

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF COPPELL, TEXAS, AND KIRKMAN ENGINEERING, INC.
FOR THE SOUTHWESTERN BLVD PROJECT DESIGN**

This Agreement for Professional Services, hereinafter called "Agreement," is entered into by the **City of Coppel, Texas**, a municipal corporation, duly authorized to act by the City Council of said City, hereinafter called "City," and **Kirkman Engineering**, a Texas corporation, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional services to City. City and Consultant when mentioned collectively shall be referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, City desires to obtain professional engineering services in connection with the **SOUTHWESTERN BLVD PROJECT**, hereinafter called "Project";

For the mutual promises and benefits herein described, City and Consultant agree as follows:

1. **Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.
2. **Services to be Performed by Consultant.** The Parties agree that Consultant shall perform such services as are set forth and described in **Attachment A - Scope of Services** and **Attachment B – Special Scope of Services** incorporated herein as if written word for word. All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under the same or similar circumstances by competent members of their profession in the locality. In case of conflict in the language of Attachments A/B and this Agreement, this Agreement shall govern and control. Deviations from the Scope of Services or other provisions of this Agreement may only be made by written agreement signed by all Parties to this Agreement.
3. **Prompt Performance by Consultant.** Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay as is necessary to cause Consultant's services hereunder to be timely and properly performed. Notwithstanding the foregoing, Consultant agrees to use diligent efforts to perform the services described herein and further defined in any specific task orders, in a manner consistent with these task orders; however, the City understands and agrees that Consultant is retained to perform a professional service and such services must be bound, first and foremost, by the principles of sound professional judgment and reasonable diligence.
4. **Compensation of Consultant.** City agrees to pay to Consultant for satisfactory completion of all services included in this Agreement a total fee of two hundred and two thousand and 700 dollars (\$202,700) for the Project as set forth and described in **Attachment C – Fee Summary** and incorporated herein as if written word for word. Lump sum fees shall be billed monthly based on the percentage of completion. Hourly not to exceed fees shall be billed monthly based on hours of work that have been completed. Direct Costs for expenses such as mileage, copies, scans, sub-consultants, and similar costs are included in fees and shall be billed as completed.

Consultant agrees to submit statements to City for professional services no more than once per month. These statements will be based upon Consultant's actual services performed and reimbursable

expenses incurred, if any, and City shall endeavor to make prompt payments. Each statement submitted by Consultant to City shall be reasonably itemized to show the amount of work performed during that period. If City fails to pay Consultant within sixty (60) calendar days of the receipt of Consultant's invoice, Consultant may, after giving ten (10) days written notice to City, suspend professional services until paid.

Nothing contained in this Agreement shall require City to pay for any work that is unsatisfactory as reasonably determined by City or which is not submitted in compliance with the terms of this Agreement.

The Scope of Services shall be strictly limited. City shall not be required to pay any amount in excess of the original proposed amount unless City shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

5. **City's Obligations.** City agrees that it will (i) designate a specific person as City's representative, (ii) provide Consultant with any previous studies, reports, data, budget constraints, special City requirements, or other pertinent information known to City, when necessitated by a project, (iii) when needed, assist Consultant in obtaining access to properties necessary for performance of Consultant's work for City, (iv) make prompt payments in response to Consultant's statements, and (v) respond in a timely fashion to requests from Consultant. Consultant is entitled to rely upon and use, without independent verification and without liability, all information and services provided by City or City's representatives.

6. **Ownership and Reuse of Documents.** Upon completion of Consultant's services and receipt of payment in full therefore, Consultant agrees to provide City with copies of all materials and documents prepared or assembled by Consultant under this Agreement and City may use them without Consultant's permission for any purpose relating to the Project. Any reuse of the documents not relating to the Project shall be at City's risk. Consultant may retain in its files copies of all reports, drawings, specifications and all other pertinent information for the work it performs for City.

7. **City Objection to Personnel.** If at any time after entering into this Agreement, City has any reasonable objection to any of Consultant's personnel, or any personnel, professionals and/or consultants retained by Consultant, Consultant shall promptly propose substitutes to whom City has no reasonable objection, and Consultant's compensation shall be equitably adjusted to reflect any difference in Consultant's costs occasioned by such substitution.

8. **Insurance.** Consultant shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement applicable insurance policies. Consultant shall submit to City proof of such insurance prior to commencing any work for City.

9. **Indemnification.** **CONSULTANT DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST LIABILITY, CLAIMS, SUITS, DEMANDS AND/OR CAUSES OF ACTION, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION), WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR OMISSION OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT.**

IN THE EVENT THAT CITY AND CONSULTANT ARE CONCURRENTLY NEGLIGENT, THE PARTIES AGREE THAT ALL LIABILITY SHALL BE CALCULATED ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY AND THAT NEITHER PARTY SHALL BE REQUIRED TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THAT PARTY'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS.

10. **Notices.** Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail to the following addresses:

Kirkman Engineering
Shea Kirkman, PE
Owner
5200 State Highway 121
Colleyville, TX 76034

City of Coppel
Kent Collins, P.E.
265 Parkway Blvd
Coppel, TX 75019

11. **Termination.** The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days' notice. In the event of termination by City, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.

12. **Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except City and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

13. **Assignment and Delegation.** Neither City nor Consultant may assign their rights or delegate their duties without the written consent of the other Party. This Agreement is binding on City and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any City officer, employee or agent.

14. **Texas Law to Apply; Successors; Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.

15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirements of the City Charter and the City's Code of Ordinances and will abide by the same. Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ.

16. **Venue.** The Parties herein agree that this Agreement shall be enforceable in Coppel, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

17. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree

to submit such disagreement to non-binding mediation.

18. **Prevailing Party.** In the event a Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

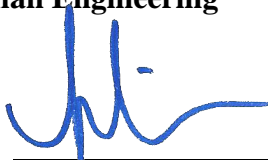
19. **Signatories.** City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

IN WITNESS WHEREOF, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the _____ day of _____, 20____.

Kirkman Engineering

CITY OF COPPELL, TEXAS

By:



Signature

Shea Kirkman
Printed Name

Owner
Title

11/5/20
Date

By:

Signature

Printed Name

Title

Date