



MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement"), effective as of the 13th day of August 2019, is between the City of Fort Collins, a Colorado home rule municipal corporation (the "City"), and Kimley-Horn and Associates, Inc. ("Vendor"). The City and Vendor may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Vendor and the City may engage in discussions concerning Data Analysis Services (the "Purpose").

WHEREAS, in the course of discussions, communications, and/or negotiations each Party may disclose to and/or receive from the other Party certain information belonging to the disclosing Party or its affiliates (collectively, the "Discloser") that includes trade secrets, privileged information, or confidential commercial and financial information ("Confidential Information");

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Records maintained by the City are subject to public disclosure pursuant to the Colorado Open Records Act ("CORA"). Certain confidential business records are exempt. If Vendor provides to the City documents that include trade secrets, privileged information, or confidential commercial or financial information, Vendor shall segregate any documents including such information from other documents provided to the City and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as confidential pursuant to CORA.
2. The Party receiving Confidential Information (the "Recipient") (i) shall use such Confidential Information only for the Purpose; (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its, and its affiliates', employees and agents who need to know such Confidential Information to carry out the Purpose and who are not direct competitors of the Discloser (and require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein); (iv) shall not disclose such Confidential Information to any other Party without prior written approval of Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any subsequent disclosure or use of such Confidential Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use. The Recipient shall immediately notify the Discloser upon the discovery of any loss or unauthorized disclosure or use of the Confidential Information of the Discloser.
3. The restrictions on use and disclosure of Confidential Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked

and provided to Recipient within thirty (30) days following the oral disclosure; except that any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser, including but not limited to business or technical information not generally known to the public, such as patents, copyrights, trademarks and trade secrets, as well as all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.

4. The restrictions on the use or disclosure of Confidential Information shall not apply to any information:
 - a. Which is independently developed by the Recipient as evidenced by documentation in such Party's possession; or
 - b. Which is lawfully received from another source free of restriction and without breach of this Agreement by the Recipient; or
 - c. After it has become generally available to the public without breach of this Agreement by the Recipient; or
 - d. Which at the time of disclosure to the Recipient was known to the Recipient free of restriction as evidenced by documentation in such Party's possession; or
 - e. Which the Discloser agrees in writing is free of such restrictions.
5. All Confidential Information shall remain the exclusive property of the Discloser, and no license under any intellectual property right is either granted or implied by this Agreement or the conveying of Confidential Information to Recipient hereunder. Discloser makes no representations, warranties, assurances, guarantees or inducements of any kind, and, in particular, with respect to the non- infringement of any intellectual property rights, or other rights of third persons or of Discloser.
6. Neither this Agreement nor the disclosure or receipt of Confidential Information hereunder shall constitute or imply any promise or intention by either Party to enter into any transaction or business relationship, nor is it an inducement for either Party or its affiliated companies to spend funds or resources or purchase or provide products or services, nor is it any commitment by either Party or its affiliated companies with respect to the present or future marketing of any product or service. No such agreement will be binding unless and until stated in a separate writing signed by authorized representatives of both Parties.
7. Each Party agrees not to announce or disclose to any other person (other than persons described in Section 2(iii), above) the Confidential Information or the nature of any discussions concerning the Purpose without first securing the prior written approval of the other Party. All Confidential Information furnished hereunder shall be returned or destroyed upon written request or upon Recipient's determination that it no longer has a need for such Confidential Information, except that Recipient's legal counsel may retain



one copy in counsel's files solely to provide a record of such Confidential Information for archival purposes.

8. The restrictions on use and disclosure of Confidential Information disclosed hereunder shall survive for a period of three (3) years from the date of last disclosure of any such Confidential Information (except in the case of software, for an indefinite period). Either Party may terminate this Agreement upon thirty (30) days advance written notice to the other.
9. All notices or communications required or permitted as a part of this Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:
 - a. actually received,
 - b. upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the Party,
 - c. upon receipt by sender of proof of email receipt, or
 - d. if not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the Party may have designated by notice or Agreement amendment to the other Party.

