

11 November 2021

Megan Mainer
Director of Parks & Recreation
City of Angleton
121 S. Velasco
Angleton, TX 77515

Re: Professional Services Agreement

Dear Ms. Mainer:

Kimley-Horn and Associates, Inc. ("Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Angleton ("Client") for developing the City of Angleton Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan.

Project Understanding

The Client wants to develop their Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan in multiple phases.

This assignment will constitute Phase 1 of the ADA Self-Evaluation and Transition Plan and will include an ADA compliance review of select City programs, services, and activities; design standards; buildings and associated parking lots including paths of travel; parks and associated parking lots including paths of travel, park sidewalk, associated curb ramps, unpaved pedestrian trails, and pedestrian bridges; signalized intersections; and public rights-of-way sidewalks and associated curb ramps. Possible solutions to bring any non-compliant elements that are not considered to be a de minimis barrier and are not "safe harbored" into compliance will be provided. An ADA Transition Plan document will be developed and include formal documentation of tasks and associated findings outlined in the Scope of Services.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Project Management

- 1.1 The Consultant will maintain project records, budgets, and communications for the duration of the project. It is understood the project will have a 9-month duration.
- 1.2 The Consultant will prepare monthly progress reports for the duration of the project.
- 1.3 The Consultant will participate in conference calls with the Client to discuss the project (up to 3 hours).

Task 2 – Project Kick-off Meeting

- 2.1 The Consultant will meet with Client staff representing major program areas and orient them to the process that will be used to develop the Client's ADA Transition Plan and introduce the proposed project tasks and schedule. The Consultant will coordinate with Client staff to identify and obtain all necessary documents and materials to support the Self-Evaluation process. This will include a list of all Client sponsored programs and Client leased and owned facilities to be included in the project. The Consultant will produce meeting materials and handouts, conduct staff orientation, and prepare a summary of action items resulting from the meeting (2-hour meeting).

Task 3 – Self-Evaluation

- 3.1 External ADA Advisory Committee. The Consultant will assist the Client in establishing an external ADA Advisory Committee comprised of disability advocates, individuals with disabilities, and general members of the public by:

- Compiling a list of local disability organizations and their contact information; and
- Writing a template letter for the Client to distribute to the local disability contact list requesting their participation on the ADA Advisory Committee.

Meetings between the Consultant and the external ADA Advisory Committee are listed in **Task 5.**

- 3.2 Programs, Services, and Activities Review. The Consultant will evaluate the current level of program, procedure, and policy accessibility by reviewing information available on the City's website and administering program questionnaires and/or conducting in-person interviews as necessary with Client staff to evaluate current City status regarding ADA requirements of the following:

- Meeting Agendas
 - Angleton Better Living Corporation (dated 10/18/21)
 - Board of Adjustments (dated 8/26/21)
 - City Council (dated 11/15/21)
 - Keep Angleton Beautiful Commission (dated 10/25/21)
 - Planning and Zoning Commission (dated 11/4/21)
 - Senior Commission (dated 10/4/21)
- City Council Meeting Minutes (dated 4/27/21)
- Employment Practices
 - Job Descriptions
 - Maintenance Technician
 - Telecommunications Officer
 - Firefighter
 - Municipal Court Clerk
 - ADA Request for Accommodation Form
 - ADA/ADAA Policy Number HR-12 (dated 5/3/19)
 - Employee Policy Manual (dated 1/1/21)
- Emergency Management Documents
 - State Planning Standards Checklist for the Basic Plan (Version 2.0, dated 05/05)
 - Emergency Management Plan for City of Angleton (Version 2.0, dated 10/12)

3.3 Design Standards Review. The Consultant will review the Parkland Dedication Ordinance Appendix B - Proposed Minimum Park Standards for consistency with the 2010 ADA Standards for Accessible Design and 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG).

