

TOWN OF ADDISON, TEXAS

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT BETWEEN THE TOWN OF ADDISON AND KIMLEY-HORN AND ASSOCIATES, INC., FOR SERVICES RELATED TO THE TOWN OF ADDISON'S AMERICANS WITH DISABILITIES SELF-EVALUATION AND TRANSITION PLAN, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Agreement between the Town of Addison and Kimley-Horn and Associates, Inc., for services related to the development of the Town of Addison's Americans with Disabilities Self-evaluation and Transition Plan, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 24<sup>th</sup> day of January, 2017.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the Town of Addison, Texas ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC., ("the Consultant").

NAME OF PROJECT: **Addison Americans with Disabilities Self-Evaluation and Transition Plan** ("the Project").

The Client and the Consultant agree as follows:

(1) Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in **Exhibit A**, which is attached and made a part of this Agreement ("the Services"). However, 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 described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as the Client's representative with respect to this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A), a list of Town facilities and associated parking lots, parks and associated parking lots, signalized intersections, existing sidewalks and associated curb ramps, design and construction standards, documented public concerns, and sponsored Boards and Commissions. The Town will also furnish its programs, procedures, policies, employment practices, community interaction, building

codes and ordinances, emergency planning and evacuation plans, and grant the Consultant access to the Town website for evaluation.

(e) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(f) Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays resulting from Client's failure to review documents promptly.

(g) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(h) Cause to be provided such accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project.

(i) If the Client designates a person to represent it at the site other than Consultant or its agent or employee, set forth the duties, responsibilities and limitations of authority of the representative and the effect on the responsibilities of the Consultant in an exhibit to this Agreement before services begin.

(j) Furnish to the Consultant data or estimates as to the Client's anticipated costs for services to be provided by others as required for the Consultant to support opinions of probable total Project costs.

(k) Attend the project kick-off meeting, monthly progress meetings, teleconference meetings, a public workshop, community meetings and related Town Council meetings.

(l) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope, timing, or payment of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(m) Bear all costs incidental to the responsibilities of the Client.

(3) Period of Services. This Agreement has been made in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement and any required retainer amount. 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 (cumulatively) 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.

(c) The Client shall also be invoiced for and shall pay to the Consultant all taxes, if any, whether state, local, or federal levied with respect to amounts paid hereunder.

(5) Method of Payment.

(a) Invoices will be submitted on a monthly basis to Client for services performed and expenses incurred. The Client may reasonably require additional information and/or documentation to verify invoices received. Payment of each invoice will be due within 30 days of receipt and should include the invoice number and Kimley-Horn project number. The Client shall also pay any applicable sales tax, as authorized by law. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the lower of the rate of 12% per annum or the highest rate permitted by law, beginning on the 30<sup>th</sup> day. If the Client fails to make any payment due the Consultant under this Agreement that is not disputed by Client, 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 and may commence proceedings to secure its right to payment.

(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) The Client agrees that the payment to the Consultant is not subject to any contingency or condition except as Client may otherwise indicate in writing in connection with a payment. 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, including but not limited to drawings, databases, specifications, reports, and data or programs stored electronically, prepared by or for the Consultant

pursuant to this Agreement are related exclusively to the services described in this Agreement, and, except to the extent described in this section below, shall belong to, and remain the sole property of Client's for its exclusive reuse at any time without further compensation and without any restrictions only if the Client has satisfied all of its payment obligations under this Agreement that are not in dispute. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant. The Consultant's electronic files and source code developed in the development of application 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. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(7) 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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified 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.

(8) Termination. This Agreement may be terminated (a) by either party upon fifteen days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, unless the non-terminating party corrects such default or presents a mutually agreeable plan to cure such failure within such time, or (b) upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination in accordance with and subject to the other terms and provisions of this Agreement. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(9) Insurance.

(a) At all times in connection with this Agreement, the Consultant shall purchase, provide and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- (i) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.
- (ii) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (iv) Professional Liability coverage at minimum limits of \$2,000,000 covering claims resulting from negligent engineering errors and omissions. This coverage must be maintained for at least four (4) years after the project for which Consultant's services are being provided is finally completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four year period thereafter described herein.

