

January 27, 2022

Mr. Jason Greiner, Executive Director  
Wylie Economic Development Corporation  
250 South Highway 78  
Wylie, Texas 75098

Re: Agreement for Professional Services  
State Highway 78 at Alanis Boulevard Flood Study and Reclamation Project

Dear Jason:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement to the Wylie Economic Development Corporation (“WEDC” or “Client”) for providing professional surveying (through a sub-consultant), hydrology, hydraulics, and civil engineering services.

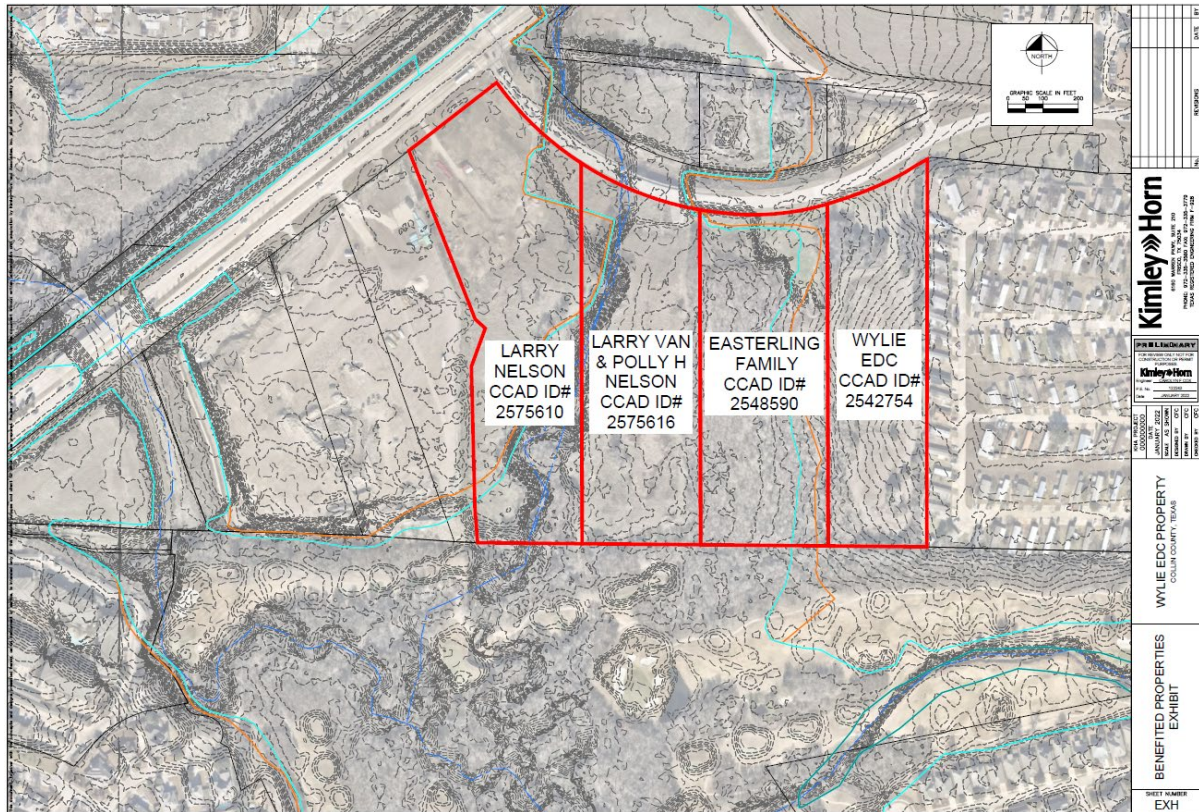
Our Scope of Services is outlined on the following pages and is based on our understanding of your needs and information provided to Kimley-Horn. In providing our services, we anticipate receiving the following current information from you or other members of your consultant team:

- A. A fully executed copy of this agreement,
- B. Unfettered access to the properties being studied.

### ***Project Understanding***

- The properties being studied for possible reclamation efforts include those shown in the image on the next page and include:
  - Wylie EDC, Collin Central Appraisal District (CCAD) ID# 2542754
  - Easterling Family, LP, CCAD ID# 2548590
  - Larry Van & Polly H. Nelson, CCAD ID# 2575616
  - Larry Nelson, etal, CCAD ID# 2575610
- An Aquatic Resources Delineation will be performed
- A Topographic Survey will be performed
- A Preliminary Floodplain Analysis will be performed
- A Mass Grading Plan will be performed
- A Floodplain Analysis Submittal will be performed for City review
- A Letter of Map Revision (LOMR) will be prepared for City and FEMA review and subsequent approval

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Assumptions and exclusions for the project are as stated:

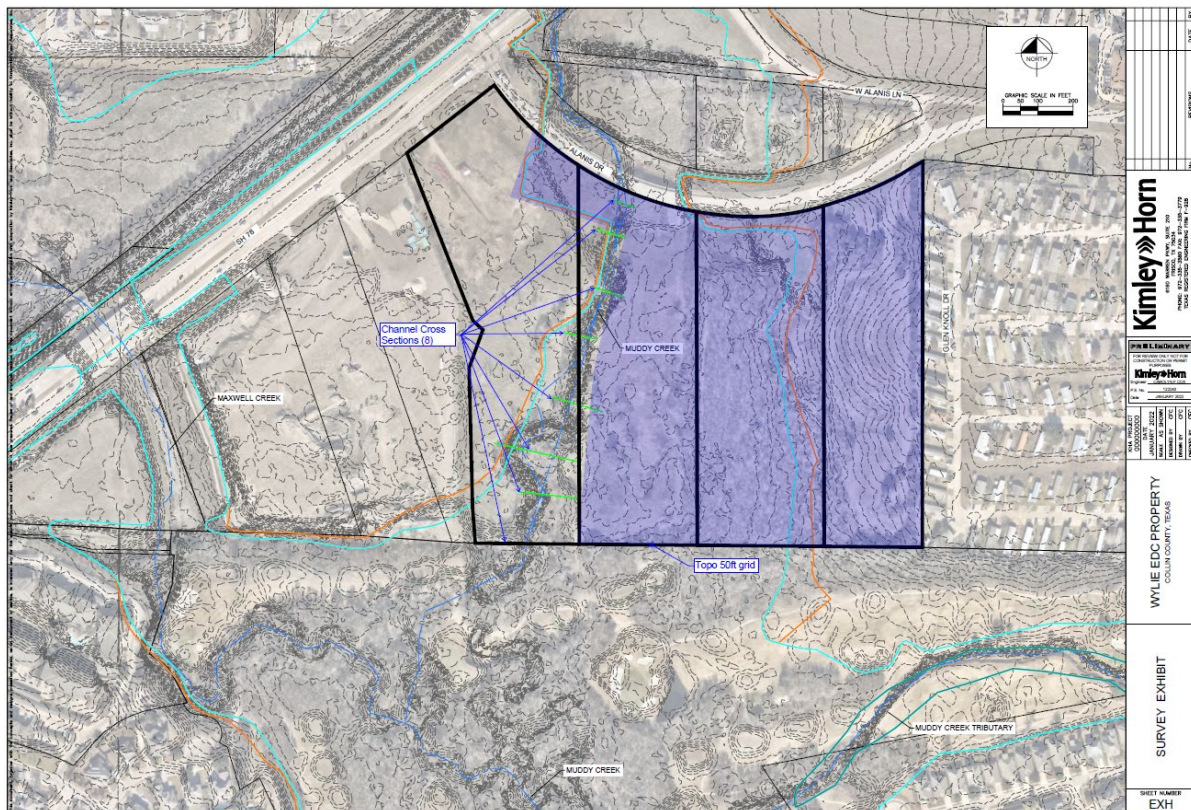
- A Tree Survey, Tree Mitigation Plan or Landscape and Irrigation Plans are excluded from this Agreement.
- An As-built Survey of the reclaimed area will be required but is excluded from this Agreement. A proposal for the As-built Survey will be submitted at the appropriate time.
- The current FEMA data request fee is \$300 and the current online FEMA LOMR submittal fee is currently \$8,000. These fees, and other potential review, submittal, or project related fees are excluded from this Agreement and will be paid directly by the client
- The site development is not anticipated to impact United States Army Corps of Engineers jurisdictional areas (waters of the US) or other environmentally sensitive areas.
- Straightening the existing channel is not an option.
- Detention of the site's runoff will not be required. No storm water quality design will be required.
- The design of proposed paving or utility improvements are not proposed nor included in this Agreement.
- Platting and easement preparation are not included in this Agreement.

**Scope of Services**

The tasks outlined below are the professional services to be provided by Kimley-Horn requested by the Client. The Scope of Services described for Lump Sum (LS) tasks will be completed for the lump sum fee indicated and those for Projected Hourly (HR) will be billed per the effort expended on an hourly basis per our current Rate Schedule. The total Projected Hourly number shown is a budget number only.

**Task 1 – Topographic Survey \$14,500 LS**

Kimley-Horn (through a sub-consultant) will prepare a topographic survey of the study area. The topographic survey is to be used for design purposes only and will not be issued as a stand-alone survey document. The survey will consist of elevations around the entire site; contour lines representing the surface of the existing ground at one-foot intervals based on a survey grid system tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances. City of Wylie datum will be used. The study area is shown in the image below.



