if a Claim is in part due to the Indemnified Party's negligence or breach of a responsibility under this Contract, but in that event, Engineer will be liable only to the extent the Claim results from the negligence, breach of a responsibility, or other fault of Engineer or of any person or entity for whom Engineer is responsible.

Engineer is not required to indemnify any Indemnified Parties for, from, or against any Claim resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

**3.30 Provisions Required by Law**

Each and every provision of law and any clause required by law to be in this Contract will be

read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Contract will promptly be physically amended to make such insertion or correction.

#### 4.0 Insurance

A current Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

**Additionally Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.**

#### 4.1 Insurance Representations and Requirements

- A. General: The Engineer agrees to comply with all applicable Town ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Engineer, the Engineer must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to Town. Failure to maintain insurance as required may result in cancellation of this Contract at the Town's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, Town does not represent that coverage and limits will be adequate to protect the Engineer. The Town reserves the right to review any and all of the insurance policies and endorsements cited in this Contract, but it has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Engineer from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Engineer must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by the Town of Paradise Valley, unless specified otherwise in this Contract.

- D. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract, and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- E. Policy Deductibles and or Self Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The Engineer is solely responsible for any deductible or self-insured retention amount and the Town, at its option, may require the Engineer to secure payment of the

deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

- F. Use of Subcontractors: If any work is subcontracted in any way, the Engineer must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the Town requires of the Engineer in this Contract. The Engineer is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Engineer must furnish the Project Manager with Certificate(s) of Insurance, or formal endorsements issued by the Engineer's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the Town will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Engineer must forward renewal Certificates to the Town within 10 days after the renewal date containing all the necessary insurance provisions.

Certificates shall specifically cite the following provisions endorsed to the Engineer's policy:

1. The Town of Paradise Valley, its elected officials, agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Engineer's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against the Town, its elected officials, agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Engineer under this Contract.
4. If the Engineer receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Engineer's responsibility to provide prompt notice of same to the Town, unless such coverage is immediately replaced with similar policies.

#### 4.2 Required Coverage

- A. Commercial General Liability: The Engineer must maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$4,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the

underlying insurance.

- B. Professional Liability: The Engineer must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose acts, mistakes, errors and omissions the Engineer is legally liable, with a liability limit of \$2,000,000 each claim and \$4,000,000 annual aggregate. Professional Liability coverage specifically for Architects, Engineers and Surveyors shall contain contractual liability insurance covering the contractual obligations of this Contract. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Engineer must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.
- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of the Contract, the Engineer must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Engineer's owned, hired, and non-owned vehicles assigned to or used in the performance of the Engineer's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- D. Workers Compensation Insurance: The Engineer must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Engineer's employees engaged in the performance of work or services under this Contract, and must also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

## **5.0 Software Licenses**

If the Engineer provides to the Town any software licenses, the following provisions apply:

### **5.1 Source Code Availability**

- A. The Engineer must furnish the Town, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
  - 1. The Engineer becomes insolvent; or
  - 2. The Engineer ceases to conduct business; or
  - 3. The Engineer makes a general assignment for the benefit of creditors;  
or
  - 4. A petition is filed in Bankruptcy by or against the Engineer.
- B. Use of the Source Code must not be subject to any greater restrictions than use of the Software itself.
- C. The Town must have the right to modify the Source Code in any manner the Town believes is appropriate, provided that the Source Code as modified must remain subject to the restrictions of Section 5.1(B).

### **5.2 Proprietary Protection**

- A. The Town agrees that if the Engineer informs the Town that the Software is confidential information or is a trade secret property of the Engineer; the Software

is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.