(b) With reference to the foregoing insurance, Consultant shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.

- (iii) A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.
  - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
  - (v) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
  - (vi) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
  - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
  - (viii) Consultant may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
  - (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.
- (c) All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and executed by the insurance company or its authorized agent, delivered to Client simultaneously with the execution of this Agreement (and updated as needed), and shall contain provisions representing and warranting the following:
- (i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
  - (ii) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.
- (d) Upon request, Consultant shall furnish the Client with complete copies of all insurance policies certified to be true and correct by the insurance carrier.
- (e) Client reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by Client.

(10) Standard of Care. The standard of care applicable to Consultant's services will be the degree of professional care and skill ordinarily exercised by consultants performing the same or similar

services in the same locality at the time the services are provided. Consultant warrants and represents that its services shall, to the best of Consultant's knowledge, information and belief as an engineer performing the practice of engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error. In accordance with the standard of care set forth herein, Consultant agrees that if it shall recommend unsuitable methodology for assessing and prioritizing ADA improvements in connection with the project or this Agreement or if its services should be defective in any way, Consultant will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Consultant's failure to meet the standard of care set forth herein. Except as may be set forth in this Agreement, no other warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(11) **CONSULTANT'S INDEMNITY OBLIGATION.**

**IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CLIENT AND CLIENT'S ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "CLIENT PERSONS" AND EACH BEING A "CLIENT PERSON"), FROM AND AGAINST ANY AND ALL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR, RELATED TO, OR ARISING OUT OF INJURIES (INCLUDING BUT NOT LIMITED TO DEATH), LOSSES, EXPENSES, LIABILITY, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, SUITS, HARM, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), OF ANY KIND OR NATURE WHATSOEVER, MADE UPON OR INCURRED BY CLIENT OR BY ANY OTHER CLIENT PERSONS, (COLLECTIVELY, "CLAIMS"), TO THE EXTENT DAMAGES ARE CAUSED BY OR RESULT FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR BY THE CONSULTANT'S EMPLOYEE, OR THE CONSULTANT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL (THE CONSULTANT'S EMPLOYEE, AGENT, CONSULTANT UNDER CONTRACT, OR SUCH OTHER ENTITY BEING, COLLECTIVELY, "CONSULTANT PERSONS").**

**WHEN CLAIMS ARISE OUT OF THE CO-NEGLIGENCE OR OTHER CO-LIABILITY OF CLIENT OR OTHER CLIENT PERSON AND THE CONSULTANT OR ANY CONSULTANT PERSONS, CONSULTANT'S LIABILITY UNDER THIS ARTICLE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (EXCLUDING ATTORNEYS' FEES AND COSTS INCURRED IN DEFENSE OF CLAIMS) EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE OR OTHER LIABILITY. LIKEWISE, IN SUCH INSTANCE, CONSULTANT'S LIABILITY, IF ANY, FOR CLIENT PERSON'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE OR OTHER LIABILITY.**

THE PROVISIONS IN THE FOREGOING DEFENSE, INDEMNITY AND HOLD HARMLESS ARE SEVERABLE, AND IF ANY PORTION, SENTENCE, PHRASE, CLAUSE OR WORD INCLUDED THEREIN SHALL FOR ANY REASON BE HELD BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, ILLEGAL, VOID, OR UNENFORCEABLE IN ANY RESPECT (INCLUDING, WITHOUT LIMITATION, FOR VIOLATING SECTION 271.904(A), TEX. LOC. GOV. CODE, OR SECTION 130.002(B), TEX. CIV. PRAC. & REM. CODE), SUCH INVALIDITY, ILLEGALITY, VOIDNESS, OR UNENFORCEABILITY SHALL NOT AFFECT ANY OTHER PROVISION THEREOF, AND THIS DEFENSE, INDEMNITY AND HOLD HARMLESS PROVISION SHALL BE CONSIDERED AS IF SUCH INVALID, ILLEGAL, VOID, OR UNENFORCEABLE PROVISION HAD NEVER BEEN CONTAINED IN THIS AGREEMENT.

