



August 15, 2025

Cody Maberry
Director of Community Services, City of Keller
P.O. Box 770, Keller, Texas 76244
817-743-4002
cmaberry@cityofkeller.com

**Re: Letter Agreement for Professional Services for
US 377 Median – Beautification Project (Green Ribbon Funding)
Keller, Texas**

Dear Mr. Maberry:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) submits this Letter Agreement (“Agreement”) to the City of Keller (“Client”) for providing professional services for the above reference project. The Consultant will perform the services outlined below for the existing median located in Keller, Texas (“Project”).

Project Understanding

The City of Keller has requested the Consultant provide professional services for the construction documents and construction phase services for the Beautification Project of the existing median at the intersection of US 377 and Johnson Road consisting of landscape and irrigation design within the median as shown on the attached “Exhibit A”.

The scope of work is within the existing median, within the noted limits as shown on “Exhibit A”. The Consultant understands that the project construction cost will be federally funded and will be programmed by the Texas Department of Transportation (TXDOT). The Client understands the project will follow the TXDOT Design Review Process and follow Local Government Project Procedures (LGPP). The Consultant understands the Client will move forward with the state letting process during bidding and construction phase.

Scope of Services

Consultant will provide the services specifically set forth below.

Task 1 Project Meetings and Design Coordination \$12,500 (LS)

The effort included in this task relates to project meetings and design coordination for the Construction Plans:

- Meet with Client and TXDOT to review schedule, design guidelines and requirements, and general design criteria and preferences for the landscaped medians – one (1) meeting.
- TXDOT coordination including correspondence with TXDOT District, Submittal (60%, 90%, and Final) and TXDOT review response letters.
- Prepare for and attend Client plan review meetings – (60%, 90%) – two (2) meetings total.
- Project communication, correspondence, and coordination with the Client.
- Prepare and email project status to project team (City of Keller staff and Consultant team).

- Review monthly invoices and invoice summary per TXDOT standards.
- Prepare project schedule and update throughout design for TXDOT and the Client.

Task 2 Topographic Survey**\$6,000 (LS)**

The Consultant will prepare a topographic survey for the subject project, as indicated on the attached "Exhibit A" for the purpose of preparing landscape plans. The Consultant will survey existing limits along the areas designated in the attached exhibit, and will consist of guardrails, fencing, traffic poles, signs, and other observed above ground physical features.

The Consultant will prepare an electronic map showing existing contour lines at 1' intervals based on a nominal 50' grid system, along with major grade breaks.

Visible evidence of utilities, including water valves, storm inlets, sewer cleanouts, electrical lines, telephone lines and gas lines will be located. This task does not include subsurface utility locations.

The Consultant will set on-site temporary benchmarks in close proximity to each median.

Horizontal and vertical datum will be provided, or the Consultant will use Texas State Plane Coordinate system.

Task 3 Construction Documents**\$41,000 (LS)**

The Consultant will prepare the landscape construction plans for the areas attached in "Exhibit A". The construction plans will provide locations of landscape improvements, planting details, irrigation plans and details, and specifications. This task consists of plan sets and submittals as follows:

60% Submittal

- Further develop Landscape Plans and Details for the medians showing new plant material locations as they relate to the medians. Included in these sheets will be a planting schedule specifying recommended plant species and details illustrating recommended installation methods and requirements.
- Develop Irrigation Plans and Details for the proposed landscape improvements showing head layout, pipe sizing and Controller/Valve locations and standard details. These plans will show sufficient detail for construction and will be prepared to conform to published Client and TXDOT requirements.
- Compile applicable Client standard details and TXDOT standard details necessary for design. Modify standard details as needed.
- Revise project schedule based on TXDOT review schedule.
- Develop opinion of probable construction costs (OPCC). The Consultant 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 to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
- Submit one (1) digital 11" x 17" .pdf to the Client for review and comment.

- Address Client comments and re-submit one (1) digital 11" x 17" .pdf to the TXDOT District Office for review and comment.
- Conduct 60% PS&E comment review meeting with TXDOT District Office to solicit review comments and discuss the approach to addressing comments.
- Address 60% PS&E comments and prepare TXDOT response letter.

