

November 7, 2022

Chad Bartee  
City Engineer, City of Keller  
1100 Bear Creek Parkway,  
Keller, TX, 76248

Re: Professional Services Agreement  
Mt Gilead Road Reconstruction – Conceptual Design (US 377 to Residential Private Drive  
(Mt Gilead Road)

Dear Chad Bartee,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Keller (“Client” or “City”) to provide professional Services. Our project understanding, scope of services, schedule, and fee are below.

## Project Understanding

The project will consist of an intersection evaluation, corridor study, performing a 30% design of Mt Gilead Road, as well as preparing construction drawings and specifications for the reconstruction of Mt Gilead Road.

The project limits for the conceptual design of Mt Gilead Road are from the intersection of US 377 to the Bourland Road. The project limits of the construction drawings and specifications for the reconstruction of Mt Gilead Road are from the intersection of US 377 to the Residential Drive (Mt Gilead). The intersection of US 377 will remain as is. The intersection of US 377 will remain as is. The intersection of Mt Gilead Road and Oak Drive will be evaluated as part of an intersection study.

Kimley-Horn’s undertaking to provide services extends only to those services specifically described in the Scope of Services. All tasks are considered lump sum unless otherwise noted. Additional information is provided under the Fee and Expenses section of this scope.

The project will consist of the following tasks and are further described in the Scope of Services:

- Task 1: Project Administration
- Task 2: City and Utility Coordination
- Task 3: Community and Council Engagement
- Task 4: Data Collection and Analysis
- Task 5: Intersection Evaluation and Conceptual Roadway Design
- Task 6: Traffic Signal Design (Upon Authorization)
- Task 7: Roundabout Design (Upon Authorization)
- Task 8: Mt Gilead Road Design: US 377 to Residential Drive (Mt Gilead Road)
- Task 9: Retaining Wall Design (Upon Authorization)

Task 10: Right-of-Way Documentation, Appraisals, and Negotiation (Hourly)

Task 11: Accessibility Review (Hourly)

Task 12: Bidding Phase Services (Hourly)

Task 13: Construction Phase Services (Hourly)

Task 14: Additional Services (Hourly)

## Scope of Services

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

### **Task 1: Project Administration**

#### *1.1. Status Report and Invoicing*

Kimley-Horn will provide status reports outlining what has been completed, what the goals are for the following month, and what information is needed from the City. The status report will be updated and distributed to the project manager with the monthly invoice. Kimley-Horn will also provide schedule updates as needed. Monthly deliverables include invoices and progress reports. Scope is based on an 18-month design schedule.

### **Task 2: City and Utility Coordination**

#### *2.1. Kick-Off Meeting with City Staff*

- Prepare for and attend a kick-off meeting with the City to discuss the findings of the data collection.

#### *2.2. City Staff Design Coordination and Meetings*

- Meetings – Kimley-Horn will conduct and document coordination meetings with the project team and any additional City department members. This task includes up to 8 (8) design coordination meetings.
- Coordination – Kimley-Horn will coordinate with City Staff regarding the project. Up to one hundred (100) hours will be spent on city coordination. Any additional time spent beyond the allotted one hundred (100) hours will be considered additional service.

#### *2.3. Franchise Utility Coordination*

- Meetings – Kimley-Horn will conduct and document up to four (4) coordination meetings with franchise utility companies.
- Coordination – Kimley-Horn will coordinate with the franchise utility companies within the study area to determine relocation options. Up to one-hundred (100) hours will be spent on franchise utility coordination. Any additional time spent beyond the allotted one-hundred (100) hours will be considered an additional service.

## **Task 3: Community and Council Engagement**

### 3.1. *City Council Meetings*

Kimley-Horn will prepare for and conduct up to two (2) meetings with City Council. The purpose of both meetings will be to present the design progress to City Council.

3.1.1. Conceptual Design Presentation – The focus of this meeting will be to present the Conceptual Design to City Council. It is anticipated that this meeting will be conducted after 4.1 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.

3.1.2. Final Plan Design Progress Meeting – The focus of this meeting will be to present the Final Design to City Council. It is anticipated that this meeting will be conducted after Task 8.1 is complete. Any feedback will be discussed with City staff following the presentation. City staff will direct Kimley-Horn on how to address City Council comments.

### 3.2. *Community Meetings*

3.2.1. Kimley-Horn will prepare materials, attend, and document as needed up to two (2) community meetings. The City will be responsible for selecting and scheduling the meeting location and distributing notifications to the public.