CONSULTANT SHALL PROMPTLY ADVISE CLIENT IN WRITING OF ANY CLAIM OR DEMAND AGAINST CLIENT OR ANY OTHER CLIENT PERSON, CONSULTANT, OR CONSULTANT PERSON RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S SOLE COST AND EXPENSE. CLIENT PERSONS SHALL HAVE THE RIGHT, AT CLIENT PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS HEREUNDER. THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(12) Consultant Representations. Consultant represents and warrants that it has all necessary licenses, permits, certificates, or other authorization to perform the work and services described in the Addison Americans with Disabilities Self-Evaluation and Transition Plan Agreement for Professional Services. Consultant acknowledges that Client is entering into this Agreement in reliance on Consultant's professional abilities with respect to performing the services set forth in this Agreement.

Consultant further represents and warrants that:

- its services and work will be provided in a professional, good and workmanlike manner, consistent with the professionally accepted practices and standards that are in use in Consultant's line of business as of the time such services and work are provided;
- it has the skills, qualifications, experience and financial capability necessary to perform the services described in this Agreement and has performed and continues to perform the same and similar services for other businesses (including governmental entities); and
- it is and shall be during all time of this Agreement validly existing and authorized to do business, and be in good standing in the State of Texas.

(13) 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.

(14) Dispute Resolution. All claims by either party arising out of this Agreement or its breach may by agreement of the parties be submitted first to mediation.

(15) Hazardous Substances. In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in Exhibit A of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(16) 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. Neither party hereto shall assign, sublet, convey or otherwise transfer any rights or duties under, or interest in this Agreement, without the written consent of the other party. The Consultant may, with Client's prior written consent, augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant does so, 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. If 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.

(a) This Agreement is to be governed by the law of the State of Texas, without regard to choice of laws rules of any jurisdiction. In the event of any suit, action, or proceeding under this Agreement, exclusive venue for the same shall lie in Dallas County, Texas. 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. This Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that 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 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.

- (b) Consultant is and shall in all events be an independent contractor exercising control over its work and services and the manner in which they are performed. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise relationship, or to allow Client to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by Consultant shall be provided in a manner consistent with all applicable laws, rules, standards and regulations governing such work and services.
- (c) The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to negotiate the insertion of a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible, with the intent that such added provision is legal, valid and enforceable.
- (d) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Client, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.
- (e) The persons signing this Agreement on behalf of the parties have the authority to do so.
- (f) For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. Section headings herein are for convenience only and shall not be used in interpretation of this Agreement.

- (g) For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two (72) hours after deposit if sent by certified mail. Addresses for notices and communications are as follows:

To Consultant:	To Client:
Kimley-Horn and Associates, Inc.	Town of Addison, Texas
12750 Merit Drive	5300 Belt Line Road
Suite 1000	Dallas, Texas 75254
Dallas, Texas 75251	Attn: City Manager

- (h) From time to time either party may designate another address and person to whom attention is to be sent within the State of Texas for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

TOWN OF ADDISON, TEXAS

BY: \_\_\_\_\_

Wesley S. Pierson

ITS: \_\_\_\_\_  
City Manager

ATTEST: \_\_\_\_\_

(IF CORPORATION, AFFIX CORPORATE SEAL)

KIMLEY-HORN AND ASSOCIATES, INC.

BY:  \_\_\_\_\_

Eric Z. Smith

ITS: \_\_\_\_\_  
Assistant Secretary

ATTEST:  \_\_\_\_\_

## EXHIBIT A

### SCOPE OF PROFESSIONAL SERVICES

#### Task 1 – Project Management

- 1.1 The Consultant will maintain project records, budgets, and communications for the duration of the project. The project schedule is assumed to be 12 months.
- 1.2 The Consultant will prepare a project schedule and update it on a weekly basis.
- 1.3 The Consultant will prepare monthly progress reports.
- 1.4 The Consultant anticipates biweekly calls between the Consultant's Project Manager and the designated Town staff to review the status of tasks and to keep the schedule current.