3.4 Facilities Review. The Consultant will establish field teams which will conduct evaluations based on forms developed by the Consultant. The evaluation forms for facilities listed in **Tasks 3.4.1.1 – 3.4.1.4** will be based on the 2010 ADA Standards for Accessible Design and applicable access-related state and local standards. The evaluation forms for facilities listed in **Tasks 3.4.1.6 – 3.4.1.8** will be based on the 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) and applicable access-related state and local standards. All field data will be compatible with the Client’s existing Geographic Information System (GIS). The Consultant will provide up to two (2) hours of in-field evaluation discussions with Client staff. In-field discussions will occur during the scheduled field evaluations.

3.4.1 Facilities Listing

3.4.1.1 Buildings and Parking Lots – The building listed in **Table 1** will be evaluated:

Table 1. Recreation

Building Name	Building Address	Sq. Ft.	Year
1. Rec Center and	1601 N. Valderas Street	57,720	2003

Building evaluations are limited to all common-use spaces, including common-use spaces located in employee-only areas. Areas used only by employees as work areas will not be evaluated.

3.4.1.2 Building Sidewalks – Up to 0.2 linear miles of on-site building sidewalk (excludes perimeter sidewalk within the public right-of-way) and all associated curb ramps, ramps, stairs, and other paths of travel required to be ADA compliant will be evaluated.

3.4.1.3 Parks and Parking Lots – The parks and amenities listed in **Table 2** will be evaluated:

Table 2. Parks

Park Name	Park/Facility Address	Size	Year
1. Masterson Park	101 S. Arcola Street	0.92	
<i>Pavilion</i>			
<i>Playgrounds (1)</i>		N/A	2001
2. BG Peck Soccer	709 Kelly Boulevard	44.56	
<i>Pavilion</i>			
<i>Concessions</i>	1505 Fire Field Road	1,200 SF	1978
3. Dickey Park	813 W. Mulberry Street	14.67	
<i>Softball Fields (3)</i>			
<i>Bathhouse</i>		400 SF	1994

Park Name	Park/Facility Address	Size	Year
<i>Horseshoe Court</i>			
<i>Pavilions (2)</i>		N/A	1989
<i>Picnic Grounds</i>			
<i>Playground</i>		N/A	2001
<i>Volleyball Court</i>			
<i>Disc Golf</i>			
4. Bates Park		23.93	
<i>Concessions</i>			
<i>Disc Golf</i>			
<i>Pavilions (2)</i>	700 Bates Park Road	N/A	1995
<i>Picnic Ground</i>			
<i>Playground</i>		N/A	2000
<i>Basketball Court</i>			
<i>Baseball Fields (2)</i>		N/A	2002
<i>Soccer/Football Field</i>			
5. Brushy Bayou Park	100 Meadow Creek Road	1.45	
<i>Pavilion</i>		N/A	1995
<i>Playground</i>		N/A	1995
6. Freedom Park		43.64	
<i>Walking trail (unpaved)</i>		0.75 mile	
<i>Baseball Fields (4)</i>			
<i>Bathhouse</i>	3105 N. Downing Street	400 SF	2010
<i>Concessions</i>			
<i>Pavilions (3)</i>		N/A	2002
<i>Playground</i>		N/A	2002
<i>Shelter & Equipment</i>		1200 SF	1992
7. Officer Cash Memorial	535 S. Anderson Street	2.98	
<i>Pavilion</i>			
8. Veterans Park	115 E. Magnolia Street	0.45	
<i>Pedestrian bridge</i>		N/A	

3.4.1.4 **Park Sidewalks** – Up to two (2) linear miles of park sidewalk will be evaluated. All curb ramps, ramps, stairs, and other paths of travel required to be ADA compliant along this sidewalk will be evaluated.

3.4.1.5 **Sidewalk and Unsignalized Intersection Inventory.** The Consultant will use aerial imagery to trace the entire pedestrian path of travel within the public rights-of-way maintained by the City including sidewalk, pedestrian street crossing, and pedestrian driveway crossings. Associated unsignalized intersections and driveways will also be identified. No attributes will be included. The resulting inventory will be provided in ESRI GIS file format. **Task 3.4.1.5** includes 20 hours of effort. Effort

above 20 hours will be considered Additional Services.

