

Feb 6th, 2026

James Quin
City Manager
City of Hutchins
400 N. JJ Lemmon Rd.
Hutchins, TX 75141
(972) 255-6121
jquin@cityofhutchinstx.gov

Re: Scope of Services for CDBG funded reconstruction of
Denton St. and Woodcrest Ln. in Hutchins, Texas

Dear Mr. Quin,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) submits this Letter Agreement (“Agreement”) to the City of Hutchins (“Client”) for providing professional services (“Project”).

Project Understanding

The City of Hutchins has requested Kimley-Horn to provide professional services for the design of:

CDBG Funded:

- **Woodcrest Lane** (Re: Figure 1) – Approximately **580 linear feet** of 2-lane existing asphalt pavement with concrete curb and gutter, bounded by Oak Creek Drive to the north (A) and Timberview Drive to the south (B).
- **S. Denton Street** (Re: Figure 2) – Approximately **1,400 linear feet** of existing 2-lane asphalt parabolic roadway extending from West Dallas Street on the north end (A) to a point approximately 440 linear feet south of West Palestine Road (B).

City of Hutchins Funded:

- **S. Denton Street - Southern Extension** (Re: Figure 3) – Approximately **920 linear feet** of existing 2-lane asphalt parabolic roadway extending from a point approximately 440 linear feet south of West Palestine Road (A) to the southern terminus of S. Denton Street (B).



Figure 1 – Woodcrest Ln.

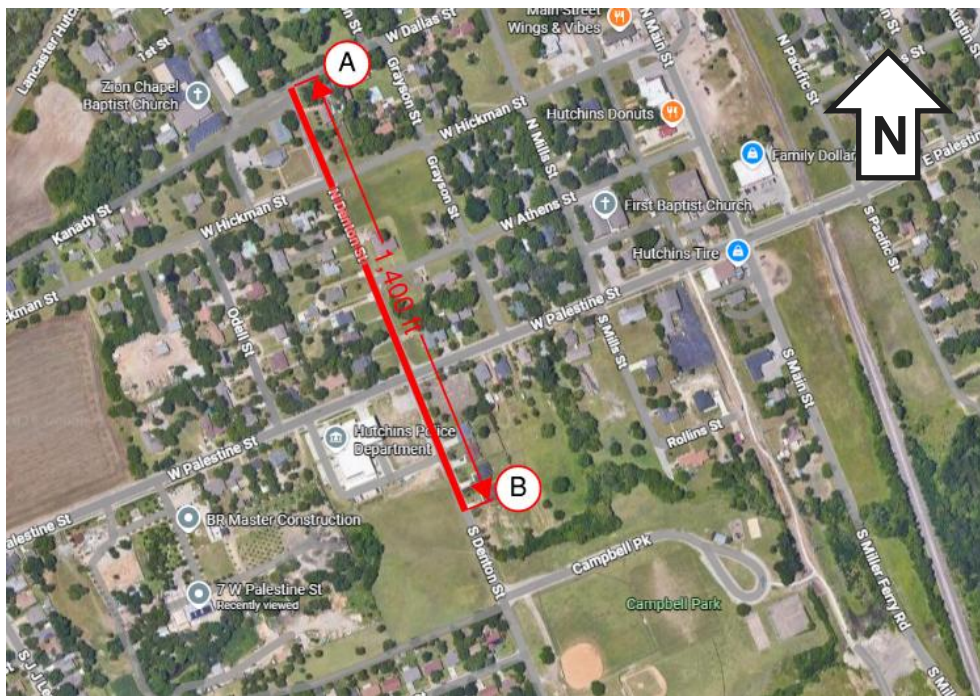


Figure 2 – S. Denton St.