#### Task 2 – Project Kick-off Meeting

- 2.1 Meet with Town staff to introduce the proposed project tasks and schedule. The proposed method for prioritizing barrier removal projects identified during the Self-Evaluation task will be presented. The Consultant will coordinate with Town staff to identify and obtain all necessary documents and materials to support the Self-Evaluation process and facility evaluations.

#### Task 3 – Self-Evaluation

- 3.1 Document current programs, procedures, and policies related to the activities and services available to the public and correlate with barriers to access. The following is a list of current programs, procedures, and policies that will be evaluated:
  - Athletic Club
  - City Manager's Office
    - Boards and Commission
    - Volunteer
  - Addison Conference Center and Theatre
  - Economic Development
  - Financial & Strategic Services
  - Fire Department
    - Emergency Management
    - Emergency communications
    - Programs and community outreach
  - General Services
  - Human Resources
    - Employment practices
    - Job descriptions
    - Employee manual
  - Information Technology
  - Infrastructure & Development Services
  - Municipal Court

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- Parks
  - Police
    - Addison Citizens assisting police
    - Community Outreach
  - Service Center
  - Special Events
  - Town Hall
  - Addison Treehouse
  - Employment Practices
  - Community Interaction
  - Building Codes
  - Ordinances
  - Emergency Planning/Evacuation
  - Town Website (cursory review)
- 3.2 Meet with Town staff representing major program areas and orient them to the process that will be used to update and evaluate policies and programs, including the development of a program services survey. Produce staff workshop materials and handouts, conduct the staff orientation workshop, and prepare a report of action items resulting from the workshop.
- 3.3 Assist the Town in establishing an ADA Liaison Committee that will meet throughout the process of completing the self-evaluation and updating the Transition Plan, and will continue to meet and actively participate after the completion of this project. The ADA Liaison Committee will also assist in designating the ADA Coordinator for the Town.
- 3.4 Evaluate the current level of program accessibility within each department by administering a program survey and/or conducting an in-person survey as necessary with Town staff. The survey will assist in evaluating current Town status regarding ADA requirements including eligibility requirements, participation requirements, facilities used, staff training, tours, transportation, communication, notifications, public meetings, the use of contracted services, purchasing, maintenance of accessible features, and emergency procedures.
- 3.5 Conduct departmental support interviews to confirm the status of policies and programs, and support the survey process.
- 3.6 Review existing Boards and Commissions and their procedures in dealing with ADA accessibility requirements.
- 3.7 Review current Town design standards for compliance with the ADA.
- Transportation Plan
  - Standard Construction Details
    - Paving
  - Traffic Details
    - Traffic

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- Utilities Trenchline & Street Restoration
  - Local Roadways
- 3.8 Establish field teams that will conduct evaluations based on forms developed by the Consultant in consultation with the Town based on the 2010 ADA Standards and 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG). All field data will be compatible with the Town's existing Geographic Information System (GIS).

### 3.7.1 Facilities Listing

3.7.1.1 Buildings and Parking Lots.– The following buildings owned or leased by the Town will be included in this project:

	Location Name	Property Address
1.	Addison Circle Park Pavilion	4790 Addison Circle Drive
2.	Athletic Club	3900 Beltway Drive
3.	Central Fire Station	4798 Airport Parkway
4.	Conference Centre	15650 Addison Road
5.	Finance Building	5350 Belt Line Road
6.	Fire Station 2	3950 Beltway Drive
7.	Police and Courts	4799 Airport Parkway
8.	Police Substation Addison Circle (leased)	4943 Addison Circle
9.	Police Substation Vitruvian (leased)	3850 Vitruvian Way
10.	Service Center	16801 Westgrove Drive
11.	Stone Cottage	15650 Addison Road
12.	Theatre Centre	15650 Addison Road
13.	Town Hall	5300 Belt Line Road
14.	TreeHouse (leased)	14681 Midway Road, Suite 200

3.7.1.2 Building Sidewalks – Approximately 2 linear miles of building sidewalk will be included in this project. All curb ramps along this sidewalk will be evaluated.

