



May 9, 2022

Aaron Reed
Public Works Director
City of Dripping Springs
511 Mercer Street PO Box 384
Dripping Springs, TX 78620

***RE: Letter Agreement for Professional Services
Middle School SRTS – Revision 1***

Dear Mr. Reed,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or the “Engineer”) is pleased to submit this letter agreement (the “Agreement”) to City of Dripping Springs (the “Client” or the “City”) to provide consulting engineering and sub-consultant services for the referenced project in accordance with the attached Standard Provisions.

PROJECT UNDERSTANDING

Kimley-Horn will be responsible for the design and preparation of PS&E and construction phase services for the Project. The Project generally consists of completion of sidewalk and shared-use path design, pedestrian traffic signals, drainage analysis, survey, subsurface utility engineering, and environmental compliance of approximately 1.1 miles of sidewalk along US 290, Old Hwy 290, and Broken Lance Road and approximately 0.3 miles of shared use path along Roger Hanks Pkwy. It is our understanding that no right-of-way or easement acquisitions are anticipated. Project specifications will be developed using the latest Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges.

We have included in the following Scope of Service the services that are anticipated for the proposed project.

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SCOPE OF SERVICES

RESPONSIBILITIES OF THE CITY

In conjunction with and in order for the completion of the professional services detailed below, the City of Dripping Springs agrees to complete the following tasks:

- Attend a Project Kickoff Meeting and assist in developing the project stakeholders list.
- Attend project coordination meetings, held virtually and at the City of Dripping Springs offices.
- Provide As-Built plans and design files for previous projects adjacent to project area
- Provide timely reviews and comments on interim and milestone submittals in order for the consultant team to maintain agreed upon schedules.

SERVICES TO BE PROVIDED BY THE ENGINEER

The Engineer's Services consist of the services specifically described in **Sections 1 through 8** including the specific engineering services to be performed through the following consulting disciplines as subcontractors to the Engineer:

- (1) McGray and McGray Land Surveyors, Inc (McGray) – Survey
- (2) The Rios Group (TRG) – Subsurface Utility Engineering
- (3) COX|McLAIN Environmental Consulting now Stantec (CMEC) – Environmental documentation

1. PROJECT ADMINISTRATION AND COORDINATION SERVICES

The Engineer will:

- 1.1. Assemble a Project team comprised of the City's representatives and the Engineer's representatives. The Engineer will meet with the Project team at a kickoff meeting to set the production schedule and parameters for all subsequent work, to verify the components within which all Project participants must perform, and to identify all parties and significant deadlines involved in the comprehensive schedule strategy. Based on this information, the Engineer will prepare a detailed schedule of its work for the Project addressing each component of the work to be done, indicating the points of involvement of all project participants. The Engineer will maintain the schedule throughout project development.
- 1.2. Perform general administrative duties associated with the Project, to consist of monitoring/reporting, scheduling, general correspondence, office administration, and invoicing.
- 1.3. The Engineer will prepare and submit monthly status updates with updated

schedule and invoices to the City for review and approval. The Engineer will prepare weekly progress updates.

- 1.4. The Engineer will attend one (1) project kickoff meeting with the City. Meeting minutes and agenda will be prepared by the Engineer for the meeting.
- 1.5. The Engineer will perform monthly internal coordination meetings estimated at one (1) hour each.
- 1.6. Meet with the City and Stakeholders to document current issues and collect observed water levels in the channel for various rainfall events.