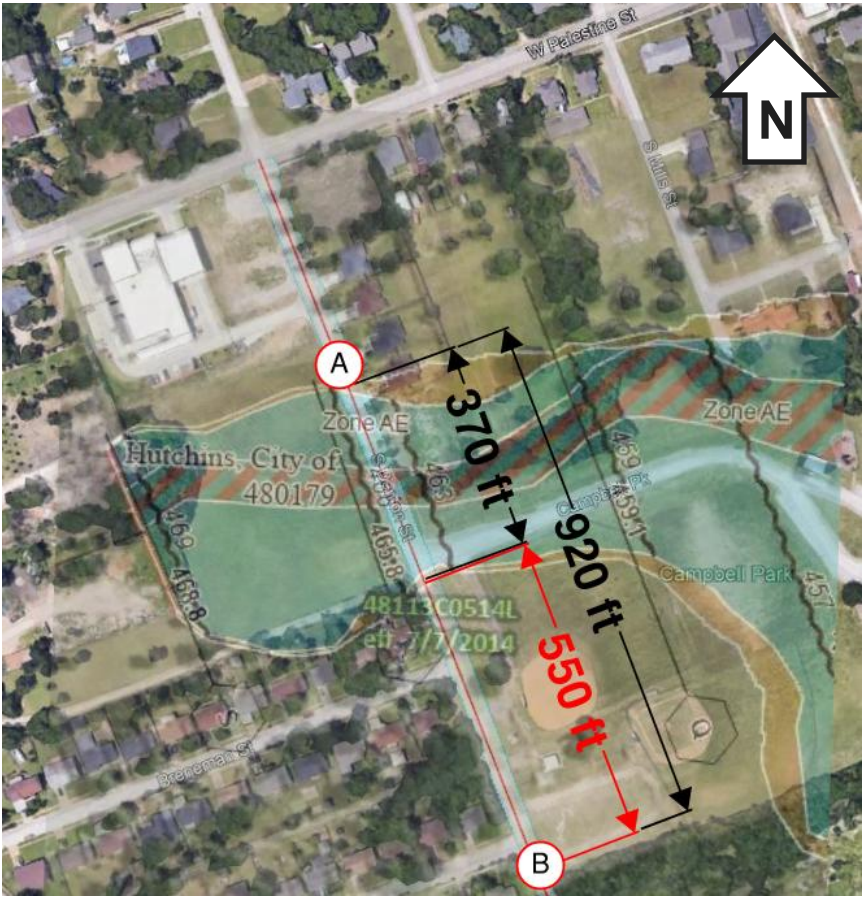


Figure 3 – Proposed S. Denton St. Reconstruction (Southern Extension)

Scope of Services

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

Task 1 Data Collection – Topographic Survey, Boundary Survey, and Geotechnical Services

- 1.1. Data Collection and Property Research
 - 1.1.1 Gather existing plat information.
 - 1.1.2 Collect property owner and record information.
 - 1.1.3 Gather existing right-of-way and easement information. Identify easements available through typical research methodologies (i.e. plats, courthouse filings, etc.). Undocumented easements may not be identified. Title research may be performed as an *Additional Service* only upon written Client authorization.
 - 1.1.4 Coordinate with Texas 811 to locate and mark existing franchise and public utilities prior to performing the field survey.
 - 1.1.5 The Client will arrange and make all provisions for access to perform the services specified within this scope. The surveyor will provide the Client with the name and address of the property owners.

- 1.2. Design Survey
 - 1.2.1 Along the limits for each roadway segment described above, including the curb returns of intersecting streets, and 10' beyond the right-of-way line.
 - 1.2.2 Set control points, which will be based on NAD-83 and NGVD 88 Texas State Plane Coordinate System datums at the north and south ends of the limits of the project area, to include two (2) primary control points established in locations unlikely to be disturbed during street reconstruction. Before setting the control points, the surveyor will submit sketches and data sheets of the control to the Client for approval.
 - 1.2.3 Perform a field survey to identify and locate visible existing topographic elements within survey limits, including the following items:
 - Property corner monumentation
 - Existing pavement (including material type), curbs, sidewalks, barrier free ramps, etc.
 - Existing storm sewer inlets, manholes, junction boxes (including culvert sizes, material type and invert elevations and direction for all visible connecting lines, where available from the surface through the access lids).
 - Existing driveway culverts and swales including flow lines.
 - Utility manholes, vaults, water valves, water meters, telephone poles, power poles, utility markers, other public utilities, and franchise utilities.
 - Signs (excluding temporary signs).
 - Trees for greater than 6" caliper. Dense stands of trees described by their limits.
 - Buildings and permanent structures.
 - Fence limits and material types (excluding temporary fences).
 - Other applicable physical features that could impact design.
 - Cross-sections throughout project limits at 50-foot intervals and at grade breaks.
 - 1.2.4 The survey deliverable will include the following:
 - Project Control sheets identifying control points used or set.
 - Relevant benchmark data.
 - AutoCAD file showing the features located and ground elevations. Provide copies of the survey field notes, a hardcopy of the coordinates and an ASCII file of the coordinates for the points located.

