

## Exhibit A

### PROFESSIONAL SERVICES MASTER AGREEMENT

This **Professional Services Master Agreement**, together with the attached Exhibits and any amendments hereto, is an agreement (collectively, the “**Agreement**”) between **City of Keller** a Texas municipal corporation (“**Client**”), and **Peloton Land Solutions, Inc, a Westwood Company.**, a Texas corporation (“**Westwood**”). Client and Westwood are each a “**Party**” and collectively, the “**Parties**” to this Agreement dated **1/19/2024** (the “**Effective Date**”).

#### 1.01 BASIC INFORMATION

A. *Parties.* Party information is listed below.

**Client:**                   **City of Keller**  
1100 Bear Creek Parkway  
Keller, Texas 75248  
Ph: 817-743-4000  
Email: rhardcof@cityofkeller.com

**Westwood:**           **Westwood Professional Services, Inc.**  
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093  
Ph: (952) 937-5150  
Fax: (952) 937-5822  
Email: legal@westwoodps.com

B. *Consideration for Services.* In exchange for the mutual covenants and promises contained in this Agreement and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree that Westwood shall provide, or cause to be provided, the professional services set forth in this Agreement on an as-needed basis as requested by Client and agreed to by Westwood in exchange for payment contemplated herein.

Depending on the project and the needs of Client, such professional services may include, but are not limited to the following:

civil engineering services, survey services, renewable energy design, LiDAR mapping and aerial photography, GIS (Graphic Information Systems), wetland services, EIS (Environmental Impact Statements), EAW (Environmental Assessment Worksheets), sustainable and conservation development, soil mapping, cultural resources, feasibility studies, regulatory research, threatened and endangered species research, erosion control services, SWPPP development (Storm Water Pollution Prevention Program) and review, land liaison services, title services, and land acquisition (described generally herein as the “**Services**”).

Depending on the particular project, Westwood’s Services may result in drawings, specifications, plans, designs, work product, and other items and materials as described in this Agreement (the “**Deliverables**”) that may be requested by Client and agreed to by Westwood.

C. *Projects.* Projects will be as determined from time to time by Client. A new scope of work for each project will be initiated by a Project Work Order. A template for the Project Work Order is attached and incorporated by reference herein as **Exhibit “A”**. Any necessary scope of work and fee changes will be documented by a Project Change Order. A template for the Project Change Order is attached and incorporated by reference herein as **Exhibit “B”**. Project Work Orders and Project Change Orders must be agreed to and executed by both Parties in order to be effective.

#### 2.01 SCOPE AND RESPONSIBILITIES

A. *Westwood.* Westwood shall perform Services for Client for each project as set forth in a Project Work Order in accordance with the terms of this Agreement and consistent with the project’s schedule, if any. Westwood reserves the right to augment its staff with employees and/or consultants as it deems appropriate due to project logistics, scheduling issues, and/or market conditions. The Deliverables and all other documents, software, data, client portals, intellectual property, and other work products created, developed, produced, delivered, performed, and/or

provided by Westwood, whether in hard copy or in electronic form, are instruments of service (“**Instruments of Service**”) for each project, whether a project is completed or not.

- B. *Client*. In addition to the other responsibilities described in this Agreement and/or imposed by law or in equity, Client shall have the following obligations:
1. Provide all information and criteria as to Client’s requirements, objectives, and expectations for each project, including all numerical criteria that Client expects Westwood and its consultants, if any, to meet, including all standards of development, design, and/or construction.
  2. Provide Westwood all previous studies, plans, and/or other documents pertaining to each project, including but not limited to the contract with the property owner (the “**Prime Contract**”), if any, and all applicable data requested by Westwood.
  3. Arrange for reasonable access to project sites and other private or public property, including any easements or other authorizations as required for Westwood to provide the Services.
  4. Review all documents and/or oral reports presented by Westwood and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services for each project.
  5. Apply for and furnish applicable approvals, licenses, and/or permits from governmental authorities having jurisdiction over each project.
  6. Furnish certifications and/or consents from other entities as may be necessary from time to time and in accordance with Section 10.01.C herein.
  7. Be responsible for obtaining from others such independent accounting, legal, insurance, cost estimating, and overall feasibility services as Client may desire for project.
  8. Comply with all applicable safety guidelines at each project site at its own expense.
  9. Give reasonably prompt written notice to Westwood whenever Client becomes aware of any development that affects the scope, timing, and/or payment of Westwood’s Services and/or any defect or noncompliance in any aspect of a project.
  10. Bear all costs incidental to the responsibilities of Client under this Agreement.

### 3.01 ADDITIONAL SERVICES

- A. The Parties recognize that a project’s scope may change from time to time, and in such an event, Westwood may furnish services in addition to those set forth in a Project Work Order, if authorized by Client in writing.
- B. In such case(s), the Parties shall appropriately and reasonably adjust Westwood’s Services, the project’s schedule, and compensation for such additional services. Specifically, Client shall pay Westwood for such additional services an amount equal to the cumulative hours charged to the project by each class of Westwood’s employees multiplied by the rates for each applicable billing class plus reimbursable expenses and Westwood’s consultant charges, if any. Client shall also adjust the budget and anticipated design and construction milestones, if any, as necessary to accommodate such changes to the project schedule. Additional Services may be documented in a Project Change Order.

### 4.01 PAYMENT PROCEDURES

- A. *Retainer*. Client shall pay a non-refundable retainer as an advance on Westwood’s Services in the amount of \$0 (USD) that is due to Westwood when Client signs this Agreement (“**Retainer**”). Client may tender the Retainer via check, cash, or wire transfer and made payable to “**Westwood Professional Services, Inc.**”.