2. ENVIRONMENTAL SERVICES

The environmental documentation includes services to prepare C-list or D-list Categorical Exclusion (CE) documentation per NEPA requirements via subconsultant (CMEC). CMEC will prepare the appropriate scoping documents according to TxDOT guidelines and policy. Environmental technical reports shall include appropriate NEPA or federal regulatory language in addition to the purpose and methodology used in delivering the service. Technical reports shall include sufficient information to determine the significance of impacts and are listed below. A technical report shall be prepared to address:

- 2.1. Archeological Resources Background Report
- 2.2. Historic Resources Project Coordination Request
- 2.3. Biological Resource Deliverables
 - Species Analysis Spreadsheet (draft Excel, final PDF)
 - Species Analysis Form (Word)
 - Texas Natural Diversity Database (TxNDD) file, including TxNDD map at 1.5 and ten miles with table of Element of Occurrence Identification numbers (EOIDs). The minimum information in the EOID table should be EOID Number, Common Name, Scientific Name, Listing Status, and Buffer Zone. If TPWD provided the TxNDD search, TPWD typically provides the associated Element of Occurrence Records (EORs). In this case attach them after the map and table. (PDF)
 - Ecological Mapping Systems of Texas (EMST) spreadsheet including tables for mapped and observed habitat types (Excel).
 - EMST map(s) showing the project and the project's relationship to mapped EMST vegetation types. The same type of maps must be produced for observed vegetation types. All maps must be combined into a single file. (PDF)
 - Documentation of Texas Parks and Wildlife Department Best Management Practices Form (form only, no attachments).
 - TPWD Rare Threatened and Endangered Species of Texas (RTEST) county list must be obtained less than six months prior to the final deliverable (PDF)

- U.S. Fish and Wildlife Service Information, Planning, and Consultation (IPaC) system species list (official or non-official) must be obtained less than six months prior to the final deliverable (PDF)
 - Project location maps (must be under Project when filed in ECOS) (PDF)
 - Project site photos (must be under Projects when filed in ECOS). General project area photos uploaded under Project. Biology specific ones uploaded under Biology. (PDF)
- 2.4. TxDOT Surface Water Analysis Form
- 2.5. Jurisdictional Delineation and Report
- The Technical Expert shall prepare and provide a draft and final Waters of the U.S. delineation report in accordance with ENV's Documentation Standard for Waters of the U.S. Delineation Report and ENV's Template: Waters of the U.S. Delineation Report including all supporting forms and exhibits current at the time of this contract execution.
- 2.6. Hazardous Materials Initial Site Assessment
- 2.7. Community Impacts Assessment (assume summary statement only)
- 2.8. EPIC Sheet Preparation
- 2.9. Public Notice and Opportunity to Comment
- CMEC will prepare the notice using the current TxDOT guidance and will send the notice to the owners of real property that is adjacent to the project, using email and/or non-certified mail to the address listed for each property owner in county or city records. CMEC will also provide notice to affected local governments and public officials. The notice and opportunity to comment must be in English and any other language identified as commonly spoken in the project area. A 15-day comment period will be afforded. Any timely comments received in response to the notice and opportunity to comment will be addressed in a comment/response matrix prior to the environmental decision on the project (i.e., the categorical exclusion determination).

Technical Report Assumptions:

- This scope assumes that the proposed project would not require acquisition of new right-of-way/easement and would not result in any residential or non-residential displacements.
- This scope assumes that a USACE permit application would not be required for the proposed project and that no work will occur within waters of the U.S. Additionally, Section 408 of the Clean Water Act and Section 10 of the Rivers and Harbors Act would not apply.
- This scope assumes that the proposed project would not result in an adverse effect to a historic property under the National Historic Preservation Act (NHPA).

- This scope assumes that federally listed threatened and endangered species and their habitat are not located within the proposed project area. This scope does not include presence/absence surveys or coordination with the United States Fish and Wildlife Service (USFWS).
 - This scope assumes that the proposed project would not result in any impacts to Section 4(f) properties.
 - This scope assumes that the proposed project would not affect any Section 6(f) properties.
- 2.10. The Engineer shall coordinate with CMEC and perform QA/QC of report deliverable files.

Deliverables will consist of:

- Draft and Final Technical Reports

3. SURVEYING SERVICES

Topographical surveying services will be performed via a subconsultant (McGray) for limits as shown in Exhibit A. Right-of-way (ROW) retracement will be performed via a subconsultant (McGray) along Old US 290 for limits as shown in Exhibit D.