- An overall printout of the survey identifying drainage structure types, sizes, and flowlines identified.
- 1.3. Subsurface Utility Engineering (SUE) QL C/D Services – The Consultant shall provide combined SUE quality level C and D Services for the purpose of determining horizontal locations of underground city and franchise utilities, in conjunction with and/or prior to the field survey. The Client shall assist with provisions for access to perform the services specified in this item. The Consultant shall provide the Client with the name and address of the property owners.
 - 1.3.1 Level ‘C+D’ Services:
 - Horizontal location of utilities will be determined.
 - Approximately 2,900 linear feet of designation.
 - 1.4. Geotechnical Investigation – The Consultant will provide a Geotechnical Engineer Report containing the following information:
 - 1.4.1 Existing Pavement Assessment – The Consultant shall perform a visual inspection of existing pavement and make recommendations on preservation and replacement. The Consultant shall determine location(s) to obtain boring samples.
 - 1.4.2 Exploration and Sampling – The Consultant shall provide a subgrade investigation including up to:
 - 2 borings on Woodcrest Ln.
 - 3 borings on S. Denton St.
 - 3 borings on S. Denton St. – Southern Extension
 - 1.4.3 Laboratory Testing – The Consultant shall determine soil properties in accordance with City design standards, *Pavement and Subgrade Design Requirements*.
 - 1.4.4 Pavement Design – The Consultant shall provide a comprehensive pavement design report including summary of site investigations and multiple recommendation options for pavement section design based on the results of the above testing. The summary is to include an evaluation of the existing pavement and proposed pavement sections.

Task 2 Roadway Design

Milestones for review of roadway design anticipates providing submittal review documents at 60%, 90% and Final design. Each submittal will be provided to the City of Hutchins and Dallas County reviewer, and will include a notes to reviewer. Submittals will include plan sheets with a detailed opinion of probable construction cost including spec item listing. Client comments received at 60% and 90% will be incorporated in the subsequent submittal.

- 2.1. Design criteria and data collection
 - 2.1.1 Compile City roadway design criteria and standard details
 - 2.1.2 Construction contract document standards
 - 2.1.3 Existing storm drainage facilities / record drawings
 - 2.1.4 Existing water and sanitary line locations / record drawing review
- 2.2. Roadway Design
 - 2.2.1 Prepare up to two (2) proposed typical sections with subgrade and pavement design
 - 2.2.2 Prepare paving plan / profile sheets (PDF and 11"x17" plan sheets at a scale of 1"=20' horizontal, and 1"=4' vertical). The final bid documents will be half-size 11"x17" plan sheets at a scale of 1"=40' horizontal, and 1"=8' vertical. Paving sheets

to include the following information:

- Control data
- Existing right-of-way and easement locations
- Existing topography
- Existing pavement
- Existing storm sewer, water, and sanitary sewer locations based on Client provided record drawings
- Existing franchise utility locations (information provided by franchise utilities)
- Existing trees
- Existing driveway locations
- Proposed centerline alignment and horizontal curve data
- Proposed face of curb
- Proposed transition pavement tie-ins to existing pavement
- Proposed storm sewer and culvert alignments.
- Proposed commercial driveways
- Profile: Existing ground profile and proposed vertical alignment
- Proposed easement locations (if any)
- Proposed commercial driveways (if replacement is required)

- 2.2.3 Analyze all driveways within the project to assist with establishing roadway profile elevation.
- 2.2.4 Side street improvements defined vertically by spot elevations.
- 2.2.5 Develop design cross-sections on 50' station intervals and at driveway centerlines. Show pavement and subgrade, right-of-way limits, side slopes, pavement cross slopes, ditch fore/back slopes.
- 2.2.6 Compile applicable paving standard details.

2.3. Drainage:

- 2.3.1 Develop updated existing project drainage area map. Determine conveyance paths, channel slopes, time of concentration, and runoff coefficients to calculate design-year flows.
- 2.3.2 Analyze existing drainage features within the limits of improvement. Subdivide the overall drainage area into sub-areas and calculate discharge to each design point (culvert, inlet, or ditch critical points). At 60% design phase, provide a summary of existing drainage capacities and limitations needing improvement.
- 2.3.3 90% design submittal to include final storm drainage improvements and sizing recommendations. Storm drainage sizing to be improvements over the existing conditions. The need for hydraulic calculations to size infrastructure to convey a specific design storm is not anticipated and is available as *Additional Services*. Design of offsite drainage improvements and easements will be considered as *Additional Services*.
- 2.3.4 Ditch profiles parallel to the roadway will be shown on the paving plan & profile sheet.
- 2.3.5 Determine grading requirements at culvert inlets and outfalls, if necessary. Provide plans and details for channel slope protection. Design of retaining walls and gabion mattresses (beyond specification of material/method) will be provided as *Additional Services* only upon Client written authorization.
- 2.3.6 Compile applicable standard details. Storm drainage structures will rely on standard details. Design of special drainage structures is available as *Additional Service*.
- 2.3.7 Prepare erosion control plan.