**Task 2 – Aquatics Resources Delineation \$ 6,500 LS**

Kimley-Horn will perform an Aquatic Resources Delineation in general accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetlands Delineation Manual and appropriate USACE Regional Supplement (Great Plains) as detailed below.

Kimley-Horn will locate readily available resource documents which may include aerial photographs, historic topographic maps, soil surveys, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), historic aerial photographs, and other related data for a desktop review of site conditions.

Kimley-Horn will perform a site visit to evaluate the existence and locations of aquatic resources on the site generally following the USACE 1987 Wetlands Delineation Manual and the applicable USACE Regional Supplement. Completion of USACE wetland determination data forms will be completed as required by the Manual, Regional Supplement, and USACE Fort Worth District. The ordinary high-water mark (OHWM) for streams will be identified in the field. Following the site visit, Kimley-Horn will prepare exhibits showing the boundaries (polygons) and acreage and/or linear footage (if applicable) of aquatic resources identified onsite during the site visit as collected utilizing a GPS with sub-meter accuracy. Kimley-Horn will provide the Client with PDF and AutoCAD versions of the aquatic resources files in the correct coordinate system.

Kimley-Horn will prepare a report for the project documenting the results of the Aquatic Resources Delineation performed onsite. The report will address the applicable regulatory framework, describe the assessment methodology, limitations, and findings. The report will also include applicable maps/exhibits and site photographs. USACE Wetland Data Sheets can be provided upon request.

It is important for the Client to understand that the Environmental Protection Agency (EPA) and the USACE occasionally issue guidance concerning what they intend to assert jurisdiction over. Changes that impact our strategy or scope will cause additional work and will be addressed as an additional service amendment to this agreement. Observations will be made under the applicable regulatory guidance at the time of the observations.

### ***Task 3 – Preliminary Floodplain Analysis***

**\$28,000 LS**

Kimley-Horn will prepare a floodplain analysis of Muddy Creek downstream of Alanis Drive. The subject reach is currently designated as FEMA Zone AE floodplain. The purpose of the floodplain analysis will be to delineate the 100-year existing and fully developed floodplain limits, evaluate potential reclamation limits, and establish minimum finished floor elevations through the subject tract for land planning purposes. The subject reach of Muddy Creek will extend from the downstream face of Alanis Drive to the confluence with Maxwell Creek.

Kimley-Horn will request effective hydrologic and hydraulic models for Muddy Creek from the City and FEMA if necessary. Kimley-Horn assumes the models will be available, digital, and executable. Kimley-Horn assumes fully developed peak flows will not be available and modifications to the hydrologic model will be required to determine fully developed peak flows. Kimley-Horn will update the existing condition hydrologic parameters to reflect fully developed conditions based on the City land use maps to determine the 100-year fully developed peak flows. The FEMA effective flows will be used to evaluate existing condition floodplain.

Kimley-Horn will update the effective hydraulic models for Muddy Creek using the on-ground survey prepared in Task 1 and supplement with available aerial topography as needed to create a revised existing condition hydraulic model. Cross sections will be added throughout the subject reach at approximately 300-foot intervals.

Kimley-Horn will evaluate the potential for floodplain reclamation for the subject property. Kimley-Horn will create a proposed condition hydraulic model for the subject reach by modifying the revised existing

model using conceptual grading. Kimley-Horn will update the proposed conceptual grading up to two times to meet City and FEMA requirements regarding water surface elevation. Kimley-Horn will delineate the 100-year existing and fully developed floodplain for the subject reach and prepare a floodplain workmap exhibit to be submitted to the Client. This task does not include submittals to the City or FEMA.

**Task 4 – Mass Grading Plans****\$ 7,500 LS**

Kimley-Horn will prepare on-site mass grading plans consisting of the following:

- Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.
- General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.
- Mass Grading Plan: Showing proposed grading and, as applicable, spot elevations and one-foot contours for the mass grading. The plan will summarize approximate cut and fill by location.
- Drainage Area Map: Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site.
- 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.

**Task 5 – Storm Water Pollution Prevention Plan****\$ 3,500 LS**

Kimley-Horn will prepare a Storm Water Pollution Prevention Plan (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 permit application, inspections, record keeping, and adjustments to the SWPPP during construction in accordance with the terms of their permits.

**Task 6 – Submittals and Permitting****\$ 3,500 HR**

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 not known we have provided a projected budget for these services, but actual cost will depend on actual effort required.

**Task 7 – Meetings and Team Coordination****\$ 3,500 HR**

Kimley-Horn will prepare for and attend meetings with the design team and reviewing staff to the extent requested by the Client and budgeted for in this agreement. Since the amount of effort for meetings and team coordination is not known we have provided a projected budget for these services, but actual cost will depend on actual effort required.