- 3.1. Surveying services will be performed via a subconsultant (McGray) as follows:
- Cross sections shall be taken at 50-foot intervals along with break lines as required, to provide a digital topographic design file at 1-foot interval contours.
 - Locate and identify all above ground features within the survey limits including, fences, sidewalks, driveways, handicap ramps, planters and mailboxes, guardrails, signs, visible utilities, including: manholes, water valves, telecom boxes, utility poles and water meters.
 - Two culver crossings as highlighted in green in Exhibit A.
 - Invert elevations and size/type of utility and drainage pipes and culverts shall be identified for all manholes and culverts within the project limits.
 - Locate and identify types of existing pavement surfaces for streets, alleys, sidewalks and driveways, identify existing lane markings and signage, identify existing traffic signals including base, mast arms, and control boxes.
 - Trees 8-inches and larger in diameter shall be measured, identified and tagged with a point number.
 - Location of monumentation sufficient to show the approximate right-of-way lines of the streets within project limits
- 3.2. The Engineer shall coordinate with MCGray and perform QA/QC of survey deliverable files.

Deliverables will consist of:

- 2D Microstation DGN of surveyed areas and ROW retracement
- Digital Terrain Model (DTM) at 1 foot contours.

4. SUBSURFACE UTILITY ENGINEERING (SUE) SERVICES/ UTILITY COORDINATION SERVICES

SUE services will be performed via a subconsultant (TRG) along the project limits specified in the project understanding and will be performed as follows:

4.1. TRG will perform SUE services for this project in general accordance with the recommended practices and procedures described in ASCE publication CI/ASCE 38-02 “Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data.” As described in the publication, four levels have been established to describe and depict the quality of subsurface utility information. The four quality levels are as follows:

- Quality Level D (QL“D”) – Information obtained from existing utility records.
- Quality Level C (QL“C”) – Surveyed data depicting visible above-ground features supplemented with QL“D” information.
- Quality Level B (QL“B”) – Two-dimensional horizontal information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as “designating,” this level incorporates QL“C” information and provides horizontal positioning of subsurface utilities to within approximately 1.0 foot.
- Quality Level A (QL“A”) – Three-dimensional horizontal and vertical information obtained through non-destructive vacuum excavation equipment to expose utilities at critical points. Also known as “locating,” this level incorporates QL“B” information and provides horizontal and vertical positioning of subsurface utilities to within approximately 0.05 feet.
- The scope of this proposal includes QL“D” SUE services along Old Hwy 290 and Broken Lance Drive for the Dripping School Middle School Sidewalks Project in Dripping Springs, Texas. The alignment of SUE investigations are shown in red on Exhibit B. Along this alignment, TRG will investigate one side of the road from edge of pavement to ROW. TRG will depict the following utilities based on available records: potable water, reclaimed water, chilled water, natural gas/crude oil/refined product pipelines, communication duct banks, fiber optic, cable television, telephone, electric, and wastewater. Additionally, TRG will attempt to depict utility service lines, however, because these lines are often not shown on records TRG cannot

guarantee all service lines will be included in the final deliverables. Irrigation lines, storm drain lines and an inventory of overhead utilities are excluded from this scope of work.

- It is the responsibility of the SUE provider to perform due-diligence with regard to records research and the acquisition of available utility records. The due-diligence provided for this project will consist of contacting the applicable One Call agency and associated utility owners/municipalities, visually inspecting the work area for evidence of utilities, and reviewing available utility record information. Additional utilities not identified through these efforts will be referred to as Unknown utilities.
- 4.2. The Engineer shall coordinate with TRG and perform QA/QC of SUE deliverable files.
 - 4.3. Update and maintain a utility layout in the Microstation V8. This layout shall include all existing utilities which are to remain in place or be abandoned, and all adjusted utilities. This layout will be utilized to monitor the necessity and evaluate alternatives. The Engineer will utilize the layout of existing utilities as prepared, and make a determination of the following:
 - Facilities potentially in conflict with the proposed project

Deliverables will consist of:

- A utility file in CAD format depicting all designated and QL“D” utilities.