- 2.4. Develop typical sections showing lane widths, edge conditions, channelization and proposed construction area.
- 2.5. Develop driveway staging plans as appropriate to accommodate the adjacent properties with one and multiple access points. Show uses of high early strength concrete where needed.
- 2.6. Pavement Markings and Signing Plans
 - a. Prepare pavement markers and marking layouts in accordance with City design standards and the Texas Manual of Uniform Traffic Control Devices (TMUTCD)
 - b. Compile applicable City standard details.

2.7. Final Plans:

The final bidding documents will be a single coversheet. The bid form will include CDBG funded street segments (Figure 1 and Figure 2) as the base bid, and the City funded Denton St. Southern Extension (Figure 3) as a bid alternate.

2.7.1 The following sheets are anticipated to be included in the final reconstruction plans:

- Title Sheet
- General Notes
- Project Control (1"=100' scale)
- Typical Sections
- Removal Plan (1"=40' scale)
- Paving Plan and Profile (1"=20' scale)
- Paving Details
- Pavement Marking and Signing
- Drainage Area Map
- Drainage Details
- Erosion Control Plan and Details (1"=40' scale)
- Cross Sections

2.7.2 Prepare specification data and identify and prepare special specifications and/or special provisions applicable to the project.

- Project Manual:
- City of Hutchins standard construction contract forms
- Notice to bidders
- Special instructions to bidders
- Bid form
- Standard construction contract
- Performance bond
- Payment bond
- Maintenance bond
- Certificate of insurance
- General conditions
- Special provisions
- Technical specifications

- 2.8. Final design deliverables will consist of PDF plans and specifications and up to (3) half-size hard-copy sets of the plans and specifications, upon Client request.
- 2.9. The consultant will provide a conceptual opinion of probable construction cost and a detailed OPCC at the 60%, 90%, and final design submittals. The pay item listing may utilize City, NCTCOG, and TxDOT pay item descriptions and specifications.
- 2.10. Client Meetings and Communication
 - 2.10.1 The Consultant will prepare monthly invoices along with a design progress report and submit these documents to the Client during the 1st or 2nd week of the month. Effort billed with each invoice will be from the previous month.
 - 2.10.2 The Consultant will provide the Client with project progress updates via email during times of activity documenting effort for the given week, anticipated effort the following week, and any items needed from the Client.
 - 2.10.3 The assigned Quality Control Manager will provide oversight of the Consultant's deliverables and overall effort. The QC Manager will be provided with deliverables at least four business days prior to an external client milestone to provide review and comments for the Consultant to incorporate prior to submitting the deliverable to the Client.

Task 3 Construction Phase Services (Hourly):

The scope of services listed below may or may not be performed as part of our construction phase services (CPS). Kimley-Horn's role during construction is limited and services are only provided upon request of the Client and billed on a reimbursable basis as labor and direct expenses are incurred. The budgeted fee for this task is based upon approximately **40 hours** of labor. We will not proceed with performance of services beyond the hours budgeted without written authorization by the Client.

- 3.1. *Pre-Construction Conference.* Consultant will attend a Pre-Construction Conference prior to commencement of construction activity.
- 3.2. *Attend Progress Meetings, Visits to Site and Observation of Construction.* Consultant will make 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.
- 3.3. Consultant 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.
- 3.4. *Recommendations with Respect to Defective Work.* Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of

its observations, Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

- 3.5. *Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by Client.
- 3.6. *Change Orders.* Consultant may recommend Change Orders to the Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- 3.7. *Shop Drawings and Samples.* Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.
- 3.8. *Substitutes and "or-equal."* Consultant will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- 3.9. *Disagreements between Client and Contractor.* Consultant will, if requested by Client, render written decision on claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith.
- 3.10. *Applications for Payment.* Based on its observations and on review of applications for payment and supporting documentation, Consultant will determine amounts that Consultant recommends Contractor be paid. Such recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. For unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
- 3.11. *Substantial Completion.* Consultant will, after notice from Contractor that it considers the Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.
- 3.12. *Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit to determine if the completed Work of the Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also

provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant.