- B. The Engineer must not use or disclose any knowledge, data or proprietary information relating to the Town obtained in any manner.
- C. As permitted by Arizona Law, the Parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of seven (7) years after termination of this Contract and of all licenses granted by this Contract, to hold each other's confidential information in confidence. The Parties agree, unless required by government regulations or order of Court, not to make each other's confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Engineer's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Engineer must reimburse the Town for the full cost of the Town's refusal to release the information, including the costs of litigation, the Town's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Town and Engineer agree to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

### **5.3 Non-Infringement**

The Engineer warrants that the Software provided to the Town does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the Town asserting or involving such an allegation, the Engineer will defend, at the Engineer's sole expense, and will indemnify and hold harmless the Town and its elected officials, agents, representatives, officers, directors, officials and employees against any loss, cost, expense (including attorney fees) or liability or damages arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Engineer's opinion the Software is likely to become the subject of a claim of infringement, the Engineer will, at its option and its sole expense:

- 1. Procure for the Town the right to continue using the Software; or
- 2. Replace or modify the Software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or
- 3. If neither 1 nor 2, above, is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

### **5.4 Third Party License**

The Engineer must sublicense to the Town any and all third-party Software required in this Contract. The Town reserves the right to accept or reject third party license terms. If the Town rejects the terms of a third-party license, it will be the Engineer's responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to the Town. The Town's acceptance of the third-party license terms will not be unreasonably withheld.

## **6.0 Severability and Authority**

### **6.1 Severability**

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

## **6.2 Authority**

Each party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

## **7.0 Request For Taxpayer I.D. Number & Certification I.R.S. W-9 Form**

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at [www.irs.gov](http://www.irs.gov) under its forms section.

(Signatures on Following Page)

The Parties enter into this Contract effective as of the date shown above.

Town of Paradise Valley,  
an Arizona municipal corporation

\_\_\_\_\_  
By: Jill Keimach  
Its: Town Manager

ATTEST:

\_\_\_\_\_  
Duncan, Miller, Town Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew Miller, Town Attorney

KIMLEY-HORN AND ASSOCIATES,  
INC.



\_\_\_\_\_  
By: Dave Leistiko, PE  
Its: Vice President

KHAMT  
52

**EXHIBIT A**  
**PROJECT SCOPE OF**  
**WORK**

(See Attached "Scope of Services Prepared September 30, 2019" and Fee Proposal)



## **TOWN OF PARADISE VALLEY**

### **Mockingbird Lane Design Concept Report**

#### SCOPE OF SERVICES

Prepared September 30, 2019

Mockingbird Lane from 56<sup>th</sup> Street to Invergordon Road receives runoff from Mummy Mountain to the south, but also potentially from Cherokee Wash breakouts upstream. Runoff is conveyed towards Invergordon Road, with splits occurring at several points along Mockingbird Lane into the residential areas to the north and northeast. These splits create flooding conditions in several locations as runoff eventually makes its way to Indian Bend Wash. This design concept report (DCR) will investigate the potential of flood mitigation by constructing additional storm drain in the Mockingbird Lane right-of-way. It is anticipated that any new storm drain will connect to the existing system in Invergordon Road, outfalling to Indian Bend Wash.

It is anticipated that this DCR will support the Town's application to the Flood Control District of Maricopa County's CIP Prioritization Procedure for cost share considerations through an intergovernmental agreement. Each task is specifically described below:

#### **Task 1. Data Collection**

- a. Kimley-Horn will collect storm drain design plans, as-builts, and design reports as available for the existing systems in Mockingbird Lane and Invergordon Road. These data will be used to evaluate existing capacity and overall system performance. It is assumed sufficient data is available to evaluate the capacity of the existing systems, and that additional field survey will not be required.
- b. Kimley-Horn will collect existing flood complaints from the Town for the area generally bounded by 56<sup>th</sup> Street, Mockingbird Lane, Invergordon Road, and Indian Bend Wash. All collected data will be catalogued and included in Flood Complaints Database and accompanying map.
- c. Kimley-Horn will collect the necessary hydrologic and hydraulic data necessary to complete the DCR from the Town and/or Flood Control District of Maricopa County (FCDMC). Data sources are anticipated to include study results from the Lower Indian Bend Wash and Middle Indian Bend Wash Area Drainage Master Studies. In addition, Kimley-Horn is conducting separate analyses of flows along Mockingbird Lane under separate contract. These data will also be used in this effort. It is assumed that no new substantial hydrologic or hydraulic analyses will be required.

**Task 2. Existing Conditions Analyses**

- a. Kimley-Horn will use existing rainfall runoff data to evaluate the street capacity of Mockingbird Lane in the current configuration. Kimley-Horn will approximate the existing design capacity based on this analysis.
- b. Kimley-Horn will evaluate the current additional capacity of the storm drain system in Invergordon Road. It is assumed that any new storm drain in Mockingbird lane will tie into the Invergordon storm drain system.