- 3.4.1.6 Signalized Intersections – The following signalized intersections will be evaluated:
- N. Downing Street and E. Wilkens Street
 - N. Downing Street and E. Kiber Street
- 3.4.1.7 Sidewalk Corridors – Up to one (1) linear miles of sidewalks will be evaluated.
- 3.4.1.8 Unsignalized Intersections and Driveways – Unsignalized intersections and driveways along the sidewalk in **Task 3.4.1.7** will be evaluated. The Consultant estimates this task will include the evaluation of up to eight (8) intersections and up to 74 curb ramps. Evaluation of additional curb ramps will be considered Additional Services.

Facility Reports. The Consultant will create a separate report for each facility type. Each facility report will identify compliance status of each facility and include the following:

- Listing of facilities that are in compliance with ADA requirements.
- Listing of facilities that are not in compliance with ADA requirements.
- Possible solutions to resolve non-compliance issues for each facility.
- Prioritized list of improvements using criteria developed by the Consultant.
- "Cost report" that assigns conceptual budget estimates to each possible solution. 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 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 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.
- Pay item descriptions, units, and unit prices for facilities listed in **Tasks 3.4.1.1 – 3.4.1.4** will be based on the Means ADA Compliance Pricing Guide, 2nd edition for interior elements and current Texas Department of Transportation (TxDOT) 12-Month Average Low Bid Unit Prices for Highway Construction Projects for exterior elements. Pay item descriptions, units, and unit prices for facilities listed in **Tasks 3.4.1.6 – 3.4.1.8** will be based on current Texas Department of Transportation (TxDOT) 12-Month Average Low Bid Unit Prices for Highway Construction Projects for exterior elements. Changes to the pay item units after project commencement will be considered Additional Services.
- Photolog summary for each facility (photos for sidewalks will be attached to the GIS database but will not be provided on each facility report). Individual barrier photo files will be provided in .JPG format and attached to the GIS database.
- The compliance status and possible solutions for facilities listed in **Tasks 3.5.1.1 – 3.4.1.4** will be based on the 2010 ADA Standards for Accessible Design and applicable access-related state and local standards. The compliance status and possible solutions for facilities listed in **Tasks 3.4.1.6 – 3.4.1.8** will be based on the 2011 Proposed Accessibility Guidelines

for Pedestrian Facilities in the Public Right-of-Way (PROWAG) and applicable access-related state and local standards.

Task 4 – Transition Plan Development

The Consultant will coordinate with Client staff in developing the Transition Plan as follows:

- 4.1 ADA/504 Coordinator. The Consultant will work with the Client to define the role and responsibilities of the ADA/504 Coordinator.
- 4.2 Grievance Policy and Procedure. The Consultant will review the City's existing ADA grievance policy, procedure, and complaint form.
- 4.3 ADA Notice. The Consultant will review the City's existing ADA Notice.
- 4.4 Prioritization Criteria. The Consultant will recommend criteria for prioritizing identified accessibility improvements.
- 4.5 Exceptions and Exemptions. The Consultant will evaluate and provide possible solutions for exceptions or exemptions that may apply under the terms of the ADA. This may include exemptions related to structures of historic significance, or other exceptions and exemptions as stated in the applicable accessibility standards.
- 4.6 Budget. The Consultant will assist the Client to develop a multi-year budget needed for accessibility improvements. Possible funding sources to achieve compliance will be provided. It will be the Client's responsibility to confirm the City's eligibility for each funding source. The Consultant will develop an ESRI dashboard for viewing project data, including cost and priority.
- 4.7 Draft Transition Plan. Based on the Self-Evaluation, the Consultant will prepare a draft Transition Plan for the Client. The plan will include:
 - Executive summary which will describe the project purpose, process, and most significant findings;
 - Summary and detailed findings of Self-Evaluation; and
 - 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.

The Consultant will provide electronic copies of the Draft Transition Plan in Microsoft Word and Adobe PDF formats to the Client.

- 4.8 Final Transition Plan. The Consultant will address one (1) round of comments from Client staff to prepare a Final ADA Self-Evaluation and Transition Plan for the Client. The Consultant will provide the following deliverables to the Client:

- Electronic copies of the Final Transition Plan in Microsoft Word and Adobe PDF formats; and
- Two (2) printed copies of the Final Transition Plan. Two (2) electronic copies of the Appendices will be provided on flash drives. Printed copies of the Appendices will be considered Additional Services.

