

August 5, 2022

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

Re: Agreement for Professional Services  
544 Gateway Addition

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 surveying 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.

### ***Project Understanding***

The WEDC requested KH provide a professional services agreement for surveying and site civil engineering for an approximately 12.2-acre tract to be platted and to design the infrastructure that will serve the site. The 12.2-acre tract is located at the intersection of F.M. Hwy. No. 544 and Commerce Drive.

An exhibit of the subject tract is provided below.



There is existing survey work that has been performed by Roome Land Surveying and will be utilized for this project.

The Scope of Services, provided below, is based upon the following:

- Fees are to perform each task one time. Revisions to address Jurisdictional or Client review comments will be made on an hourly basis under the appropriate Submittals and Permitting Task;
- Our services will be performed in general accordance with current published City design standards;
- KH does not guarantee the issuance of permits or approvals. If permits are issued for this project, the conditions and expiration dates are the sole responsibility of the Client;
- Private utility information (gas, electric, cable, and telephone) will be shown on the plan for reference only if provided by the appropriate entities in a timely manner. Design of franchise utilities is beyond the scope of this agreement;
- Inspections and Certifications during construction, if required, will be performed by others and is beyond the scope of this agreement;
- Design of Life Safety Lighting and signage is beyond the scope of this Agreement;
- KH 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 Construction Costs (OPCC) are based on the information known to KH at the time and represent only KH's judgment as a design professional. KH cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.
- Additional tasks may be necessary to complete the project based on City/Client requirements. If necessary KH will provide the Client with a separate scope and fee for this effort.
- KH shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract Documents. The Client shall not allow the contractor to take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the Client shall direct the contractor to promptly submit the matter to the Client before the improvements are built. The Client shall promptly make a determination and issue the necessary instructions to the contractor in writing. Any adjustment by the contractor without this determination and instructions shall be at the contractor's own risk and expense. The Work is to be made complete as intended by the Contract Documents.
- In the performance of any services during construction, KH shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. KH shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. KH will not be responsible for any inspections or certifications during or after completion of the project.
- Any standard details or specifications provided or referenced on KH plans are for the convenience of the Client only. The Client understands that jurisdictions often mandate use of

their standard and that these standards have not been modified or designed by KH. The Client has declined to have these standards updated or made specific to this project and will not hold KH responsible for errors or omissions in these standards should an issue arise from their use.

- The property is zoned to allow the intended use. Changes to the zoning and/or request for variances or special use permits will not be required.
- Electrical design (such as site lighting), structural design (such as retaining walls), and site signage design is beyond the scope of this Agreement.
- The site development is not anticipated to impact United States Army Corps of Engineers jurisdictional areas or other Environmentally Sensitive Areas.
- The adjacent water and wastewater mains are adequate in size to serve the proposed use and no offsite extensions or improvements are anticipated or required. No design or study of offsite improvements to water, wastewater, roadways, traffic signals, or other utilities is known at this time and is therefore excluded.
- The site development is not anticipated to impact any published FEMA floodplain area.
- Detention of the site's runoff is not required. No storm water quality design will be required.
- KH has been provided survey information and instructed to use it for our design. KH will not be liable for errors or omissions in our work that were contributed to by errors or omissions in the survey.

**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 – Concept Plan \$5,000 LS**

KH will prepare a Concept Plan that shows the proposed improvements for the subject tract and submit to the WEDC for review. The proposed improvements will include a private firelane from F.M. 544 to Commerce Drive, a turn lane from FM 544 into the subject site, a water main along the firelane, sanitary sewer connections and storm sewer. All public infrastructure will be proposed within a firelane, access and utility easement.

**Task 2 – Preliminary Plat \$2,000 LS**

KH was provided a copy of the existing Preliminary Plat prepared by Roome Land Surveying and dated October 2021. This plat will need to be updated based on the approved Concept Plan. Kimley-Horn will coordinate with Roome Land Surveying to make the required updates. KH will submit a Preliminary Plat, Checklist and Application to the City for review. KH will attend one meeting with review staff and, if required, one public hearing at which the item is considered for approval.

**Task 3 – Final Plat \$ 4,500 LS**

KH will prepare and submit a Final Plat, Checklist, and Application to the City for review. KH will attend one Planning and Zoning Commission and one City Council meeting at which the Final Plat is considered for approval. If approved, KH will coordinate filing of the Plat with the County.

**Task 4 - On-Site Civil Engineering****\$ 30,000 LS**

KH will prepare civil engineering plans for the infrastructure to serve the approximate 12.2-acre site. The plans will consist of the following:

**A. Cover Sheet****B. Paving Plan**

KH will prepare a paving plan for the site. The paving plan will include a street that connects F.M. 544 and Commerce Drive. The typical section will be a firelane pavement section.

**C. Turn Lane Design**

KH will prepare a grading, paving, and striping plan for the proposed deceleration lane from F.M. 544 into the site. The turn lane plans will be submitted concurrently to TxDOT with the on-site civil engineering plans, and not as a separate plan set. Effort to coordinate with TxDOT and acquire a permit is included in the submittals/coordination/meetings task. A TIA is anticipated to be required by TxDOT and the effort to prepare the TIA is included in a separate task.

**D. Water and Sanitary Sewer Plan**

KH will prepare water and sanitary sewer plans for the site. The plan will show the water and sanitary sewer mains and services stubbed out to each proposed lot.