## **Task 4: Data Collection and Analysis**

4.1. *Data Research – Kimley-Horn will collect data to develop a base map; this information will be utilized to analyze existing constraints and issues for the development of the conceptual design.*

- Aerial Photography – Kimley-Horn will collect updated aerial photography for the project corridor from NearMaps and/or available aerial photos from the City.
- LIDAR – Kimley-Horn will gather updated LIDAR data (1' contour information) available from USGS.
- Available Record Drawings and Development Plans – Kimley-Horn will collect from the City any available record drawings (roadway, drainage, water, sewer, etc.) within the project limits and any proposed development plans.
- Existing and Proposed Utility Information – Kimley-Horn will collect from the City existing and proposed water, storm, and sewer utility information for project limits.
- Franchise Utility Information – Kimley-Horn will contact utility company providers to obtain maps of existing and/or proposed facilities.
- Field Observation – Kimley-Horn will conduct up to one (1) site visit to visually document the existing conditions of the site.

- 4.2. *Topographic and Boundary Survey* – Kimley-Horn will prepare a topographic boundary survey to be used for civil engineering design purposes. The topographic and boundary survey is to be used in-house and will not be issued as a stand-alone survey document.
- Mt Gilead: 100-foot-wide topographic survey which will be 50 feet on either side of the center of the existing road from US 377 to 600 feet east of Bourland Road.
  - Oak Drive: 500 feet south of Mt Gilead Road for the full width of the existing right-of-way.
  - Bourland Road:
    - North: From Mt Gilead to roughly 700 feet north.
    - South: From Mt Gilead to Brian Drive from existing fence line to existing fence line.
  - Side Streets and Commercial Drives: 200 LF north/south on all side streets and 100 LF north/south of all commercial drives.
  - The boundary survey will consist of the location of the right-of-way lines and adjoining property lines with existing easements readily available in the public record (this does not include an abstract of title).
- 4.3. *Geotechnical Analysis* – Kimley-Horn will, via a subconsultant, obtain borings and perform geotechnical engineering services to provide the following information:
- General soil and ground-water conditions
  - Recommendations for pavement subgrade stabilization type, depth, and concentration
  - Guidelines for new pavement
  - Recommendations for culvert foundation type, depth, and allowable loading
  - Foundation construction requirements
  - Recommended lateral pressures for the design of culvert structures
  - Evaluation of the swell characteristics of the subgrade soils
  - Earthwork recommendations
- 4.4. *Subsurface Utility Exploration* – Kimley-Horn will, via a sub-consultant, expose certain utilities using SUE methods and collect survey data on their exposed location. This information will be used during civil engineering design. SUE quality levels B & A are described as follows:
- 4.4.1. Level B Utility Exploration - QL-B involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits.
- The limits of Level B will be the same as the topographic survey limits listed as part of Task 4.2. Level B scope is based on an average 10 underground utilities. Collecting additional lines will be considered additional services.

4.4.2. Level A Test Holes – QL-A, also known as "locating", is the highest level of accuracy presently available and involves nondestructive exposure of underground utilities, and also provides the type, size, condition, material and other characteristics of underground features.

- Kimley-Horn will obtain up to 20 test holes within the limits of the topographic survey area.

## **Task 5: Intersection Evaluation and Conceptual Roadway Design**

### **5.1. Mt Gilead Road and Oak Drive Intersection Evaluation**

- 5.1.1. Intersection Evaluation Memo – Kimley-Horn will provide a memo documenting the scenarios evaluated and a recommended intersection layout based on the information developed as part of Tasks 5.1.2, 5.1.3, and 5.1.4.
- 5.1.2. Proposed Traffic Operations Improvement Scenario Exhibits – Using the traffic data collected, and nearby development information from the City, Kimley-Horn will provide an exhibit for each scenario to be evaluated as part of Task 5.1.2. The scenarios to be evaluated to include:
- Mt Gilead Road and Oak Drive
    - Stop Control
    - Traffic Signal
    - Roundabout
  - Traffic signal turn lane storage lengths at Mt Gilead Road and US 377
  - Roadway corridor lane configurations
- 5.1.3. Pedestrian Evaluation – Using future projected pedestrian volumes based on future development, Kimley-Horn will evaluate the corridor and provide a recommendation for an enhanced crossing. A crossing with standard crosswalk signage, LED flashing signs, RRFB, or a PHB will be considered.
- 5.1.4. Prepare Oak Drive 30% Design Exhibit – Kimley-Horn will prepare a horizontal geometry exhibit and a conceptual level Opinion of Probable Construction Cost (OPCC) for a traffic signal or stop sign at Mt Gilead Road and Oak Drive and a roundabout at Mt Gilead Road and Oak Drive. The intersection layout will be developed based on the information prepared as part of Task 5.1.2.
- 5.1.5. City Comments – Kimley-Horn will address up to one (1) round of comments following a City review meeting. The review meeting will count as one of the coordination meetings under Task 2.2.