Task 5 – Meetings

- 5.1 Progress Meeting. The Consultant will assist the Client in establishing an ADA Liaison Committee that will meet throughout the process of completing the Self-Evaluation and developing the Transition Plan and will continue to meet and actively participate after the completion of this project. The Consultant will work with the ADA Liaison Committee throughout the duration of the project to receive feedback and incorporate information from the ADA Liaison Committee into the project. The Consultant will prepare for and attend up to one (1) in-person progress meetings with Client staff and the newly created ADA Liaison Committee. The Consultant will produce meeting materials and handouts and prepare meeting notes, including a summary of action items resulting from the meetings (2-hour meeting).
- 5.2 External ADA Advisory Committee Meeting. The Consultant will prepare for and attend up to one (1) in-person meeting with Client staff and the newly created ADA Advisory Committee to describe the process, timeline, and expectations associated with this project, as well as receive any general input they may provide. The Consultant will produce meeting materials and handouts and prepare meetings notes, including a summary of action items resulting from the meetings (1-hour meeting). The City will be responsible contracting for all effective communication services, including but not limited to sign language interpreting and captioning services. Any request for the Consultant to contract and coordinate directly with effective communication service providers will be considered Additional Services. Meeting materials to be provided by the Consultant:
- PowerPoint presentation;
 - Interactive online map that allows for geo-referenced public input; and
 - Public access survey in SurveyMonkey.
- 5.3 Council Meeting. The Consultant will prepare for and attend one (1) Client Council meeting. The Consultant will produce meeting materials and handouts and prepare a summary of action items resulting from the meetings (2-hour meeting).

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Review of programs, services, and activities not listed in **Task 3.2**;
- Review of design standards not listed in **Task 3.3**;
- Evaluation and reporting of facilities not listed in **Task 3.4**;
- Evaluation of areas used only by employees as work areas;
- Providing printed copies of Appendices.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

Schedule

We will provide our services as expeditiously as practicable and work with the Client to develop a mutually agreeable schedule.

Deliverables

The Consultant will deliver the following materials to the Client:

- Electronic copies of the Draft Transition Plan in Microsoft Word and Adobe PDF formats;
- Electronic copies of the Final Transition Plan in Microsoft Word and Adobe PDF formats;
- Two (2) printed copies of the Final Transition Plan. Two (2) electronic copies of the Appendices will be provided on flash drives. Printed copies of the Appendices will be considered Additional Services.
- Field work data in GIS format, compatible with the Client's GIS system.
- An ESRI dashboard for viewing project data, including cost and priority.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 5 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1	Project Management	\$ 10,300
Task 2	Project Kick-off Meeting	\$ 5,000
Task 3	Self-Evaluation	
	• Non-Facilities	\$ 8,100
	• Facilities Review and Facility Reports	
	○ Buildings	\$ 4,700
	○ Parks	\$ 16,800
	○ Sidewalk and Unsignalized Intersection Inventory	\$ 2,700
	○ Signalized Intersections	\$ 2,100
	○ Sidewalk Corridors	\$ 4,200
	○ Unsignalized Intersection and Driveways	\$ 4,500
Task 4	Transition Plan Development	\$ 26,600
Task 5	Meetings	\$ 15,000
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Total Lump Sum Fee		\$100,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

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 City of Angleton.

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 want us to proceed with the services, please have an authorized person sign this Agreement below. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

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

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed:

Printed Name: Erin Eurek, P.E.

Title: Project Manager

CITY OF ANGLETON

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

Signed:

Printed Name: Scott Arnold, P.E.

Title: Vice President

Client's Federal Tax ID: _____
Client's Business License No.: _____
Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions

DRAFT

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

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. Other direct expenses will be billed at 1.15 times cost.

(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 rate of 12% per year beginning on the 25th day. 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.
- (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.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, 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 two years 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 of 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. 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.