5. DRAINAGE DESIGN SERVICES

Drainage design services consist of a drainage study to analyze existing and proposed conditions for roadside ditches and the culvert crossings of the Unnamed Tributary to Onion Creek at Old Hwy 290 and Broken Lance Drive.

The Engineer will:

- 5.1. Perform Hydrologic analysis to establish drainage areas for each culvert crossing and develop runoff discharges for the design and 100-yr check rainfall events.
- 5.2. Perform Hydraulic analysis for each existing and proposed culvert, using HY-8, to determine water surface elevations in the channel for the design and 100-yr check rainfall events.
- 5.3. Perform roadside ditch Hydrologic and Hydraulic analysis. Hydraulic analysis will be performed at 100' intervals along the roadway alignment.

6. FINAL PS&E DESIGN SERVICES

The Engineer will:

- 6.1. Obtain and review available record drawings, aerial photography, and any site development plans under review by the City.
- 6.2. Perform a site visit to evaluate site and traffic characteristics, topography, utilities, and potential environmental issues.
- 6.3. Design Criteria and Design Concept Conference (DCC) Meeting
 - Attend and document a DCC meeting with the City and TxDOT to establish preliminary design criteria
 - Prepare a Design Summary Report (DSR). The DSR will be presented at the DCC meeting. Update the DSR based on decisions made at the DCC meeting. The DSR will be updated throughout project development as design progresses and provided to TxDOT for their approval and record.
- 6.4. Evaluate and design vertical profile utilizing Microstation V8 and Geopak roadway design software.
- 6.5. Evaluate and prepare horizontal geometrics
- 6.6. Prepare a Title Sheet, Index of Sheets, and a Project Layout which references survey control benchmarks.
- 6.7. Prepare existing and proposed typical section sheets
- 6.8. Develop Removal Plans identifying and quantifying removals at a scale of 1"=20'
- 6.9. Prepare Plan-Profile Sheets at a scale of 1"=20' horizontal and 1"=2' vertical. Plan-profile sheets will include signing and pavement marking details and SW3P design. Design signing and pavement markings in accordance with the Texas Manual for Uniform Traffic Control Devices a
- 6.10. Prepare miscellaneous details sheet
- 6.11. Prepare cross sections to final roadway design at a spacing no less than 100 feet and at driveways.
- 6.12. Prepare Sequence of Work narrative and General Traffic Control Notes for construction.
- 6.13. Calculate quantities and prepare Item Summaries Sheets tabulating project quantities.
- 6.14. Incorporate TxDOT and City standard details as applicable.
- 6.15. Prepare General Notes and a Construction Timeline Estimate
- 6.16. Prepare an opinion of probable construction costs (OPCC) at each milestone deliverable.
- 6.17. Attend up to two (2) Design Review meetings for 60% and 90% PS&E design submittals. Prepare meeting minutes and distribute to project attendees. Prepare comment responses for comments received during design review submittals.

The Engineer will prepare the following deliverables during this task:

- a) Three (3) hard copies and a PDF of the following 60% Design Plans (11"x17"):
- Title Sheet
 - Index of Sheets
 - Project Layout
 - Typical Sections
 - Plan-Profile Sheets
 - Culvert Drainage Area Maps
 - Culvert Hydrologic & Hydraulic calculation sheets
 - Culvert Layout Sheets
 - Signal Layout sheets
 - Signal Elevation sheets
 - Electrical Conduits and Wiring
 - Opinion of Probable Construction Costs
 - Cross sections
 - Form 1002, 2443
 - Austin District Project Development Manual IDF-Checklists
- b) Three (3) hard copies and a PDF of the following 90% Design Plans (11"x17"):
- Title Sheet
 - Index of Sheets
 - General Notes
 - Item Summaries
 - Traffic Control Narrative and Standards
 - Project Layout
 - Typical Sections
 - Removal Plans
 - Plan-Profile Sheets
 - Intersection Detail Sheets
 - Miscellaneous Details Sheet
 - Culvert Drainage Area Maps
 - Culvert Hydrologic & Hydraulic calculation sheets
 - Culvert Layout Sheets
 - Signal Layout sheets
 - Signal Elevation sheets
 - Electrical Conduits and Wiring
 - EPIC
 - Standards
 - Cross Sections
 - 90% Opinion of Probable Construction Costs
 - 90% Construction Timeline

