

February 3, 2023

Mr. Scott Moore, City Manager
City of Manor
105 E. Eggleston Street
Manor, Texas 78653

**RE: Professional Services Agreement
Hill Lane – Public Roadway Extension
City of Manor, Travis County, Texas**

Dear Mr. Moore:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “the Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the **City of Manor** (the “Client” or the “Owner”) for providing professional civil engineering services.

PROJECT UNDERSTANDING

We understand that the Client is interested in the development of an approximately 1,825 LF extension of the public roadway ‘Hill Lane’ and related infrastructure in Manor, TX. A conceptual plan is below:



ASSUMPTIONS

Kimley-Horn assumes the following in preparation of the Agreement:

- The limits of the projects are from the proposed Entrada Boulevard connection to Hill Lane, west, to the City Limits line.
- The site is located within the full purpose city limits jurisdiction of the City. Additional ROW dedication will not be required.
- The roadway alignment will be provided by the Client. Kimley-Horn will assist in preliminary roadway planning coordination under **Task 3**. Any revisions to the final alignment after completion of **Task 3** will be considered an additional service;
- Detention and water quality will not be required for this roadway.
- The site development is not anticipated to impact any published FEMA floodplain area. No flood study is included in the Scope of Services;
- On-site paving design will be based on soil borings and tests by a geotechnical engineer. The Client will contract with a geotechnical engineer for these services. Kimley-Horn will coordinate location of the proposed borings and will correspond with the geotechnical engineer with respect to suggested testing and design recommendations. The geotechnical engineer will be responsible for providing pavement design, CBR testing, foundation designs, and special bedding designs for storm pipes greater than 36" in diameter. Boring location stakeout will be done by GPS and final identification of borings will be collected by the project surveyor;
- The Hill Lane construction plans included in **Task 6** will be included with a Public Improvement Plan Application to the City; PIP plans include the construction of Hill Lane ROW improvements, including utility extensions and demolition.
- Coordination with TxDOT will not be required;
- No Traffic Impact Analysis (TIA) will be required;
- The client will provide any previously prepared studies or surveys for the property;
- The required TDLR/TAS submittals for site accessibility requirements will be made by the Client's Project Architect;
- The Client will be responsible for establishing franchise utility services. Kimley-Horn will provide limited assistance under **Task 10**;
- Kimley-Horn will show light pole locations on the site plan for coordination purposes. We will coordinate with the Client's lighting vendor and/or electrical engineer who will provide all site electrical and photometric design;
- City required code landscape, lighting plans, retaining or structural wall designs, if required, will be provided by others.
- Kimley-Horn will have legal access to the property; and
- The Client will assume payment for all review fees.
- Concept and preliminary plans are not required.

We have included in the following Scope of Service the services that are anticipated to meet the Client's needs for the proposed development.

SCOPE OF SERVICES

Task 1 - Boundary Retracement Survey

If the Client has provided and directed Kimley-Horn to use a boundary survey of ± 1825 LF of ROW land prepared by others, then Kimley-Horn will retrace that boundary in the field in an effort to determine whether it is legally correct. If discrepancies or errors are found with the boundary then Kimley-Horn will inform the client but this task does not include effort to correct the work of others. No certified documents will be prepared for this task.

Austin TBPELS Firm Number: 10194624

Task 2 - Topographic and Tree Survey

Kimley-Horn will prepare a topographic survey at 50' intervals up to 75' outside of the existing ROW, utility and perimeter roadway improvement and tree survey for the ± 1825 LF of ROW and adjacent public roadways for use with site planning and civil engineering design. The survey is to be used in-house and will not be issued as a stand-alone survey document. The survey will consist of: elevations around the immediate perimeter of the site; contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchise utility facility appurtenances; Texas 811 markings of subsurface utilities that are in place at the time our field work is being done; and two benchmarks established with the survey. Kimley-Horn will prepare a Tree Survey (12" and larger) of the property for the purpose of preparing the conceptual site plan. The survey will show approximate locations of trees, their likely species, and estimate of their size. We will endeavor to locate all trees meeting the requirements of the local tree protection ordinance. If requested, a tree health assessment or arborist report can be provided as an additional service.

Austin TBPELS Firm Number: 10194624

Task 3 – Roadway Alignment Review and Modifications

Kimley-Horn will assist the Client in reviewing the existing Hill Lane roadway alignment/section and the proposed Hill Lane roadway alignment/section. We will request and review documentation of existing water, wastewater, storm drainage, and roadway improvements on or immediately adjacent to the site and incorporate with survey information to develop a preliminary Constraints Exhibit. We will make modifications to the roadway alignment/section that are generally consistent with the requirements of the City's development guidelines and information provided by the Client. This task includes assisting the Client in the preparation of two (2) layout modifications to the current concept plan and the associated correspondence.