The 60% Submittal (11"x 17" plan sheets) will consist of:

- TXDOT Standard Cover/Index
- Project Control
- Quantity Summary Sheets
- Project Layout
- Landscape
- Irrigation
- Miscellaneous Details
- TXDOT Standard Detail Sheets
- OPCC
- General Notes

90% Submittal

- Submit one (1) digital 11" x 17" .pdf to the Client for review and comment.
- Address Client comments, prepare comment response letter, and re-submit one (1) digital 11" x 17" .pdf to the TXDOT District Office review and comment.
- Conduct 90% PS&E comment review meeting with TXDOT District Office to solicit review comments and discuss the approach to addressing comments.
- Address TXDOT Area Office comments and resubmit one (1) digital 11" x 17" .pdf for review and comment.

The 90% Submittal (11"x 17" plan sheets) will consist of:

- TXDOT Standard Cover/Index
- Project Control
- Quantity Summary Sheets
- Project Layout
- Landscape
- Irrigation
- Miscellaneous Details
- TXDOT Standard Detail Sheets
- OPCC
- General Notes

Final Submittal

- Incorporate the final design submittal review comments and prepare comment response letter.
- Submit five (5) sets of plans and specifications to the Client.
- Submit final OPCC.

Subsequent modifications resulting from material site plan changes directed by the Client or their representatives will be billed to the Client as Additional Service.

Task 4 Environmental Compliance Documents \$12,500 (LS)

Task 4A Project Scoping/Work Plan Development (WPD)

This task is intended to assist the Client in securing the appropriate scope determination from TxDOT for the proposed project. Consultant will do the following to complete the WPD:

- Organize a kickoff call with TxDOT and the Client for a project environmental kick-off to review project and schedule (as appropriate).
- Complete current TxDOT scope forms to identify required actions that need to be entered into ECOS. The following figures will also be prepared and provided: Project location map, topographic map, aerial map, Historic Resources Aggregator map and THC Atlas Map. This project development process will determine which specific studies, technical reports, and coordination will be required.
- Scoping documents will be submitted to TxDOT for review and comment prior to initiating required studies and technical reports.

Task 4B Environmental Studies and Documentation

As determined by the results of the Project Development process (Task 4A), Consultant will prepare the appropriate documentation for submittal to the TxDOT Environmental Reviewer to assist in obtaining environmental approval. Consultant will coordinate with the TxDOT Environmental Reviewer as appropriate and required by TxDOT. Studies will be performed in accordance with TxDOT guidelines and will follow TxDOT toolkits. Based on project information and proposed concept, in the absence of scope determination from TxDOT, Consultant will perform the following:

- Species Analysis Form and Spreadsheet
 - Includes site visit and photo log

Task 5 Bidding \$8,000 (LS)

The Consultant will assist the Client and TxDOT during the bidding phase. The Consultant understands the Client is utilizing the state let process for this phase. Consultant will:

- Prepare for a pre-bid meeting and answer appropriate questions from bidders.
- Issue addenda in response to bidder's requests for information.
- Provide bid tabulations and Letter of Recommendation. (A summary of the bid analysis will be provided to the Client for use in selection and award of the construction contract.) TxDOT will need to approve the bid opening and tabulation prior to the award of the construction contract.

Task 6 Landscape Architecture Construction Phase Services \$14,000 (LS)

The Consultant will assist the Client and TxDOT during the construction phase. The Consultant understands the Client is utilizing the local let process for this phase. Consultant will:

- Shop Drawings and Samples. The 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.

- Attend one (1) pre-construction meeting. Consultant will attend a Pre-Construction Conference prior to commencement of Work at the Site.
- Respond to contractor RFI's. Consultant will respond to five (5) Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.
- Site visits as requested by the Client or TxDOT – four (4) total. Consultant will make visits at intervals as directed by Client in order to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the Work. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- Final walk-through. Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.