**Task 3. – Proposed Conditions Analyses**

- a. Kimley-Horn will develop conceptual design of a storm drain system to relieve flooding conditions along Mockingbird Lane. The system will be designed per the Town of Paradise Valley's Storm Drainage Design Manual, with the goal of obtaining the highest level of flood protection with the project constraints.
- b. The cost of final design, construction, and maintenance will be estimated for the conceptual design. This data will be used to develop a cost/benefit analysis, and to present to Council as part of the decision process for updating the CIP budget or submitting a CIP prioritization application to FCDMC.
- c. As part of the conceptual design and costing effort, a utility and right-of-way investigation will be conducted to identify fatal flaws or constraint that would impact design and construction cost. This investigation will gather existing data available from the Town or Blue Stake. Now field survey is anticipated as part of this task.
- d. Kimley-Horn will complete a cost/benefit analysis to support Council presentation by staff. The analyses will use FEMA's Benefit Cost Toolkit and Hazus software. Kimley-Horn will assist Town staff in preparing presentation material summarizing the results of these analyses.

**Task 4. – Public Meeting Support**

- a. Kimley-Horn will assist the Town in conducting up to two (2) public meetings to present the results of the conceptual design and report. An initial public meeting may present conceptual design ideas for public input. A final public meeting would present the final conceptual design and next steps in the process. Kimley-Horn will prepare public meeting materials including display boards, meeting invitation language, PowerPoint presentation, and any required handouts. Kimley-Horn can also present technical data at each meeting if desired by the Town. It is assumed that the Town will secure facilities and distribute invitations to Town residents.

**Task 5. – Design Concept Report/Plan**

- a. Kimley-Horn will develop conceptual level plan sheets for the storm drain design. Plan sheets will show plan and profile considering known right-of-way and utility constraints. Notes, details, and specifications will not be included.
- b. Kimley-Horn will compile all collected data, analyses, and design into a design concept report for submittal and approval to the Town. Kimley-Horn will submit a draft report and final report that addresses all Town comments. It is assumed that all submittal will be electronic, and that one round of comments will be addressed.

**Task 6. – FCDMC CIP Application Support**

- a. Kimley-Horn will assist the Town with preparing and submitting the project to FCDMC for inclusion in the CIP Prioritization Procedure. Project must be submitted to FCDMC between the second Friday in May and the second Friday in July 2020. The submittal will include the following:

- i. Letter of Interest per the FCDMC template
- ii. Project description
- iii. Funding commitment from the Town
- iv. Master plan and DCR data
- v. Summary of the flooding threat
- vi. Level of protection of the project
- vii. Area protected
- viii. Any ancillary benefit
- ix. Level of partner participation
- x. Any operation and maintenance costs that would be incurred by FCDMC

These data will be used to score the project by FCDMC to determine its acceptance into the program.

**Task 7. – Project Management**

- a. Project management includes contract management, invoicing, internal meetings with staff, and Quality Control/Quality Assurance.

**Task 8. - Meetings**

- a. Kimley-Horn will attend three (3) progress meetings with the Town as a part of this project to discuss the results of the analyses.

## **KIMLEY-HORN ALLOWANCES**

### **Task 9. - Expenses (Allowance)**

- a. This allowance is for expenses anticipated for this project including: telecommunications, in-house reproduction, postage, deliveries, supplies, and project-related computer time.

## **OTHER EXCLUSIONS**

- a. Geotechnical and environmental services are not included
- b. Field survey or topographic mapping services are not included