5.2. *Mt Gilead Road Conceptual Roadway Design*

Development of conceptual (30%) roadway design will consist of:

5.2.1. Horizontal Geometry Update

- Limits: US 377 to Residential Private Drive (Mt Gilead Road)
- Updating the Tarrant County Bond Application Exhibit per topographic and boundary survey information and City comments
- Prepare a roundabout intersection option for Mt Gilead Road and Oak Drive. The roundabouts will be shown on the roadway exhibit in a blow-up as a potential alternative to a signalized or stop controlled intersection.

5.2.2. Conceptual Roadway Roll-Plot

Development of Conceptual Roadway Roll-Plot from US 377 to Residential Private Drive (Mt Gilead Road) will consist of:

- Existing and proposed typical sections
- Proposed Roadway Improvements – Horizontal geometry for the roadway, side streets, driveways, intersections, sidewalks, street lights, and driveway.
- Oak Drive Intersection Blow-Up – Horizontal geometry for the proposed intersection options at Oak Drive.
- Proposed Profile – Station and elevation data of all vertical profile PCs, PTs, Pls, low points, and high points, lengths of vertical curves, grades, K values, and vertical clearances where applicable.
- Proposed Storm Drain – Horizontal geometry for the proposed storm drain including the mainline, inlets, culvert crossing, and headwalls.
- Proposed City Utility Improvements – Horizontal geometry for the proposed City utility improvements.
- Existing Features – Horizontal geometry for existing right-of-way, easements, pavement, curbs, retaining walls, storm drain, utility poles, mailboxes (within right-of-way), water meters, fire hydrants, and trees (within right-of-way)

5.2.3. Drainage

- Existing Drainage Area Map – Delineate existing drainage areas using LiDAR contours and record drawing information provided by the City. The map will indicate existing drainage areas, outfall locations, flow directions, and contour labels.
- Proposed Drainage Area Maps – Delineate proposed drainage areas using LiDAR contours, proposed conceptual (30%) design improvements, and proposed runoff calculations. This drainage area map will not be developed using proposed grading and will need to be modified during 60% design. The purpose of this map is to indicate any upsizing of existing storm drain

infrastructure needed, conceptually design the proposed underground internal storm system, place inlets, determine proposed culvert locations, and establish how much runoff will need to be contained within the proposed roadway improvements.

- Drainage Calculations
  - Runoff Calculations
  - Inlet Calculations

5.2.4. OPCC

- Kimley-Horn will prepare an Opinion of Probable Construction Cost (OPCC) to be submitted with the Conceptual Roadway Design Submittal.

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 provided herein are based on the information known at this time and represent only Kimley-Horn’s judgement 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 its opinions of probable costs.

**Conceptual Design Submittal Deliverables:**

1. PDF of Intersection Evaluation, Conceptual Roadway Roll-Plot, Drainage Exhibits
2. PDF of OPCC

**Task 6: Traffic Signal Design (Upon Authorization)**

This task will only be performed with the authorization of the City. City to provide authorization prior to Task 8: starting. Kimley-Horn will perform services for either Task 6 or Task 7.

Kimley-Horn will develop design drawings for a traffic signal design at Oak Drive at the authorization of the City. The design drawings and deliverables will coincide with the plan set being developed as part of Task 8.

6.1. 60% Design

Development of 60% construction drawings shall be submitted with the Task 8.1 deliverable and will consist of:

- Traffic Signal Layout
- Traffic Signal Charts
- Intersection Grading
  - To include contours shown at 1’ intervals as well as station, coordinate data, and elevations for all horizontal alignment P.C.’s, P.T.’s, and P.I.’s

- Additional Traffic Control Sequence of Construction

6.2. *90% Design*

The 90% Construction Drawing Submittal shall be submitted with the Task 8.2 deliverable and will consist of all the plan sheets developed as part of Task 6.1 as well as the below plan sheets:

- Intersection Traffic and Erosion Control Layout Sheets
  - Traffic Control – Kimley-Horn will prepare traffic and erosion control plans for up to one (1) phase of construction. It is assumed the intersection will be closed and the intersection will be built in one phase. If any additional phases are required, the extra design effort necessary to design additional traffic control phases will be considered additional services.

6.3. *Prepare Bid Package*

- Kimley-Horn will prepare the traffic signal design sheets to be included with the Task 8.3 Bid Package Submittal.