Task 4 – Preliminary Engineering Services

Kimley-Horn will prepare on-site preliminary civil engineering plan consisting of the following:

Preliminary Road Grading Plan: Kimley-Horn will prepare one (1) preliminary road grading plan that will show the approximate road grades based on the concept plan– all to a low level of detail compared to

final construction drawings, but conceptually workable. Kimley-Horn will then conduct one meeting with the Client and project team to present plan and grading analysis results.

Preliminary Utility Plan: Kimley-Horn will prepare one (1) Preliminary Water, Sanitary Sewer, and Storm Sewer Plan and present them to the project team at the meeting described above.

Task 5 – Engineer’s Opinion of Probable Construction Costs (OPCC)

Kimley-Horn will prepare one (1) OPCC of the civil on-site improvements based on the modified concept plan and preliminary utility and road grading plans. The deliverable for this task will be one spreadsheet in PDF format. Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor’s methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs are based on the information known to Kimley-Horn at the time and represent only Kimley-Horn’s judgment as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.

Task 6 – Hill Lane Construction Plans

Kimley-Horn will prepare on-site civil engineering plans for the proposed development. The plan set will consist of the following sheets:

- A. Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.
- C. Erosion Control Plan: Showing initial erosion control measures to be installed prior to disturbance of the site. The erosion control measures will be maintained and modified throughout site construction by the Contractor, and it is the Contractor’s responsibility to modify the plan during construction as necessary to comply with the conditions of their permits. This task does not yield a Storm Water Pollution Prevention Plan (SWPPP) document.
- D. Grading Plan: Showing one-foot contours for public roadways, open spaces and private block grading. Retaining walls needed to accomplish the grading will be shown with proposed top and toe elevations in a “wall zone”. The selection of the wall system and the structural design of the walls is beyond the limited scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client.
- E. Paving and Striping Plan: Showing proposed paving type for parking areas, fire lanes, and drives based upon recommendations in the geotechnical report provided by the Client. This plan will show handicap parking signage.
- F. Water and Wastewater Plan: Showing on-site water and wastewater plan layouts to within five feet of proposed building(s).
- G. Drainage Area Map: Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site to be used as the basis for drainage system sizing and layout.
- H. Storm Drainage Plan: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan and profile view.
- I. Construction Details: Typical construction details for proposed site civil engineering improvements will be included by reference to applicable jurisdictional standard details. If deemed necessary by

Kimley-Horn, construction details for certain site civil engineering improvements will be included in the plan set.

Task 7 –Submittals & Permitting

This task is to capture effort expended by Kimley-Horn for project submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the City for plan approval is unknown, we have provided a projected budget for these services, but actual cost will depend on actual effort required.

Task 8 – Bidding Services

Kimley-Horn will prepare and assemble construction bidding documents for the project, including specifications for the subject work and the construction contract, based on “Standard General Conditions of the Construction Contract” (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee (EJCDC). Kimley-Horn will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. Kimley-Horn will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. Kimley-Horn will prepare a written summary of this tabulation and evaluation. If requested by the Client, Kimley-Horn will notify the selected Contractor.

Task 9 – Construction Phase Services

Kimley-Horn can provide professional construction phase services as specifically stated below as directed by the Client.

Pre-Construction Conference: Consultant will attend the Pre-Construction Conference prior to commencement of Work at the Site as requested by the Client.

Construction Submittals and Site Documents: Consultant will review, approve, reject, or ask for clarifications of submittals and shop drawings provided by the Contractor for to insure general compliance with the specifications.

Pay Applications: Consultant will review and make recommendations for approval for monthly pay applications.

Visits to Site and Observation of Construction: Consultant will provide on-site construction observation services during the construction phase. Consultant will make visits at intervals as directed by Client to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, 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 purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract

Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

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

Clarifications and Interpretations: Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

Change Orders: Consultant may recommend Change Orders to Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Substantial Completions Walk: Consultant will coordinate a substantial completion walk through with City of Georgetown and the MUD to generate a punch list of items not completed or not in general compliance with the approved plans and technical specifications.

Final Closeout Documents: Consultant will coordinate and assemble the needed documents for final closeout with the City of Georgetown and to gain acceptance for the public improvements. Consultant will coordinate and assemble the needed documents for final closeout with the MUD to satisfy the MUD reimbursable requirements.

Final Notice of Acceptability of the Work: Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, 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 upon which it is entitled to rely.