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3.7.1.3 Parks and Parking Lots – The following parks will be included in this project:

Location Name	Property Address
1. Addison Circle Park	4950 Addison Circle Drive
2. Addison Town Park	3799 Sidney Drive
3. Les Lacs Park	3901 Beltway Drive
4. Quorum Park	16201 Quorum Drive
5. Redding Trail Dog park	located south of 14677 Midway Road
6. Vitruvian Park	3966 Vitruvian Way
7. Winnwood Park	5580 Belt Line Road

3.7.1.4 Park Sidewalks – Approximately five (5) linear miles of park sidewalk will be included in this project. All curb ramps along this sidewalk will be evaluated.

3.7.1.5 Signalized Intersections – Nineteen (19) signalized intersections will be included in this project.

3.7.1.6 Sidewalks – Up to 18 linear miles of arterial sidewalk will be included in this project. All unsignalized intersections, driveways, and curb ramps (up to 800 curb ramps) along this sidewalk will be evaluated.

3.8 Survey Data Report. The Consultant will create a separate report for each facility type. Each facility report will identify compliance status of each facility with regards to both federal and state standards and include the following:

- Listing of facilities that are in compliance with current standards.
- Listing of facilities that are not in compliance with current ADA requirements.
- Recommended actions to resolve non-compliance issues for each facility.
- Prioritized list of improvements using criteria developed by the Consultant and Town staff.
- "Cost report" that assigns conceptual budget estimates to each recommended action.
- Photolog summary for each facility.
- Catalog of sidewalk, curb ramp, and signalized intersection data compatible with the Town's existing GIS databases (including mapping of the various facility types).

### Task 4 – Transition Plan Development

- 4.1 Coordinate with Town staff in the development of a strategy for developing the Transition Plan, including a review of Town ordinances, design policies, design standards related to curb ramps and sidewalks. Identify issues which should be addressed to confirm that policies are nondiscriminatory to people with disabilities.
- 4.2 Assist the Town in developing a process and format to evaluate the accessibility

## EXHIBIT A

improvements identified in Task 3, utilizing prioritization and evaluation criteria. Existing evaluation methodology will be analyzed and recommendations made for necessary improvements.

- 4.3 Recommend prioritization criteria for creating an implementation schedule for accessibility improvements.
- 4.4 Prioritize the accessibility improvements by facility type and severity, providing cost estimates for the recommended modifications.
- 4.5 Evaluate and make recommendations on exceptions or exemptions that may apply under the terms of the ADA. This may include exemptions related to structures of historic significance, alterations affecting the fundamental nature of a service, activity or program under financial and administrative burden, or structural changes.
- 4.6 Define an ongoing budget needed for ADA modifications. Potential funding sources will be researched and recommended to most effectively achieve compliance.
- 4.7 Assist in the development and preparation of a long-range financial plan for identified ADA modifications.
- 4.8 Work with the Town to define the role and responsibilities of the ADA Coordinator.
- 4.9 Assist the Town to develop an ADA grievance policy and procedure.
- 4.10 Prepare a plan summary document that will serve as a resource guide for Town staff in a program / database that can be utilized to run reports that can provide detailed modifications, costs, and priorities for the transition plan (Access compatible).

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- 4.11 Prepare a draft Self-Evaluation and Transition Plan for the Town. The Plan will include:
- An executive summary which will describe the project purpose, process, and most significant findings;
  - A summary of findings and recommendations for all items in Task 3;
  - A phased schedule with cost estimates for the removal of facility barriers that cannot be resolved through relocation of services, the provision of auxiliary aids, or equivalent facilitation; and
- 4.12 Following review by the Town and relevant community review of Draft Plan, the Consultant will incorporate comments and prepare the Final Plan.

### Task 5 – Staff Training

- 5.1 Conduct one (1) staff training session (up to eight (8) hours) in providing accessible programs, activities, and services. The training will include disabilities etiquette, technologies, and procedures that can assist Town staff in providing services to people with disabilities as well as the technical information necessary to know where the risk factors are in terms of litigation. Any request to record, videotape, or reproduce any of the training materials with the intent to train outside consultants and contractors will be considered additional services.