**Task 7: Roundabout Design (Upon Authorization)**

This task will only be performed with the authorization of the City. City to provide authorization prior to Task 8 starting. Kimley-Horn will perform services for either Task 6 or Task 7.

Kimley-Horn will develop design drawings for a roundabout design at Oak Drive at the authorization of the City. The design drawings and deliverables will coincide with the plan set being developed as part of Task 8.

7.1. *Prepare 60% Design Drawings*

Development of 60% construction drawings shall be submitted with the Task 8.1 deliverable and will consist of:

- Roundabout Paving Layout
  - Proposed Improvements – Horizontal geometry for proposed horizontal alignments, city utilities (water, sewer, and storm), franchise utilities, curbs, sidewalks, street lights, and driveways.
  - Existing Features – Horizontal geometry for existing right-of-way, easements, pavement, curbs, retaining walls, storm drain, utility poles, mailboxes (within right-of-way), water meters, fire hydrants, and trees (within right-of-way)
- Roundabout Profiles
  - Station and elevation data of all vertical profile P.C.'s, P.T.'s, P.I.'s, low points, and high points; lengths of vertical curves, grades, K values, e, and vertical clearances where required.



- Roundabout Grading Plan
  - To include contours shown at 1' intervals as well as station, coordinate data, and elevations for all horizontal alignment P.C.'s, P.T.'s, P.I.'s.
- Roundabout Signing and Pavement Marking Plan
- Roundabout, Hardscape, and Paving Details - to include curbs, curb expansion joints, driveways, sidewalks, pavement details, truck apron, central island, and median paving details.
- Additional Storm Drain Lateral and Inlet Design
- Additional Street Light Photometric Design
- Additional Traffic Control Sequence of Construction
- Central Island Landscape and Irrigation Plan – Kimley-Horn will develop plans for the landscape and irrigation for the central island based. Any design of landscaping outside of the central island will be considered additional services.

7.2. *Prepare 90% Construction Drawings*

The 90% Construction Drawing Submittal shall be submitted with the Task 8.2 deliverable and will consist of all the plan sheets developed as part of Task 7.1 as well as the below plan sheets:

- Roundabout Traffic and Erosion Control Layout Sheets
  - Traffic Control – Kimley-Horn will prepare traffic and erosion control plans for up to one (1) phase of construction. It is assumed the intersection will be closed and the roundabout will be built in one phase. If any additional phases are required, the extra design effort necessary to design additional traffic control phases will be considered additional services.

7.3. *Prepare Bid Package*

Kimley-Horn will prepare the roundabout design sheets to be included with the Task 8.3 Bid Package Submittal.

**Task 8: Mt Gilead Road Design: US 377 to Residential Drive (Mt Gilead Road)**

Kimley-Horn will develop design drawings for Mt Gilead Road from the US 377 intersection to the Residential Private Drive (Mt Gilead Road) east of Milestone Church. The intersection of Oak Drive will be designed as part of Task 6 or Task 7. This task includes the 60%, 90%, and Bid Package. Any deliverable prepared as part of Tasks 6, 7, or 9 will be included with the design submittals associated with this task. There will be no separate deliverables for the roadway, retaining walls, or the intersection designs.

8.1. *60% Design*

Development of 60% construction drawings will consist of:

- Cover and Sheet Index
- Project Control and ROW Map
  - Alignment information including coordinate data for all horizontal alignment PCs, PTs, and Pls.
  - Bearings given on all proposed centerlines or baselines
  - Existing and proposed right-of-way and easement information including property owners, addresses, and easement widths.
- Existing and Proposed Typical Sections
- Traffic and Erosion Control Plan
  - This task consists of preparing a sequence of construction, traffic control phasing diagram, typical sections, and detour routes only. Plan layout of traffic and erosion control phasing will be provided with Task 8.2.
  - Detour Routes – Kimley-Horn will prepare up to three (3) detour routes associated with the construction of Mt Gilead Road. The following roads/driveways are assumed to require a detour route:
    - Mt Gilead Road between US 377 and Valley Ridge Road – It is anticipated that Mt Gilead Road will be built in halves and only one lane of traffic will be maintained on Mt Gilead Road between US 377 and Valley Ridge Road during construction of these limits.
    - Oak Drive and Milestone Church Driveway – It is anticipated that the portion of Mt Gilead Road between Valley Ridge Drive and the Residential Private Drive (Mt Gilead Road) will be closed during construction of this portion of Mt Gilead Road.
    - The Residential Private Drive (Mt Gilead Road) – It is anticipated this private drive will need to be narrowed to one lane during construction.
    - If any additional detour routes are required, the extra design effort necessary to design additional detour routes will be considered additional services
- Removal Plan
- Utility Plan
  - Level A SUE Test Hole Plan
  - Sewer Plan and Profile
    - Kimley-Horn will prepare horizontal and vertical design for a 12-inch sewer line for the length of the project.
    - Plan View – Horizontal geometry for the sewer line improvements, manholes, services, future connection stub-out for Phase 2, and proposed roadway improvements.
    - Profile – Existing and proposed grading profiles, existing sewer line pipe, proposed sewer line pipe, pipe slopes, and elevation information.