Task 7 LGP Construction Phase Services

\$145,000 (LS)

7.1 Meetings

- Consultant will attend one (1) preconstruction meetings and three (3) construction progress meetings with the City and the Contractor to review the status of the construction and coordinate upcoming work or any outstanding items. Consultant will prepare meeting agenda and meeting notes for the four (4) meetings listed above to distribute to the project team. (Consultant design staff to participate under Task 6 of Professional Services Agreement)

7.2 Request for Reimbursement Support

- Consultant will assist the City with compiling and reviewing the following monthly

documentation, as needed, for TxDOT submission. This scope assumes three (3) each of the following documents will be required for submission.

- Billing Statement
- Project Worksheet
- Proof of Payment to Contractor
- Supporting Documentation (Project Schedule, Quantity Measurement and Calculations)

7.3 Notice to Proceed

- Consultant will prepare (1) one Notice to Proceed document and issue to the Contractor.

7.4 Contract Time Statement

- Consultant will prepare a Contract Time Statement (TxDOT Form 252 or LG equivalent) monthly for TxDOT submission. This scope assumes three (3) contract time statements.

7.5 Bulletin Board Checklist

- Consultant will review the Bulletin Board installed by the Contractor for contract conformance and will assist the City with preparing checklist for TxDOT submission.

7.6 Change Orders

- Consultant may recommend Change Orders to the City and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. Consultant will coordinate change order review to arrange for the appropriate parties to receive the submitted information from the Contractor, reviewers to respond in the required time, any questions are addressed, and all submitted items are properly documented. This scope assumes up to two (2) change orders during construction.

7.7 Storm Water Pollution Prevention Plan (SWPPP) and Barricade Observation Walkthrough

- Consultant will participate in SWPPP and Barricade walkthroughs with the City and the Contractor. The scope assumes the following:
 - Assumes up to fifteen (15) walkthroughs to observe SWPPP.
 - Assumes up to six (6) walkthroughs to observe Barricades.
- Consultant 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.

7.8 Daily Reports

- Consultant will perform daily site visits. Site observation will be scheduled based on

contractor activities at the site. Site visits will follow the guidelines established in the original contract for engineering services for this project. Site visits will be documented with observation reports to include a description of work in progress and any observations of construction issues that may require attention. (Consultant design staff to participate under Task 6 of Professional Services Agreement)

- Assumes daily site visits during three (3) months of construction.
- Consultant will not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Consultant does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents.

7.9 Contractor Labor Interviews

- Consultant will participate in Contractor Labor Interviews and assist the City with preparation of TxDOT Form 2200.
 - The scope assumes three (3) labor interviews.

7.10 City, Contractor, and TxDOT Coordination

- Consultant will perform coordination with City staff, the Contractor, and TxDOT 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.

7.11 Final Notice of Acceptability of the Work

- Consultant will coordinate a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. This scope includes one (1) final completion walk through and preparation of one (1) final completion letter. (Consultant design staff to participate under Task 6 of Professional Services Agreement)

7.12 Limitation of Responsibilities

- Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. 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 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.

- 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 Consultant for all claims and liability arising out of job site accidents; and that the Client and Consultant shall be made additional insureds under the contractor's general liability insurance policy.

Services Not Included:

Any other service not listed, including but not limited to the following, are not included in this contract amendment.

- Materials testing will be provided by the construction contractor.
- Materials testing coordination will be provided by the construction contractor.
- Specialized testing/inspection.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at Kimley-Horn's then-current hourly rates. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Attending City of Keller parks board meetings
- Attending City of Keller city council meetings
- Presenting at City of Keller parks board meetings and/or city council meetings
- 3D renderings, perspectives, bird-eye view renderings
- Franchise utility coordination
- Traffic impact studies or signal design
- Preparation of traffic control plans
- Revisions due to changes in regulations
- Archaeological survey
- Submittal, permitting fees, or impact fees
- Separate engineering site development review process sets and submittals
- Off-site utility design
- Off-site roadway design
- Off-site easement descriptions
- Contractor type detailed estimates (as prepared by estimating service)
- Record drawing survey and record drawings
- Preparation of preliminary or final plat
- Environmental impact statement
- Storm drainage studies and detention/retention pond design
- Signage design of any kind or nature

- Additional work due to increase in project cost and scope

Schedule

Kimley-Horn will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 6 for the total lump sum labor fee below. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen (15%) markup, will be immediately issued to and paid by the Client.