Town of Paradise Valley  
Mockingbird Lane Design Concept Report  
Fee Proposal

TASK DESCRIPTION	Project Manager	Senior Professional	Professional	Analyst	Designer	Admin		Total
						\$	\$	
<b>1. DATA COLLECTION</b>								
Storm Drain As-Builts, Design Report	-	-	-	4	20	-	-	24
Flood Complaints				2	8			
ADMS Data				2	8			
					4			
<b>2. EXISTING CONDITIONS ANALYSES</b>								
Mockingbird Street Capacity	-	-	12	56	-	-	-	68
Invergordon Storm Drain Capacity			8	32				
			4	24				
<b>3. PROPOSED CONDITIONS ANALYSES</b>								
Storm Drain Modeling	12	-	44	152	20	-	-	228
Cost Estimate	4		12	60				
Utility/Right-of-Way Investigation			4	12				
Cost/Benefit Analyses			4		8			
	8		24	80				
<b>4. PUBLIC MEETING SUPPORT</b>								
Public Meeting Support	12	-	-	12	24	-	-	48
				12	24			
<b>5. DESIGN CONCEPT REPORT</b>								
Conceptual Plan	6	-	4	68	40	-	-	118
Design Concept Report	2			24	40			
	4		4	44				
<b>6. FGDMC CIP APPLICATION SUPPORT</b>								
CIP Prioritization Application	4	-	4	28	-	-	-	36
			4					
<b>7. PROJECT MANAGEMENT</b>								
Project Management	12	-	-	-	-	-	-	12
<b>8. MEETINGS</b>								
Progress Meetings	6	-	6	9	-	-	-	21
				9				
	52	-	70	329	104	-	-	555
<b>SUBTOTAL DIRECT LABOR</b>								
<b>KIMLEY-HORN ALLOWANCES</b>								
<b>9. EXPENSES</b>								
General Expenses								
<b>CONTRACT TOTAL</b>								

**ACORD™****CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

1/15/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Greyling Ins. Brokerage/EPIC 3780 Mansell Road, Suite 370 Alpharetta, GA 30022	<b>CONTACT NAME:</b> Jerry Noyola <b>PHONE (A/C, No, Ext):</b> 770-552-4225 <b>FAX (A/C, No):</b> 866-550-4082 <b>E-MAIL ADDRESS:</b> jerry.noyola@greyling.com																					
<b>INSURED</b> Kimley-Horn and Associates, Inc. 421 Fayetteville Street, Suite 600 Raleigh, NC 27601	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : National Union Fire Ins. Co.</td><td>19445</td></tr> <tr> <td colspan="2">INSURER B : Aspen American Insurance Company</td><td>43460</td></tr> <tr> <td colspan="2">INSURER C : New Hampshire Ins. Co.</td><td>23841</td></tr> <tr> <td colspan="2">INSURER D : Lloyds of London</td><td>085202</td></tr> <tr> <td colspan="2">INSURER E :</td><td></td></tr> <tr> <td colspan="2">INSURER F :</td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : National Union Fire Ins. Co.		19445	INSURER B : Aspen American Insurance Company		43460	INSURER C : New Hampshire Ins. Co.		23841	INSURER D : Lloyds of London		085202	INSURER E :			INSURER F :		
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INSURER F :																						

**COVERAGES****CERTIFICATE NUMBER: 19-20****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			5268169	04/01/2019	04/01/2020	EACH OCCURRENCE \$1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000
	<input checked="" type="checkbox"/> Contractual Liab.						MED EXP (Any one person) \$25,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						GENERAL AGGREGATE \$2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$2,000,000
							\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			4489663	04/01/2019	04/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			CX005FT19	04/01/2019	04/01/2020	EACH OCCURRENCE \$5,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$5,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$0						\$
C A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			015893685 (AOS)	04/01/2019	04/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-IFR
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A	015893686 (CA)	04/01/2019	04/01/2020	E.L. EACH ACCIDENT \$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$1,000,000
							E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liab			B0146LDUSA1904949	04/01/2019	04/01/2020	Per Claim \$4,000,000 Aggregate \$4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Contract #CON-20-108-ENG - Mockingbird Lane Design Concept Report for Drainage (56th Street to Invergordon Road) - Project #2021-03. The Town of Paradise Valley, its elected officials, agents, representatives, officers, directors, officials & employees are named as Additional Insureds with respects to General & Automobile Liability where required by written contract. The above referenced liability policies with the exception of workers compensation and professional liability are primary & non (See Attached Descriptions)

**CERTIFICATE HOLDER****CANCELLATION**

<b>Town of Paradise Valley</b> 6401 East Lincoln Road Paradise Valley, AZ 85253	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## DESCRIPTIONS (Continued from Page 1)

contributory where required by written contract. Waiver of Subrogation is applicable where required by written contract & allowed by law. Umbrella Follows Form with respects to General, Automobile & Employers Liability Policies.