- Utility Details.
- City Utility Adjustments
  - Adjustments will consist of location and vertical elevation adjustments for existing City utilities that are not going to be relocated/replaced during the sewer utility replacements. This will consist of surface adjustments for water and sewer valves and manholes from existing grade to proposed grade as well as new fire hydrant locations.
- Franchise Utility Relocation Plan
  - Plan view to consist of franchise utility conflicts with proposed roadway improvements and locations where franchise utility infrastructure needs to be removed or relocated (power poles, meters, risers, etc).
  - Proposed franchise utility relocations may be shown if provided by the Franchise Utility Companies. Kimley-Horn will not be responsible for designing or specifying proposed utility relocation locations.
  - Oncor or Tri-County illumination design will be included with the illumination plan.
- Drainage
  - Existing and Proposed Drainage Area Maps – Kimley-Horn will update the existing and proposed drainage area maps developed as part of the conceptual design contract.
  - Drainage Calculations
    - Runoff Calculations
    - Inlet Calculations
    - HGL Calculations
    - Ditch Calculations (As Needed)
  - Mainline Plan and Profile
  - Lateral Profiles
  - Culvert Plan and Profile – There are three (3) anticipated culvert crossings.
    - Improve existing culvert crossing between Valley Ridge Drive and Oak Drive
    - Provide up to two (2) culvert crossings on the south side of Mt Gilead at Oak Drive.
  - Headwall and Culvert Structural Details
- Roadway Paving Plan and Profile
  - Proposed Improvements – Horizontal geometry for proposed horizontal alignments, City utilities (water, sewer, and storm), franchise utilities, curbs, street lights, and driveways.
  - Based on the City’s Trails Master Plan, sidewalk and/or trail design will be included on the paving plan and profile sheets along the north side of the road.

- Design information will include horizontal geometry, curb ramps, and crosswalks where needed.
  - Existing Features – Horizontal geometry for existing right-of-way, easements, pavement, curbs, retaining walls, storm drain, utility poles, mailboxes (within right-of-way), water meters, fire hydrants, and trees (within right-of-way)
  - Proposed Profile – Station and elevation data of all vertical profile PCs, PTs, PIs, low points, and high points, lengths of vertical curves, grades, K values, and vertical clearances where applicable.
- Oak Drive Trail Connection
  - Kimley-Horn will evaluate a future trail connection location at Oak Drive south of Mt Gilead Road.
  - Only a future connection of up to twenty (20) LF along one side of Oak Drive will be provided. Any additional trail design will be considered additional services.
- Side Street and Driveway Plan and Profiles
  - Kimley-Horn will provide driveway designs for the current residential and commercial driveways. Up to fifteen (15) driveways will be designed.
  - Kimley-Horn will provide side street design for Valley Ridge Drive and the Residential Private Drive (Mt Gilead Road).
  - Design sheets to show side street and driveway slopes, station and elevations for horizontal geometry points, and a side street or driveway profile with PVI's, slopes, and elevations.
- Intersection Improvement Design for Oak Drive
  - Intersection design to follow recommendation provided per the traffic study prepared as part of Task 5.
  - Intersection design sheets to be developed as part of Task 6 or Task 7.
- Preliminary Custom and Standard Paving Details
- Pavement Marking and Signing Plan
- Illumination Plan
  - Kimley-Horn will provide a photometric analysis for Mt Gilead Road in accordance with City requirements. The photometric analysis will consist of placing illumination poles and modeling fixtures to meet roadway and pedestrian illumination level requirements. Kimley-Horn assumes the City will provide the type of lights to be used in the photometric model based on Tri-County or Oncor standard light pole and fixtures.
  - Kimley-Horn will coordinate with Tri-County or Oncor for the illumination design and equipment location.
  - Kimley-Horn will set the ground box and foundation locations and design the conduit layout. It is assumed that Tri-County or Oncor will pull their cable through

and set the light poles once the ground boxes, foundations, and conduit are constructed.