### Task 6 – Meetings

- 6.1 Up to three (3) monthly progress meetings with Town staff and the newly created ADA Liaison Committee. The Consultant will prepare all meeting materials and a summary of discussion items.
- 6.2 Up to three (3) Town Council meetings to introduce the project and present the Draft Self-Evaluation and Transition Plan. The Consultant will prepare all meeting materials and a summary of discussion items.
- 6.3 Up to three (3) community workshop / meetings to introduce the project, update the progress, and present the draft plan. The Consultant will prepare outreach materials, conduct the workshop, and prepare a summary of the workshop to highlight action items.
- 6.4 Up to two (2) teleconference meetings with various project stakeholders. The Consultant will prepare a summary of discussion items.

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**Schedule:** The Consultant will provide its services as expeditiously as practicable and work with the Town to develop a mutually agreeable schedule.

**Deliverables:** The Consultant will deliver the following materials to the Town:

1. One (1) PDF copy of the Draft ADA Self-Evaluation and Transition Plan and PDF planning level map of proposed improvements.
2. Two (2) paper copies and one (1) PDF of the Final ADA Transition Plan, including prioritized ADA modification plan, long-range financial plan, and PDF planning level map of proposed improvements. All appendices will be provided in PDF format.
3. Field work in GIS shapefile format, compatible with the Town's GIS system.
4. A program / database utilized to provide detailed modifications, costs, and priorities for the transition plan (Access compatible).

**Fee Schedule:**

<b>Task</b>	<b>Fee</b>
Task 1 – Project Management	\$ 21,000
Task 2 – Kick-Off Meeting	\$ 7,800
Task 3 – Self-Evaluation	
Programs, Procedures, and Policies	\$ 19,900
Buildings	\$ 27,600
Parks	\$ 32,300
Signalized Intersections	\$ 8,800
Sidewalks	\$ 28,100
Unsignalized Intersections	\$ 48,500
Task 4 – Transition Plan Development	\$ 47,100
Task 5 – Staff Training	\$ 10,900
Task 6 – Meetings	\$ 48,000
<b>TOTAL</b>	<b>\$ 300,000</b>

## EXHIBIT A

### SCOPE OF PROFESSIONAL SERVICES

#### ADA Self-Evaluation and Transition Plan Update – Addison Airport

##### Task 1 – Project Management

- 1.1 The Consultant will maintain project records, budgets, and communications for the duration of the project. The project schedule is assumed to be 3 months.
- 1.2 The Consultant will prepare a project schedule and update it on a weekly basis.
- 1.3 The Consultant will prepare monthly progress reports.

##### Task 2 – Project Kick-off Meeting

- 2.1 Meet with Town and Addison Airport staff to introduce the proposed project tasks and schedule. The proposed method for prioritizing barrier removal projects identified during the Self-Evaluation task and the process that will be used to evaluate policies and programs, including the program services questionnaire, will be presented. Coordinate with Town and Addison Airport staff to identify and obtain all necessary documents and materials to support the Self-Evaluation process and facility evaluations.

##### Task 3 – Self-Evaluation

###### **Program, Services, and Activities Review**

- 3.1 Document current Addison Airport programs, procedures, and policies related to the activities and services available to the public and correlate with barriers to access. The following is a list of current programs, procedures, and policies that will be evaluated:

- Addison Airport
  - Leases
    - T-hangers & Patio (Shade) Hangers
    - Conventional Hangers
    - Ground Leases
      - Museum
      - Hangar Office/Leasing
      - Aviation Consulting
      - Car Rental
      - Avionics Sales/Repairs
      - Charter Cargo
      - Charter Passenger
      - Corporate Flight
      - Flight Instruction
      - Instrument Sales/Repair
      - Aircraft Rental
      - Aircraft Sales
      - Airport Management

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Addison Airport

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- FAA Control Tower Access Requirements
  - U.S. Customs Process
  - Airport Rules and Regulations
  - Airport Master Plan
- 3.2 Evaluate the current level of program accessibility within Addison Airport by administering a program survey and/or conducting an in-person survey as necessary with Addison Airport staff. The survey will assist in evaluating current Addison Airport status regarding ADA requirements including airport circulation/flow, use of international symbol of accessibility, elements pertaining to flight (ticketing/check-in areas), passenger loading/unloading, parking, sub-buildings used for lease purposes, hangars, ground leases, wayfinding, public services, museum, policies, and equipment.
- 3.3 Conduct departmental support interviews to confirm the status of policies and programs, and support the survey process.