**Task 8 – Floodplain Analysis Submittal****\$24,000 LS**

Kimley-Horn will update the Preliminary Floodplain Analysis prepared in Task 3 to reflect the final mass grading plan performed under Task 4. Kimley-Horn will prepare a Floodplain Analysis submittal to the City. Meetings with the City to discuss drainage will be included under Task 7. Kimley-Horn anticipates the submittal will consist of the following items:

- Report,
- Drainage Area map,
- Hydrologic Parameter Summary Tables,
- Hydrologic Model Output,
- Hydraulic Workmaps,
- Hydraulic Model Output, and
- Digital Files.

Kimley-Horn will respond to one round of City comments as part of this task. Responding to additional rounds of comments will be considered additional services. The fee for this task does not include potential City submittal, review, or other project-related fees. Kimley-Horn assumes project-related fees will be paid directly by the Client. This task does not include submittals to the FEMA. If FEMA submittals are required, Kimley-Horn can provide them as an additional service.

**Task 9 – Letter of Map Revision Request****\$40,000 LS**

Kimley-Horn will prepare a Letter of Map Revision (LOMR) application for the subject reach of Muddy Creek for submittal to the City and FEMA. The subject reach of Muddy Creek will be unchanged from Task 8.

Once construction is complete within the floodplain area, a field survey of the as-built construction will be required. The field survey will be performed under a future agreement. Kimley-Horn will review the as-built survey of the floodplain modifications to confirm the floodplain grading was constructed in accordance with the plan presented in Task 8.

Kimley-Horn will prepare a LOMR application for submittal to the City and FEMA. The LOMR application will consist of the following items:

- Narrative,
- Pre-Project Floodplain Map,
- Post-Project Floodplain Map,
- Water Surface Elevation Comparison Tables,
- HEC-RAS Output,
- FEMA FIRM,

- Annotated FEMA FIRM,
- FEMA MT-2 Forms, and
- Digital Files.

Kimley-horn will submit an electronic copy of the LOMR to the City and FEMA. Kimley-Horn will respond to one round of comments from the City and one round of comments from FEMA under this task.

The online FEMA LOMR fee is currently \$8,000 and it is excluded from the task fee above. This fee, and other potential review, submittal, or project related fees will be paid directly by the Client.

### **Additional Services**

Services not specifically provided for in the above scope, as well as changes in the scope the Client requests, will be considered additional services and will be performed on an hourly basis or can be done through an amendment contract.

### **Fee and Expenses**

Kimley-Horn will perform the services in Tasks 1 – 5 and 8 - 9 on a lump sum basis with the labor fee shown below.

In addition to the fees noted for each task, reimbursable expenses (out of house printing, courier service, Federal Express, etc.) will be billed at a rate of 1.15 times cost.

<b>TASK</b>		<b>FEE</b>	
Task 1	Topographic Survey	\$14,500 (LS)	Approved/Completed
Task 2	Aquatics Resource Delineation	\$ 6,500 (LS)	Approved/Completed
Task 3	Preliminary Floodplain Analysis	\$28,000 (LS)	Approved/Completed
Task 4	Mass Grading Plans	\$ 7,500 (LS)	Approved/In Process
Task 5	Storm Water Pollution Prevention Plan	\$ 3,500 (LS)	
Task 8	Floodplain Analysis Submittal	\$24,000 (LS)	
Task 9	Letter of Map Revision Request	\$40,000 (LS)	
<b>Total Lump Sum Labor Fee</b>		<b>\$124,000 (LS)</b>	

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice.

Kimley-Horn will perform the services in Tasks 6 - 7 on an hourly basis with the projected labor fee shown below.

<b>TASK</b>		<b>FEE</b>	
Task 6	Submittals and Permitting	\$ 3,500 (HR)	Approved/In Process
Task 7	Meetings and Team Coordination	\$ 3,500 (HR)	Approved/In Process
<b>Projected Hourly Labor Fee</b>		<b>\$ 7,000 (HR)</b>	

Kimley-Horn will not exceed the total projected labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks.

**Closure**

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn, Inc., and the term "the Client" shall refer to the WEDC.

If you concur with the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. 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 if you have questions.

Sincerely,

**Kimley-Horn and Associates, Inc.**



Joseph E. Helmberger, P.E.  
Vice President



Kevin S. Gaskey, P.E.  
Senior Vice President

**AGREED** to on this \_\_\_\_\_ day of \_\_\_\_\_, 2022

**WYLIE ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**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 25<sup>th</sup> 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.

(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 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.