- LGPP Development Review Checklist
 - Form 1002, 2443, 2229, 2699
 - Draft certifications, Engineers Seal, specifications list
 - Austin District Project Development Manual IDF-Checklists
- c) Final Plans Submittal to contain:
- Three (3) hard copies and a PDF of the Final Design Plans consisting of all sheets from the 90% submittal
 - Three (3) hard copies and a PDF of the Final Opinion of Probable Construction Costs
 - Three (3) hard copies and a PDF of the Final Construction Timeline

7. TRAFFIC ENGINEERING SERVICES

The Engineer will develop pedestrian signal improvements for 3 crossings at the US 290/Old Hwy 290 intersection and for 1 crossing at the Roger Hanks Pkwy/US 290 intersection. The Engineer will:

- 7.1. Conduct field reconnaissance at above intersections to identify existing signal equipment and operations.
- 7.2. Develop Signal Layout sheet for each intersection to show locations of proposed pedestrian crossing, ramps, push-button, ped-poles and ped-head displays.
- 7.3. Develop conduit and electrical wiring chart to show appropriate conduit and wiring to the new pedestrian signal equipment.
- 7.4. Develop Signal Elevation sheet for each intersection to show the new pedestrian equipment.
- 7.5. Develop a Summary of Quantities for the signal modification.
- 7.6. Develop a list of appropriate traffic signal standards and specifications for the above modifications.
- 7.7. Develop signal modifications using assumptions all existing signal equipment shall be re-used.

8. CONSTRUCTION PHASE SERVICES

Engineer will not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Consultant does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

- 8.1. Attend one (1) Pre-Construction meeting with the City and the Contractor.

- 8.2. Respond to up to five (5) Request for Information (RFI) requests from the Contractor. Any orders authorizing variations from the Contract Documents will be made by Client.
- 8.3. Develop and issue up to three (3) revised sheets.
- 8.4. Review shop drawings and respond to reasonable requests for information (RFI's) for construction; a maximum combined total of five (5) shop drawings will be reviewed or responded to. Shop drawing submittals will typically consist of concrete mix designs, prestressed concrete girders, and prestressed concrete panels. Kimley-Horn will not direct any construction activities and assumes no responsibility for any work performed by the Contractor.
- 8.5. Make up to one (1) site visits as directed by Client in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the work.

The following services are not included in this Agreement at present and are specifically considered to be additional services:

- a. Right-of-Way/easement acquisition and/or condemnation assistance;
- b. Franchise Utility relocation design
- c. Construction inspection, construction staking
- d. Appearing as an expert witness in any litigation for the City.
- e. Formal coordination with the USFWS
- f. Endangered species presence/absence surveys, including freshwater mussel surveys
- g. Section 6(f) or 4(f) analysis
- h. USFWS Coordination
- i. Indirect and Cumulative Impacts Assessment
- j. Preparation of Environmental Assessment or other NEPA document
- k. U.S. Army Corps of Engineers Section 401/404/408 Permit Applications
- l. Geologic Assessment
- m. Hazardous Materials Phase I or II analysis
- n. USACE Pre-Construction Notification or Individual Permit preparation
- o. Preparing Conditional Letter of Map Revision for FEMA
- p. Preparing final conditions Letter of Map Revision for FEMA
- q. Irrigation design



SCHEDULE

We will provide our services as expeditiously as practicable as shown in Exhibit C



FEE AND EXPENSE

Kimley-Horn will perform the tasks noted below on a lump sum (LS) basis and time and materials, not to exceed, (TM). The services in this agreement will be billed as follows.