- The following services are considered additional services: photometric analysis of street lighting exterior to project and 3D renderings.
- Cross-Sections
  - Develop on 50-foot station intervals and at driveway and cross street centerlines.
  - Cross-sections will show curb elevations, sidewalks, roadway and parkway slopes, and ROW locations (proposed and existing).
- OPCC
  - Kimley-Horn will prepare an OPCC to be submitted with the Preliminary (60%) Design Submittal.

**60% Design Submittal Deliverables:**

- 3. Compiled PDF plan sets in 11"x17" and 22"X34"**
- 4. OPCC**
- 5. Hard copy plans as requested**

8.2. *90% Design*

The 90% Construction Drawing Submittal will consist of all the plan sheets developed as part of Task 8.1 as well as the below plan sheets:

- General Notes
- Quantity Summary Sheet
- Traffic and Erosion Control
  - Sequence of construction, typical sections, and plan sheets that outline construction traffic control devices, signage, pavement markings, and erosion controls.
  - Roadway Traffic Control Phases – Kimley-Horn will prepare traffic control for up to five (5) phases of construction for Mt Gilead from the tie in at US 377 to the Residential Private Drive (Mt Gilead Road). Traffic control for the construction of Oak Drive intersection will be designed as part of Task 6 or Task 7. The following phases are assumed:
    - Phase 1: Half of Mt Gilead Road from US 377 to Valley Ridge Drive.
    - Phase 2: Other half of Mt Gilead Road from US 377 to Valley Ridge Drive.
    - Phase 3: Remaining portions of Valley Ridge Drive Intersection.
    - Phase 4: Full road closure between Valley Ridge Drive to the Residential Private Drive (Mt Gilead Road). Residential driveway and gas driveway will maintain access.
    - Phase 5: Remaining portions of the Residential Private Drive (Mt Gilead Road) intersection.

- If any additional phases are required for the roadway or intersection, the extra design effort necessary to design additional traffic control phases will be considered additional services.
- Roadway Paving Plan and Profile
  - Final design notes and labels as well as station, coordinate data, and elevations for all horizontal alignment PCs, PTs, and Pls.
- Curb Ramp Layout and Grading
  - Will only be developed for curb ramps that are not City or TxDOT standard ramps.
- Cross-Sections
- Residential Driveway Fence and Decorative Gate Details – Details for the relocation of decorative gates and fences will be prepared for up to four (4) locations.
- Standard and Custom Details
- OPCC
- Project Manual
  - Kimley-Horn will develop a project manual utilizing the City’s standard front-end documents (contract forms and contract conditions) and technical specifications applicable to the project.

**90% Design Submittal Deliverables:**

1. **Compiled PDF plan sets in 11”x17” and 22”X34”**
2. **OPCC**
3. **Project Manual**
4. **Hard copy plans as requested**

8.3. *Prepare Bid Package*

- Following the review of the 90% Design submittal, Kimley-Horn will respond to one (1) round of comments and will provide a comment response letter with the Bid Package Submittal. The submittal of the final design comments by the City is an assumed notice to proceed with preparing the bid package submittal which consists of the signed and sealed construction plan documents and project manual.

**Task 9: Retaining Wall Design (Upon Authorization)**

Kimley-Horn will develop design drawings for retaining walls along Mt Gilead near Milestone Church at the authorization of the City. The design drawings and deliverables will coincide with the plan set being developed as part of Task 8.

Retaining walls are assumed to be a maximum of 10’ in height. Retaining walls will utilize TxDOT standard details wherever possible and will reference the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014. Retaining walls will be designed with TxDOT traffic railing or pedestrian railing as required during design. Kimley-Horn will provide the following plan sheets.

9.1. *60% Design*

- Retaining Wall Plan and Profile
  - Plan View – Horizontal geometry for proposed retaining wall alignments, proposed and existing utilities, proposed roadway improvements, and storm drain improvements.
  - Profile View – Station and elevation data of all vertical profile PCs, PTs, and PIs, along the retaining wall. Top and bottom of wall elevations, footing information, existing and proposed utility crossings, and proposed and existing ground elevations.
- Structural Details – General structural details will be provided.

9.2. *90% Design*

The 90% Construction Drawing Submittal will consist of all the plan sheets developed as part of Task 9.1 as well as the below plan sheets:

- General Notes
- Custom Structural Details – Location specific structural details will be prepared

9.3. *Bid Package*

- Following the review of the 90% Design submittal, Kimley-Horn will respond to one (1) round of comments for the retaining wall and prepare final signed and sealed retaining wall plan sheets with the deliverable as part of Task 8.3.