**E. Drainage Area Map and Erosion Control Plan**

KH will prepare a drainage area map for the site showing on-site drainage patterns and off-site discharges onto the site. This plan will show required erosion control measures to be installed prior to disturbance of the site and to be maintained throughout site construction. It is understood the General Contractor will prepare the SWPPP package and obtain the necessary permits required by TCEQ.

**F. Storm Drainage Plan and Profile**

KH will prepare a storm drainage plan for the site showing inlet and pipe sizes and locations. KH will prepare storm drainage profile sheets for storm sewer with an inside diameter of 18 inches and larger.

**G. Construction Details**

This task includes addressing up to two rounds of City and Client review comments. Response to additional rounds of comments will be on an hourly basis.

Private utility information (gas, electric, cable, and telephone) will be shown on the plan if provided by the appropriate entities in a timely manner.

**Task 5 – Traffic Impact Analysis****\$ 10,000 LS*****Data Collection***

In the general vicinity of the proposed development, KH will perform in-field verification of the existing roadway network and intersection characteristics in the study area. KH will investigate publicly-available traffic count information for the adjacent roadways.

KH will perform turning movement counts during the weekday AM and PM peak hours at the following intersections. If additional counts are required, it will be considered an additional service.

- FM 544 & Commerce Drive
- FM 544 & Existing Drive

KH will perform weekday 24-hour machine counts on FM 544

***Traffic Operational Analysis***

The study area is defined as the intersections and roadway links where data was collected (two intersections), KH will conduct the analysis for the weekday AM and PM peak hour time periods.

KH will perform the following tasks:

- Evaluate the existing (2022) intersection operational conditions at each existing study intersection;
- Calculate the site buildout year each study intersection by inspection of growth rates and addition of traffic from other committed developments in the vicinity;
- Evaluate the intersection operational conditions for each background traffic scenario;
- Calculate new site-generated traffic based on ITE Trip Generation Manual, latest edition, including reductions for internal capture and transit adjacency;
- Create distribution of site-generated traffic in the major directions;
- Assign site-generated traffic onto site driveways and adjacent roadways;
- Evaluate intersection traffic operations for the buildout scenarios using background and site-generated traffic at the study intersections;
- Perform a link capacity analysis for the roadway adjacent to the site for the existing and future year scenarios;
- Identify intersection and thoroughfare deficiencies based on background and site-related traffic;
- Recommend site access and transportation improvements needed to maintain traffic flow in the study area, and identify the site's pro-rata share of the costs, if any, and
- Recommend intersection geometry and type of traffic control at project driveways.
- No traffic signal warrant analysis is included as part of this scope of services

***Prepare Technical Memorandum***

KH will document the findings of this task in a draft technical memorandum and will present the memorandum to the Client for review. KH will incorporate comments from the Client into the

memorandum and will prepare a final technical memorandum and will submit the memorandum to the Client. If the memorandum is reviewed by outside agencies, and should the outside agencies request revisions to the study upon review, KH will make one round of revisions and resubmit the updated study.

**Task 6 - Submittals\Coordination\Meetings****\$ 20,000 HR**

At Client's request, KH will attend design team project meetings, City meetings, and/or other project related meetings not listed in previous Task items. Two rounds of City staff review comments are included in the lump sum portion for each design task in this Agreement; however, we will address additional staff review comments in an effort to obtain project approval and permits on an hourly basis under this task. The actual effort for this task will include additional effort required to address and revise the plans, based on reasonable comments by the City.

The effort required to coordinate with TxDOT to obtain a permit for the proposed deceleration lane off of F.M. 544 is included in this task.

Because the extent of our required effort is unknown at this time, we have projected our effort at 100 hours.

**Task 7 - Record Drawings****\$ 1,500 LS**

KH will prepare record drawings for the project per the City requirements for Record Drawings. We will use the contractor mark-ups given to us by the contractor as the basis for the record drawings. KH will not be performing field verification of the contractor's mark-ups.

***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.

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### ***Fee and Expenses***

KH will perform the services on a lump sum or hourly labor fee as described below. Direct reimbursable expenses such as express delivery services, fees, 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.

| <b>TASK</b> |                                  | <b>FEE</b>           |
|-------------|----------------------------------|----------------------|
| Task 1      | Concept Plan                     | \$5,000 (LS)         |
| Task 2      | Preliminary Plat                 | \$2,000 (LS)         |
| Task 3      | Final Plat                       | \$4,500 (LS)         |
| Task 4      | On-site Civil Engineering        | \$30,000 (LS)        |
| Task 5      | Traffic Impact Analysis          | \$10,000 (LS)        |
| Task 6      | Submittals/Coordination/Meetings | \$20,000 (HR)        |
| Task 7      | Record Drawings                  | \$1,500 (LS)         |
|             | <b>Projected Total</b>           | <b>\$73,000 (LS)</b> |

Lump sum fees will be invoiced monthly based upon the percentage of services completed as of the invoice date. Projected hourly fees will be invoiced monthly based on the actual amount of service performed and expenses incurred.

Please be advised KH is not a Contingent Partner in this project. As such the Consultant will be paid in full for all Professional Services rendered. Payment of invoices will be due within 25 days of receipt. The Consultant reserves the right to suspend services if payment has not been received within 25 days of receipt of the invoice.

### ***Closure***

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the 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.

*Brittany S. Rouse, P.E.*

Brittany S. Rouse, P.E.  
Project Manager



Hugo Morales, P.E.  
Senior Associate

**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.