The consequences of failure to receive a notice due to improper notification by the intended Recipient of a new address will be borne by the intended Recipient. The addresses of the Parties to this Agreement are as follows:

Kimley-Horn and Associates, Inc.
7740 N 16th Street
Suite 300
Phoenix, AZ 85020
Attention: Dennis Burns

City of Fort Collins
215 N. Mason
PO Box 580
Fort Collins, CO 80522
Attention: Purchasing Director

10. This Agreement shall not be construed to limit either Party's right to independently develop or acquire products or services without use of the other Party's Confidential Information.
11. The restrictions on disclosure of Confidential Information under this Agreement shall not preclude Recipient, on the advice of counsel, from complying with applicable law, regulation, other governmental requirement or other demand under lawful process, including a discovery request in a civil litigation, if Recipient first gives Discloser notice of the required disclosure and cooperates with Discloser, at Discloser's expense, in seeking reasonable protective arrangements. In no event shall Recipient be required to take any



action which, on the advice of Recipient's counsel, could result in the imposition of any sanctions or other penalties by a court or government body.

12. Neither Party has any obligation to disclose Confidential Information to the other. Either Party may, at any time: (i) cease giving Confidential Information to the other Party without any liability, or (ii) request in writing return of Confidential Information previously disclosed.
13. Recipient acknowledges that Confidential Information provided under this Agreement may be subject to U.S. export laws or regulations. Recipient shall not use, distribute, transfer or transmit Confidential Information (even if incorporated into products, software or other information) except in compliance with such laws and regulations. If requested, Recipient shall sign written assurances and other export-related documents as may be required to comply with such laws or regulations.
14. Each Party agrees that all of its obligations undertaken herein as Recipient shall survive and continue after any termination of this Agreement, subject to Section 8 above.
15. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed by duly authorized representatives of each Party.
16. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties. This Agreement may not be assigned by one Party without the other Party's prior written consent.
17. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect to the greatest extent permitted by law.
18. No forbearance, failure or delay in exercising any right, power or privilege is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege. This Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.
19. This Agreement shall be governed by the laws of the State of Colorado, U.S.A., without regard to its conflicts of law principles. Each Party acknowledges and agrees that a breach by it or one of its affiliates, employees or representatives of any of the covenants set forth in this Agreement will cause irreparable injury to the other Party and its business for which damages, even if available, will not constitute an adequate remedy. Accordingly, each Party, for itself and its affiliates, employees and representatives, agrees that the other Party, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) by a court of competent jurisdiction in order to enforce the covenants and agreements contained herein.
20. Any judicial proceeding brought by or against any of the Parties on any dispute arising out of this Agreement or any matter related hereto shall be brought exclusively in the state district court sitting in Larimer County, Colorado, and by execution and delivery of this Agreement, each of the Parties accepts for itself the exclusive jurisdiction and venue of the



aforesaid court as trial courts. Each Party expressly waives any objection (including, without limitation, objections based on *forum non conveniens*) which any Party may have now or hereafter to the laying of venue or to the jurisdiction of any such suit, action, or proceeding, and irrevocably submits generally and unconditionally to the jurisdiction of any such court in any such suit, action, or proceeding. Each Party agrees that its attorneys shall accept service of process.

21. This Agreement constitutes the entire understanding between the Parties as to the treatment of Confidential Information disclosed for the Purpose and merges all prior discussion between them relating thereto. Each Party has read this Agreement, understands it and agrees to be bound by its terms and conditions. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the Parties. Signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

THE CITY OF FORT COLLINS, COLORADO

By: 
Gerry Paul
Purchasing Director

DATE: 8/20/2019

KIMLEY-HORN AND ASSOCIATES, INC.

By: 
Printed: Dave Leistiko

Title: Senior Vice President

Date: 08/13/2019