**Task 10: Right-of-Way Documentation, Appraisals, and Negotiation (Hourly)**

- 10.1. *Right-of-Way Coordination* – Kimley-Horn will coordinate with City Staff, the acquisition sub-consultant, and property owners regarding property negotiations. This coordination may include conference calls, emails, meetings, and exhibit preparation. Kimley-Horn will provide up to one hundred (100) hours of right-of-way coordination.
- 10.2. *Right-of-Way Documentation* – Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for proposed easements or right-of-way dedications. Right-of-Way dedication and or 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 City will file the documents as necessary. Kimley-Horn will prepare documents for the following:
  - ROW Documents: Up to sixteen (16) right-of-way documents will be developed. This is an estimate. Not all ROW documents may be required.
  - Temporary Construction Easements: Up to sixteen (16) temporary construction easements will be developed. This is an estimate. Not all easements may be required.
- 10.3. *Appraisal and Right-of-Way Acquisitions* – Kimley-Horn will, via a sub-consultant, perform appraisal and right-of-way acquisition services associated with this project.

- Condemnation is not included as part of this contract and will be considered an additional service.
- Task includes up to ten (10) appraisals and up to sixteen (16) property negotiations

## **Task 11: Accessibility Review (Hourly)**

Kimley-Horn will utilize a subconsultant that is a Registered Accessibility Specialist (RAS) for the purposes of reviewing plans for conformance with the Texas Accessibility Standards (TAS). Kimley-Horn will coordinate with the RAS for project registration with the Texas Department of Licensing and Regulation (TDLR), and project inspection upon completion of construction. Kimley-Horn will make one (1) round of revisions to the plans based on comments received from the RAS. Inspection, plan review, and registration fees for TDLR are included in this fee.

## **Task 12: Bidding Phase Services (Hourly)**

Kimley-Horn will provide support for the bidding of Mt Gilead Road Reconstruction from US 377 to Residential Drive (Mt Gilead).

### *12.1. Bidding Support*

- Project Management and City Coordination: Kimley-Horn will continue coordinating with the City and providing project management services.
- Pre-Bid Meeting: Kimley-Horn attend the pre-bid meeting.
- Bid Tabulations: Kimley-Horn will tabulate the bids received and evaluate compliance of bids with the bidding documents. Kimley-Horn will prepare a written summary of this tabulation and evaluation and will provide a recommendation of award of contract.
- Requests for Information: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information during bidding in the form of an addenda. Requests for information will be received and responded to until an agreed upon date prior to the established bid opening date. The addenda will be issued to all registered plan holders.
- Bid Opening: Attend the bid opening
- Addenda: Incorporate all addenda into the contract documents and issue conformed sets.
- Pre-Construction Meeting: Kimley-Horn will conduct a pre-construction meeting prior to commencement of construction activity.

### **Task Duration:**

1. Kimley-Horn will perform bidding services for up to one hundred fifty (150) hours. Any additional time spent performing bid phase services will be considered additional services.



**Task 13: Construction Phase Services (Hourly)**13.1. *Meetings*

- Kimley-Horn will attend monthly construction progress meetings (up to 24 meetings) with the City and the Contractor to review the status of the construction and coordinate upcoming work or any outstanding items.

13.2. *Site Observation*

- Consultant will make visits to the site to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work.
- Consultant will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. Consultant does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.
- Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.
  - Assumes an average of up to 2 site visits per week (6 hr duration) on average during the construction duration for 24 months. Will vary as needed per construction activities. Up to 1300 hours.

13.3. *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 Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

13.4. *Clarifications and Interpretations:*

- Consultant will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client.

13.5. *Shop Drawings*

- Consultant will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction

or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

13.6. *Substitutes and "or-equal":*

- Consultant will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.

13.7. *Inspections and Tests:*

- Does not include Construction Material Testing. Construction Material Testing will be performed by the Contractor.
- Consultant may require special inspections or tests of Contractor's work, and may receive and review certificates of inspections within Consultant's area of responsibility. Consultant's review will be solely to determine that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Consultant is entitled to rely on the results of such tests.

13.8. *Disputes between Client and Contractor:*

- Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.

13.9. *Applications for Payment*

- Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
- By recommending any payment, Kimley-Horn shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Kimley-Horn in this Agreement. It will also not impose responsibility on Kimley-Horn to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to City free and clear of any liens, claims, security interests, or encumbrances, nor that there may not

be other matters at issue between City and Contractor that might affect the amount that should be paid.

13.10. *City and Contractor Coordination*

- Kimley-Horn will perform coordination with City staff and the Contractor on an as-needed basis regarding project documentation, the project schedule, and known project issues. The purpose of this coordination will be to facilitate communication and resolution of outstanding items to promote progress of the project during construction.