Assumptions

Kimley-Horn's scope and fee are based on the following assumptions:

- Right-of-way and easement acquisitions are not anticipated
- Tree survey is not anticipated
- Improvements will not adjust cut/fill within the floodplain and coordination with FEMA is not anticipated.
- Task 2 includes SUE C+D, which will be performed as combination of topographic survey of Tx811 markings and review of City record drawings. The need for SUE A potholing is not anticipated.

If any of these assumptions are not correct, then the scope and fee may change.

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. Additional services we can provide include, but are not limited to, the following:

- Franchise Utility Coordination
- Bid Phase Support
- Public involvement
- Executive briefings or presentations (Council meetings)
- Design of Traffic Signals or Illumination
- Traffic data collection
- Environmental services
- Other services not specifically listed above

Information Provided By the Client

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

Schedule

Kimley-Horn will provide the services listed in the Scope of Services as expeditiously as practicable with the goal of providing Task 1-2 deliverables within 3 months of written notice-to-proceed.

CITY OF HUTCHINS

MILESTONE SCHEDULE

For the following project:
 City of Hutchins CDBG
 Denton St. and Woodcrest Ln. Reconstruction

Milestone	2026								
	January	February	March	April	May	June	July	August	September
1. Council Approval & Notice to Proceed		█							
2. Surveying Phase		█	█						
3. Geotechnical Investigation		█	█	█					
4. Preliminary Phase (60% Design)		█	█	█					
5. City/County Review of 60% Submittal				█					
6. 90% Design Phase				█	█				
7. City/County Review of 90% Submittal				█					
8. Prepare Final Bid Documents					█				
9. Bidding Phase					█	█			
10. Construction Start						█			

Updated: 2/6/2026

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 and 2 for the total lump sum fee below. Individual task amounts are informational only. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Task Number & Name		Fee	Type
1	Data Collection	\$ 48,000	Lump Sum
2	Roadway Design	\$ 91,000	Lump Sum
Total		\$ 139,000	

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.

Kimley-Horn will perform services in Tasks 3-5 on a labor fee plus expense basis with labor fees billed on an hourly basis. The hourly fee is budgeted based on Kimley-Horn’s experience with similar projects. Kimley-Horn will not exceed the maximum hourly labor fee shown without prior authorization from the Client, however, Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. Labor fee will be billed on an hourly basis according to our then-current rates.

Task Number & Name		Fee	Type
3	Construction Phase Services	\$ 9,000	Hourly, Not-to-Exceed
Total		\$ 9,000	

Labor fee will be billed on an hourly basis according to our then-current rates. Direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client’s behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn will perform the above basic services in Tasks 1-2 on a lump sum basis and Tasks 3-5 on a labor fee plus expense hourly basis for a total fee not to exceed \$148,000.00.

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, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Hutchins.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. 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: _____

To proceed with the services, please have an authorized person sign this Agreement below and return to us. 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 this project.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed: 

Printed Name: Nathan Ante

Title: Senior Vice President

SIGNED: _____

Client's Federal Tax ID: _____

PRINTED NAME: _____

Client's Business License No.: _____

TITLE: _____

Client's Street Address: _____

DATE: _____

**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn'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 Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - 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 Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn 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 Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn 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 Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
 - Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
 - Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
 - Account Number: 2073089159554
 - ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.

- d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn 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.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall 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 Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn 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 Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn 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 Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn 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 deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn 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. Kimley-Horn 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. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **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. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn'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 Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND KIMLEY-HORN, 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 KIMLEY-HORN AND KIMLEY-HORN'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, ATTORNEYS' FEES (INCLUDING ATTORNEYS' FEES OTHERWISE RECOVERABLE UNDER TEX. CIV. PRAC. & REM. CODE § 38.001), 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 KIMLEY-HORN OR KIMLEY-HORN'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY KIMLEY-HORN UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CLIENT TO INDEMNIFY KIMLEY-HORN.
- 11) **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.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn 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.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims 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 one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If Kimley-Horn prepares construction documents and Kimley-Horn 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 Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any

contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn 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. Kimley-Horn 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 Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. 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 Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn 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.
 - 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
 - 19) **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 Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. 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.