### **Facility Reviews**

- 3.4 Establish field teams that will conduct evaluations based on forms developed by the Consultant in consultation with the Town and Addison Airport staff based on the 2010 ADA Standards. All field data will be compatible with the Town's existing Geographic Information System (GIS).
- 3.4.1 Facilities Listing
- 3.4.1.1 Addison Airport – The following facilities will be included in this project:
- Terminal Building
  - Conventional Hangar Buildings (not T-hangars)
  - Museum
  - Airport Fire Station
- 3.5 Survey Data Report. The Consultant will create a separate report for each airport facility. Each facility report will identify compliance status of each facility with regards to both federal and state standards and include the following:
- Listing of facilities that are in compliance with current standards.
  - Listing of facilities that are not in compliance with current ADA requirements.
  - Recommended actions to resolve non-compliance issues for each facility.
  - Prioritized list of improvements using criteria developed by the Consultant, Town staff, and Airport staff.
  - "Cost report" that assigns conceptual budget estimates to each recommended action.
  - Photolog summary for each facility.
  - Catalog of airport facility data compatible with the Town's existing GIS databases (including mapping of the various facility types).

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### Task 4 – Transition Plan Update

- 4.1 Evaluate and make recommendations on exceptions or exemptions that may apply under the terms of the ADA. This may include exemptions related to structures of historic significance, alterations affecting the fundamental nature of a service, activity or program under financial and administrative burden, or structural changes.
- 4.2 Define an ongoing budget needed for ADA modifications. Potential funding sources will be researched and recommended to most effectively achieve compliance.
- 4.3 Assist in the development and preparation of a long-range financial plan for identified ADA modifications.
- 4.4 Prepare a draft Self-Evaluation and Transition Plan Update for the Town. The update will include:
  - A summary of findings and recommendations for all items in Task 3;
  - A phased schedule with cost estimates for the removal of facility barriers that cannot be resolved through relocation of services, the provision of auxiliary aids, or equivalent facilitation; and
- 4.5 Following review by Town and Airport staff, the Consultant will incorporate comments and prepare the Final Plan Update.

### Task 5 – Meetings

- 5.1 Up to one (1) progress meeting with Town and Addison Airport staff. The Consultant will prepare all meeting materials and a summary of discussion items.

**Schedule:** The Consultant will provide its services as expeditiously as practicable and work with the Town to develop a mutually agreeable schedule.

**Deliverables:** The Consultant will deliver the following materials to the Town:

1. One (1) PDF copy of the Draft ADA Self-Evaluation and Transition Plan Update.
2. Two (2) paper copies and one (1) PDF of the Final ADA Transition Plan Update, including prioritized ADA modification plan, and long-range financial plan. All appendices will be provided in PDF format.
3. Field work in GIS shapefile format, compatible with the Town's GIS system.
4. Update to the program / database developed in the ADA Self-Evaluation and Transition Plan project, utilized to provide detailed modifications, costs, and priorities for the Transition Plan (Access compatible).

**EXHIBIT A**

**Fee Schedule:**

Task	Fee
Task 1 – Project Management	\$ 2,000
Task 2 – Kick-Off Meeting	\$ 3,700
Task 3 – Self-Evaluation	
Programs, Procedures, and Policies	\$ 14,800
Facilities	\$ 10,800
Task 4 – Transition Plan Update	\$ 3,500
Task 5 – Meetings	\$ 3,200
<b>TOTAL</b>	<b>\$ 38,000</b>