13.11. *Change Orders*

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

13.12. *Substantial Completion*

- When requested by Contractor and Client, Consultant will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.

13.13. *Final Notice of Acceptability of the Work*

- Consultant will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor.

13.14. *Record Drawings.*

- As an additional service if required, Consultant will prepare a record drawing showing significant changes reported by the Contractor or made to the design by Consultant. Record drawings are not guaranteed to be as-built, but will be based on information made available.

13.15. *Limitation of Responsibilities*

- Kimley-Horn 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 14: Additional Services (Hourly)**

This task shall be used for additional services not included in Tasks 1 – 13. This task will be invoiced hourly for an amount not to exceed the amount listed in the Fee summary. Kimley-Horn will not perform any services using this task unless authorized by the City. This task is optional and is at the discretion of the City to use the Task or not.

## Additional Services

Any services not specifically identified in the Scope of Services shall be considered Additional Services. These may be performed on an individual basis upon written authorization by the City at our then current hourly rates under the existing Agreement if budget allows.

Additional Services include, but are not limited to, the following:

- Additional meetings;
- Additional City Council presentations;
- Additional community or public meetings;
- Additional intersection evaluations not listed under the scope of services;
- Additional photometrics or utility design not listed under the scope of services;
- Renderings or any visualizations not listed under the scope of services;
- Design services beyond what is included under the scope of services. Not design services will be performed beyond conceptual design;
- Full-time project observation is not included in this amendment.
- Materials testing is not included in this amendment and will be provided by the construction contractor.
- Materials testing coordination is not included in this amendment and will be provided by the construction contractor.
- Services related to warranty claims, enforcement and inspection after final completion;
- Assist the City as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City's acceptance of substitutions proposed by the contractor; and
- Any services not listed above.

## Schedule

Tasks 1 – 13 will be completed based on the attached schedule. Additional services, if desired, will be performed within a mutually agreed upon schedule, once authorized by the Client in writing.

## Fee and Expenses

### Lump Sum Tasks

Kimley-Horn will perform the services in Tasks 1 – 5, and 8 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1: Project Administration	\$	26,300
Task 2: City and Utility Coordination	\$	83,600
Task 3: Community and Council Engagement	\$	48,100

Task 4: Data Collection and Analysis	\$ 200,300
Task 5: Intersection Evaluation and Conceptual Roadway Design	\$ 159,200
Task 8: Mt Gilead Road Design: US 377 to Residential Drive (Mt Gilead Road)	\$ 529,600
<hr/>	
Total Lump Sum Fee	\$ 1,047,100

Kimley-Horn will perform the services in either Task 5, 6, and 8 for the lump sum fees below upon authorization from the City.

Task 6: Traffic Signal Design (Upon Authorization)	\$ 97,000
Task 7: Roundabout Design (Upon Authorization)	\$ 136,000
Task 9: Retaining Wall Design (Upon Authorization)	\$ 71,700

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

### Hourly Not to Exceed Tasks

Kimley-Horn will perform the services in Tasks 6 and 7 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 10: Right-of-Way Documentation, Appraisals, and Negotiation (Hourly)	\$ 244,200
Task 11: Accessibility Review (Hourly)	\$ 6,950
Task 12: Bidding Phase Services (Hourly)	\$ 29,600
Task 13: Construction Phase Services (Hourly)	\$ 444,550
Task 14: Additional Services (Hourly)	\$ 15,000
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Maximum Labor Fee	\$ 740,300

Kimley-Horn will not exceed the total maximum 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 as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. 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. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the

Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, 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.

**Total Contract Amount (All Tasks) \$ 2,092,100**

## 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 the City of Keller.

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. 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 me if you have any questions.

Very truly yours,  
**KIMLEY-HORN AND ASSOCIATES, INC.**



Sam Fries, P.E.  
Project Manager



Scott R. Arnold, P.E.  
Vice President

**CITY OF KELLER, TEXAS  
A Municipality**

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Attachment: Standard Provisions, Rate Schedule, and Schedule

## Kimley-Horn and Associates, Inc.

### Standard Rate Schedule

#### (Hourly Rate)

Classification	Rate
Analyst	\$150 - \$230
Professional	\$200 - \$275
Senior Professional I	\$240 - \$330
Senior Professional II	\$295 - \$350
Senior Technical Support	\$150 - \$260
Support Staff	\$105 - \$135
Technical Support	\$95 - \$140

Effective through December 31, 2022

Subject to annual 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 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.
- (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.** 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.

(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.