



May 22, 2018

Ms. Sue Polka
Director of Public Works/City Engineer
City of Arden Hills
1245 West Highway 96
Arden Hills, Minnesota 55112

Re: Proposal for Professional Services
TCAAP Related Improvements

Dear Ms. Polka:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Arden Hills ("City" or "Client") for services related to the redevelopment of the TCAAP site.

Project Understanding

The City has been working with Ramsey County on the redevelopment of the 427-acre TCAAP site. Ramsey County is leading the design efforts for much of the public roadway and utility infrastructure needed to serve the site. The City is responsible for some tasks including the following:

- Preparation of an Arden Hills Public Works Design Manual as required by the TCAAP Redevelopment Code (TRC)
- Preparation of a Joint Powers Agreement between Arden Hills, Mounds View, and Metropolitan Council Environmental Services (MCES) to address ownership, maintenance and billing for the trunk sanitary sewer system to serve the TCAAP site

The City has requested that Kimley-Horn provide engineering services for these tasks based on our past and current work on the site and our understanding of the issues that must be addressed.

Scope of Services

Kimley-Horn will provide the following services:

Task 1 – City of Arden Hills Public Works Design Manual

Kimley-Horn will prepare a Public Works Design Manual detailing requirements for public street and utility construction within TCAAP and elsewhere within the City. We have assumed that the manual will include a design guideline narrative and standard detail plates along with references to MnDOT standard specifications for roadway construction and CEAM standard specifications for utility construction. We anticipate reviewing and incorporating appropriate standard detail plates prepared for past projects in Arden Hills and standard details published by local municipalities in conjunction with input from Arden Hills staff. We have assumed the Design Manual will be comparable to the City of Roseville's Design Manual relative to the level of detail and content incorporated. Our services for this task will include up to 3 meetings with City staff to review and discuss the content of the document.

Task 2 – Sanitary Sewer Joint Powers Agreement (JPA)

The Preliminary Design Report for the TCAAP public infrastructure identified the need for a JPA between Arden Hills, Mounds View, and Metropolitan Council Environmental Services to detail ownership, maintenance, and billing for the trunk sanitary sewer system serving for the TCAAP site. Kimley-Horn will prepare a draft of the JPA for review by the 3 agencies. We will gather comments and prepare a final version of the JPA for approval and execution. Our services for this task will include up to 3 meetings to discuss the content of the JPA with the agencies.

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants or representatives. The City shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Existing City standards, specifications, and detail plates
- Existing sanitary sewer system information including as-built drawings

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting an agreed upon schedule. A preliminary schedule is outlined below:

Kickoff Meeting	Week of June 11, 2018
Draft Sanitary Sewer JPA Complete	July 2018
Draft Public Works Design Manual Complete	July 2018
Final Sanitary Sewer JPA Complete	September 2018
Final Public Works Design Manual Complete	September 2018

Fees and Expenses

Kimley-Horn will perform the services detailed above on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our current standard hourly rate schedule. A summary of our estimated costs to complete the scope of services is shown below. A spreadsheet providing additional detail of our estimated costs is attached to this letter for your information.

Task 1 Public Works Design Manual	\$ 16,330
Task 2 Sanitary Sewer JPA	\$ 9,440
Subtotal	\$ 25,770
Reimbursable Expenses	\$ 1,400
Total Estimated Labor and Expenses	\$ 27,170

Kimley-Horn will not exceed the estimated amount shown without authorization from the City. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Arden Hills.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

Please email all invoices to _____

Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please execute this Agreement in the space provided below, and return a copy to us. We will commence services after we have received a fully-executed agreement. Fees stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Gregory S. Brown, P.E.
Project Manager



Jon B. Horn, P.E.
Sr. Vice President

Attachment: Detailed Fee Estimate

Agreed to this _____ day of _____, 2018

CITY OF ARDEN HILLS

Signature

Name

Title

**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. 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 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.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria 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 surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its 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 from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (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 noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (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 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.
- (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 an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, 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 from the Client.

(5) **Use of Documents.** All documents and data 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 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.

(6) **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, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made 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 its opinions of cost. If 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.

(7) **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 shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **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.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **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.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or 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.

(12) **Certifications.** The Consultant shall not be required to execute certifications 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.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client 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.

(14) **Hazardous Substances and Conditions.** 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 will 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.

(15) **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, 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 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.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign 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.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant 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.

(18) 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. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Estimate of Cost for Professional Services

City of Arden Hills TCAAP Related Services May 22, 2018									
Task	Estimated Labor Effort							Estimated Cost	
	Senior Project Manager	Project Engineer	Senior Designer	Graduate Engineer	Clerical	Sub-Consultant	Total Hours	Total KHA Labor Cost	Task Subtotal
Task 1: City of Arden Hills Public Works Design Manual									
1.1 Design Manual Document	24	24			8		56	\$8,800	
1.2 Standard Plates	4	12		40	2		58	\$7,530	
Task 1 Subtotals	28	36		40	10		114	\$16,330	
Task 1 Subtotal Fees									\$16,330
Estimated Expenses									\$900
Total Task 1 Fees and Expenses									\$17,230
Task 2: Sanitary Sewer Joint Powers Agreement									
2.1 JPA Agreement Preparation, Coordination and Assistance	36	16			4		56	\$9,440	
Task 2 Subtotals	36	16			4		56	\$9,440	
Task 2 Subtotal Fees									\$9,440
Estimated Expenses									\$500
Total Task 2 Fees and Expenses									\$9,940
Total Estimated Fees and Expenses (Task 1+2)									\$27,170.00