<u>Base Services</u>			
Task 1	PROJECT ADMIN AND COORD SERVICES	\$	22,565.00 TM
Task 2	ENVIRONMENTAL SERVICES	\$	44,644.43 TM
Task 3	SURVEYING SERVICES	\$	53,200.00 LS
Task 4	SUE SERVICES(QLD)	\$	8,100.00 LS
Task 5	DRAINAGE DESIGN SERVICES	\$	12,100.00 LS
Task 6	FINAL PS&E DESIGN SERVICES	\$	147,700.00 LS
Task 7	TRAFFIC ENGINEERING SERVICES	\$	21,000.00 LS
Task 8	CONSTRUCTION PHASE SERVICES	\$	15,340.00 TM
	EXPENSES	\$	1,224.00 LS
Base Services Total		\$	325,873.43

For all tasks, direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at cost. All permitting, application, and similar project fees will be paid directly by the Client.

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.

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 Dripping Springs**.

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

Please email all invoices to: _____

Please copy: _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute this Agreement in the spaces provided below and return a copy to our attention. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us at (512) 418-1771 should you have any questions regarding this agreement.

Sincerely,



Sam Lundquist, P.E.
Project Manager
TBPE F-928



Trey Neal, P.E.
Vice President

Agreed to on this ____ day of _____, 2022.

City of Dripping Springs

By: _____

(Print Name)



Attachments:

- Exhibit A – Topographic survey limits
- Exhibit B – QL D SUE limits
- Exhibit C – Proposed Design Schedule
- Exhibit D – Right of Way retracement limits

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 within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

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(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the

Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

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

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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.

EXHIBIT "A"