Task Number & Name		Fee	Type
1	Project Meetings and Design Coordination	\$12,500	Lump Sum
2	Topographic Survey	\$6,000	Lump Sum
3	Construction Documents	\$41,000	Lump Sum
4	Environmental Compliance Documents	\$12,500	Lump Sum
5	Bidding	\$8,000	Lump Sum
6	Landscape Architecture Construction Phase Services	\$14,000	Lump Sum
7	LGP Construction Phase Services	\$145,000	Hourly
Lump Sum Subtotal		\$94,000	Lump Sum
Estimated Hourly Not to Exceed Subtotal		\$145,000	Hourly
Estimated Total		\$239,000	

Lump sum fees and expenses will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn will perform the services in Task 7 on a labor fee plus expense basis with the maximum labor fee shown above. Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client.

As to Task 7, labor fee will be billed on an hourly basis according to our then-current rates. Direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the

Client request Kimley-Horn to advance any such aproject fees on the Client's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued and paid by the Client.

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

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Keller, Texas.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

To proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed: 

Printed Name: Laura Presley, PLA

Title: Project Manager



Bradley J. Hill

Regional Contract Lead

THE CITY OF KELLER

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

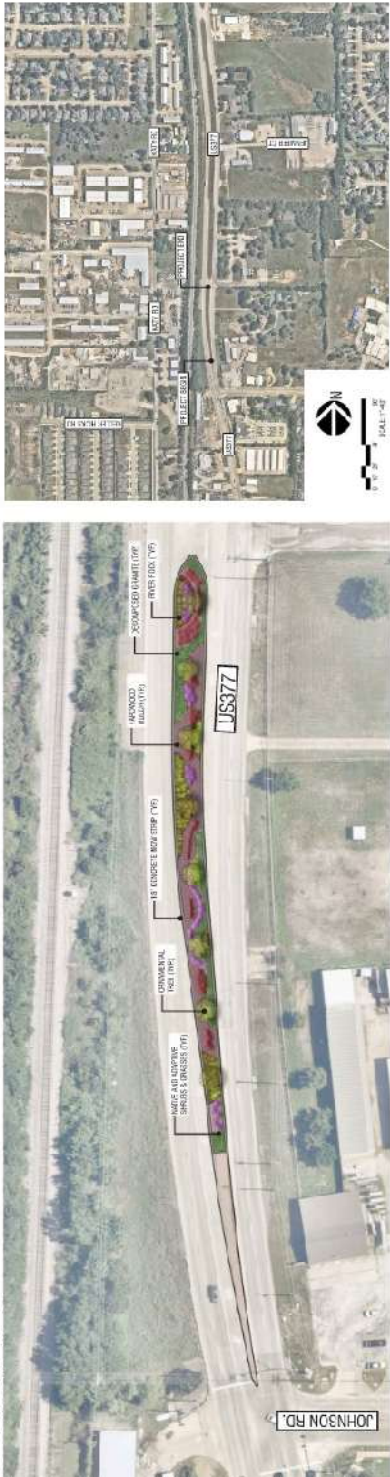
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Attachment – Standard Provisions

Attachment – Exhibit A

EXHIBIT A

CONCEPT



KELLER, TX GREEN RIBBON
US377 (N Main St.) Medians - North of Johnson Rd

FISCAL YEAR 2026

MARCH 2025
City of KELLER Kimley»Horn

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND KIMLEY-HORN, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF KIMLEY-HORN AND KIMLEY-HORN'S OFFICERS, DIRECTORS,

EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, ATTORNEYS' FEES (INCLUDING ATTORNEYS' FEES OTHERWISE RECOVERABLE UNDER TEX. CIV. PRAC. & REM. CODE § 38.001), OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF KIMLEY-HORN OR KIMLEY-HORN'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY KIMLEY-HORN UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CLIENT TO INDEMNIFY KIMLEY-HORN.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.