Limitation of Responsibilities: Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

Task 10 – Franchise Utility Coordination

Kimley-Horn will provide assistance to the Client to arrange franchise utility service (gas, electric, cable/data, and telephone) for the project. Design of franchise utilities will be by the franchise utility companies. Kimley-Horn will coordinate locating these utilities on the site utility plan as they relate to the storm drain, water, and wastewater layouts. If provided in a timely manner and in AutoCAD format by the franchise utility companies, the franchise utility layouts will be shown on the civil plans.

Task 11 – Meetings and Team Coordination

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders. Because the extent of the effort required is unknown, we have provided a projected budget for these services, but actual cost will depend on actual effort required.

Task 12 – Storm Water Pollution Prevention Plan (SWPPP)

Kimley-Horn will prepare a SWPPP for the site in general accordance with current published Texas Commission on Environmental Quality (TCEQ) standards. This task will incorporate the Erosion Control Plan for the site, prepared under a separate task, to be included with the SWPPP report. The Contractor is responsible for all permit application, inspections, record keeping, and adjustments to the SWPPP during construction in accordance with the terms of their permits.

Task 13 – Separate Instrument Easement Documents (as needed)

Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for one proposed easement. Easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to Kimley-Horn. The Client will file the document.

Task 14 - Reimbursables

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at cost+15%. Administrative time related to the project will 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, a separate invoice for such fees will be immediately issued to and paid by the Client at cost.

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;

- Traffic Impact Analysis;
- Traffic control plans;
- Offsite improvements;
- Landscape, Tree Mitigation, and Irrigation Plans;
- Design of retaining walls or other structures;
- License agreements; and
- Any item not specifically noted in this agreement.

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. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Geotechnical report, including foundation and paving design recommendations.
- Code Landscape Architecture and Irrigation Plans required for Construction Plan Permitting;
- Final Site Plan (ACAD 2012 Format);
- Executed copy of this Agreement and access to property; and
- Permission to enter the subject site (execution of this contract will be considered our authorization to enter the site);

FEE AND EXPENSE

Kimley-Horn will perform the tasks noted below on a lump sum (LS), hourly (HR), or as requested basis. The services in this Amendment will be billed as follows.

Hill Lane Extension Engineering				
Task 1 & 2	Boundary Retracement, Topographic, and Tree Survey	\$	10,000 (10,825)	(LS+Tax)
Task 3	Roadway Alignment Review and Modifications	\$	5,000	(LS)
Task 4	Preliminary Engineering Services	\$	5,000	(LS)
Task 5	Engineer’s Opinion of Probable Construction Costs	\$	4,000	(LS)
Task 6	Hill Lane Construction Plans	\$	75,000	(LS)
Task 7	Submittal & Permitting	\$	20,000	(HR)
Task 8	Bidding Services	\$	15,000	(LS)
Task 9	Construction Phase Services	\$	20,000	(LS)
Task 10	Franchise Utility Coordination	\$	5,000	(LS)
Task 11	Meeting and Team Coordination	\$	5,000	(HR)
Task 12	Storm Water Pollution Prevention Plan	\$	3,000	(LS)
Task 13	Separate Instrument Easement Documents	\$	3,000	(as needed)
Task 14	Reimbursables	\$	3,000	(Cost +)
Total		\$	168,825	

For Lump Sum (LS) tasks, lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred.

As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. 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, a separate 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.

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 Manor**.

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 a copy of this Agreement in the spaces provided below and return a copy 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 your project.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



John A. Pickens, P.E.
Project Manager
TBPE F-928



Brian Parker, P.E.
Senior Vice President
TBPE F-928

REALTY INCOME CORPORATION

SIGNED: _____ Client Federal Tax ID: _____

PRINTED NAME: _____ Client Business License No.: _____

TITLE: _____ Client Street Address: _____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD RATE SCHEDULE

Classification	(Hourly Rate)
Analyst	\$160 - \$275
Professional	\$230 - \$320
Senior Professional I	\$245 - \$390
Senior Professional II	\$350 - \$410
Senior Technical Support	\$165 - \$295
Support Staff	\$110 - \$155
Technical Support	\$100 - \$155

Effective through June 30, 2023 and subject to periodic adjustment thereafter

**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 maximum rate allowed by law. 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) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant 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 Consultant and its affiliates.
- 7) **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.
- 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. 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.
- 9) **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.
- 10) **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 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 THE CONSULTANT.

- 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 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.
- 13) **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.
- 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.** 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.
- 16) **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.
- 17) **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.

- 18) **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.

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. If Client requires Consultant 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 Consultant 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.