Google Earth

Exhibit B

Dripping Springs Middle School Sidewalks Project

Legend


 QLC/D SUE Limits



Exhibit C
 DS Middle School SRTS
 Project Development Schedule

ID	Task Name	Duration	Start	Finish	Predecessors	May '22	Jun '22	Jul '22	Aug '22	Sep '22	Oct '22	Nov '22	Dec '22	Jan '23	Feb '23	Mar '23	Apr '23	May '23	Jun '23	Jul '23	Aug '23	Sep '23	Oct '23	Nov '23	Dec '23	Jan '24	Feb '24	Mar '24						
1	Design Phase	415 days	Mon 5/23/22	Fri 12/22/23		[Gantt chart bar for Design Phase]																												
2	Notice to Proceed	1 day	Mon 5/23/22	Mon 5/23/22		[Gantt chart bar for Notice to Proceed]																												
3	Data Collection & Subcontracting	10 days	Tue 5/24/22	Mon 6/6/22	2	[Gantt chart bar for Data Collection & Subcontracting]																												
4	Topographic Survey and QLD SUE	45 days	Tue 6/7/22	Mon 8/8/22	3	[Gantt chart bar for Topographic Survey and QLD SUE]																												
5	Review and update preliminary design	30 days	Tue 6/7/22	Mon 7/18/22	3	[Gantt chart bar for Review and update preliminary design]																												
6	Prepare 60% PS&E	75 days	Tue 8/9/22	Mon 11/21/22	4,5	[Gantt chart bar for Prepare 60% PS&E]																												
7	Submit 60% Plans to City	1 day	Tue 11/22/22	Tue 11/22/22	6	[Gantt chart bar for Submit 60% Plans to City]																												
8	City Review 60% PS&E	15 days	Wed 11/23/22	Tue 12/13/22	7	[Gantt chart bar for City Review 60% PS&E]																												
9	Update 60% Plans per City Comments	15 days	Wed 12/14/22	Tue 1/3/23	8	[Gantt chart bar for Update 60% Plans per City Comments]																												
10	Submit 60% Plans to TxDOT	1 day	Wed 1/4/23	Wed 1/4/23	9	[Gantt chart bar for Submit 60% Plans to TxDOT]																												
11	TxDOT Review 60% PS&E	25 days	Thu 1/5/23	Wed 2/8/23	10	[Gantt chart bar for TxDOT Review 60% PS&E]																												
12	Prepare 90% PS&E	55 days	Thu 2/9/23	Wed 4/26/23	11	[Gantt chart bar for Prepare 90% PS&E]																												
13	Submit 90% Plans to City	1 day	Thu 4/27/23	Thu 4/27/23	12	[Gantt chart bar for Submit 90% Plans to City]																												
14	City Review 90% PS&E	15 days	Fri 4/28/23	Thu 5/18/23	13	[Gantt chart bar for City Review 90% PS&E]																												
15	Update 90% Plans per City Comments	15 days	Fri 5/19/23	Thu 6/8/23	14	[Gantt chart bar for Update 90% Plans per City Comments]																												
16	Submit 90% Plans to TxDOT	1 day	Fri 6/9/23	Fri 6/9/23	15	[Gantt chart bar for Submit 90% Plans to TxDOT]																												
17	TxDOT Review 90% PS&E	25 days	Mon 6/12/23	Fri 7/14/23	16	[Gantt chart bar for TxDOT Review 90% PS&E]																												
18	Prepare 100% PS&E, Project Manual, LGPP Checklist	25 days	Mon 7/17/23	Fri 8/18/23	17	[Gantt chart bar for Prepare 100% PS&E, Project Manual, LGPP Checklist]																												
19	Receive TxDOT SLOA and FPAA	90 days	Mon 8/21/23	Fri 12/22/23	18,30	[Gantt chart bar for Receive TxDOT SLOA and FPAA]																												
20	Environmental	180 days	Tue 7/19/22	Mon 3/27/23		[Gantt chart bar for Environmental]																												
21	Roadway Environmental Checklist	15 days	Tue 7/19/22	Mon 8/8/22	5	[Gantt chart bar for Roadway Environmental Checklist]																												
22	Prepare and Send Opportunity for public comment	15 days	Tue 8/9/22	Mon 8/29/22	21	[Gantt chart bar for Prepare and Send Opportunity for public comment]																												
23	Opportunity for Comment Period	15 days	Tue 8/30/22	Mon 9/19/22	22	[Gantt chart bar for Opportunity for Comment Period]																												
24	Hazardous Materials	75 days	Tue 8/9/22	Mon 11/21/22	21	[Gantt chart bar for Hazardous Materials]																												
25	Traffic Noise	75 days	Tue 8/9/22	Mon 11/21/22	21	[Gantt chart bar for Traffic Noise]																												
26	Biological Resources	75 days	Tue 8/9/22	Mon 11/21/22	21	[Gantt chart bar for Biological Resources]																												
27	Historic Resources	75 days	Tue 8/9/22	Mon 11/21/22	21	[Gantt chart bar for Historic Resources]																												
28	Community Impacts Analysis	75 days	Tue 8/9/22	Mon 11/21/22	21	[Gantt chart bar for Community Impacts Analysis]																												
29	Archeological Resources	70 days	Tue 8/9/22	Mon 11/14/22	21	[Gantt chart bar for Archeological Resources]																												
30	TxDOT Review	90 days	Tue 11/22/22	Mon 3/27/23	24,25,26,27,28,29	[Gantt chart bar for TxDOT Review]																												
31	Bidding Phase	60 days	Mon 12/25/23	Fri 3/15/24		[Gantt chart bar for Bidding Phase]																												
32	TxDOT Advertise, Solicit Bids, Award Contract	60 days	Mon 12/25/23	Fri 3/15/24	19	[Gantt chart bar for TxDOT Advertise, Solicit Bids, Award Contract]																												
33	Construction Phase	210 days	Mon 3/18/24	Fri 1/3/25		[Gantt chart bar for Construction Phase]																												
34	Construction	210 days	Mon 3/18/24	Fri 1/3/25	32	[Gantt chart bar for Construction]																												

Project: DS Middle School SRTS Date: Mon 5/9/22	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

Exhibit D

- Proposed R.O.W. Retracement

1000 ft