Westwood’s acknowledgment of receipt of the Retainer is required before Westwood is able to counter-sign this Agreement and commence work on its Services. The Retainer shall be applied against Westwood’s Invoice(s) for Services to satisfy such fees, costs, and expenses as are being provided for Client until the Retainer is depleted; thereafter, Westwood shall invoice Client for Westwood’s fees, costs, and expenses. Westwood may hold such Retainer as security against any amounts to be paid or apply such balance, in whole or in part, to cover any amounts due and owing from Client but that remain unpaid. No interest will accrue or be owed on the Retainer.

- B. *Compensation*. Client shall compensate Westwood by paying fees and reimbursable expenses for Westwood and its consultants’ Services either hourly or on a lump sum basis as outlined below:

1. *Hourly.* If the Services for a particular project are agreed to be on an hourly basis, invoice amounts for that project shall be in accordance with Westwood's fee schedule in effect at the time when the Services are performed. Westwood's standard hourly rates in the fee schedule applicable to the respective project shall be defined as an amount equal to the cumulative hours charged to the Project by Westwood's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Westwood's consultants' charges, if any. Westwood's standard hourly rates and reimbursable expenses will be adjusted annually to reflect equitable changes in the compensation payable to Westwood.
2. *Lump Sum.* If the Services for a particular project are agreed to be on a lump sum basis, invoice amounts for that project shall be an amount equal to the percent of each task's completion multiplied by the lump sum of the task plus reimbursable expenses and Westwood's consultant charges, if any.

Reimbursable expenses are defined as project-related internal expenses to Westwood actually incurred plus all invoiced external reimbursable expenses allocable to the specific project, the latter of which is multiplied by a factor of 1.15.

If applicable, when compensation to Westwood includes charges of Westwood's consultants, those charges shall be the amounts billed by Westwood's consultants to Westwood multiplied by a factor of 1.15. The consultant's reimbursable expenses and Westwood's factors include consultant overhead and profit associated with Westwood's responsibility for the administration of such services.

Fee estimates will be included in a Project Work Order, including any Project Change Orders or subsequent amendments thereto, with the final and total cost to be determined based on actual requirements of the specific Services rendered for each project. Westwood may alter the distribution of compensation between individual phases of work to be consistent with Services actually rendered.

- C. *Preparation of Invoices.* Westwood will prepare a monthly invoice in accordance with Westwood's standard invoicing practices and submit the invoice to Client.
- D. *Payment of Invoices.* Invoices are due and payable within thirty (30) days of receipt.
- E. *Termination or Suspension of Services.* If Client fails to make any payment due to Westwood for fees, costs, or expenses within thirty (30) days of receipt of Westwood's invoice, such failure shall be considered substantial nonperformance and cause for termination of this Agreement in accordance with Section 9.01.B.2.iii. Alternatively, Westwood may suspend Services under this Agreement until Westwood has been paid in full for all amounts due and after giving seven (7) days advance written notice to Client. In the event of a suspension of Services, Westwood shall have no liability for delay or damage caused because of its suspension of Services. If Westwood resumes its Services after being paid all amounts due, a project's schedule may be equitably adjusted, if necessary.
- F. *Payment Disputes.* Client shall provide written notification to Westwood within fourteen (14) days of receipt of the invoice should Client object to all or any part of the charges appearing on the invoice. Such written notice shall set forth, at a minimum, the specific portion of the invoice disputed, the amount disputed, and the alleged factual and legal basis for the dispute. The portion of the invoice not in dispute shall be paid by Client within thirty (30) days receipt of said invoice, and the disputed portion shall be resolved in accordance with Section 8.01.

In no event shall Client withhold amounts from Westwood's compensation to impose a penalty or liquidated damages unless Westwood specifically agrees in writing or has been found liable for the amounts in a binding dispute resolution proceeding or lawsuit. Further, Westwood has the right to employ such persons and/or professional service providers on a consultant basis to mitigate its damages, if needed.

- G. *Taxes.* Each Party shall be solely responsible for their own tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to this Agreement.
- H. *Attorney Fees.* In the event that Westwood must retain an attorney or collection agency to recover amounts due and owing under this Agreement, including any additional services authorized by Client in writing, Client shall be liable for all fees, costs, and expenses, including reasonable attorney fees, incurred in such collection regardless of whether an action is filed.

- I. *Interest.* Interest on any outstanding invoice balance past 30 days shall accrue at the rate of 1.25% per month or the highest rate permitted by law. Payments will be credited first to interest and then to principal.

## 5.01 INTELLECTUAL PROPERTY

- A. *Ownership and License.* For each project, Westwood shall be the owner of all right, title, and interest in and to any and all Deliverables and/or Instruments of Service, together with any and all related rights of copyright, patent, trade secret, trademark, service mark, and all other proprietary rights of any kind whatsoever, including all Westwood delivery Services, software, data, client portals, and all other Westwood work product and intellectual property created for that project. Subject to the provisions herein and upon Westwood's receipt of full payment for the Deliverables and/or Instruments of Service, Westwood hereby grants to Client, and Client accepts (i) a nonexclusive, nontransferable, without the right to sublicense, royalty-free license to use the Deliverables and/or Instruments of Service for the sole purpose of constructing a particular project, and (ii) the right to reproduce applicable portions of the Deliverables and/or Instruments of Service for Client's contractors, consultants, and/or suppliers solely for use in construction of that particular project, provided, however, that Client reproduces on such copies the copyright notice and other proprietary legends that were on the original, if any. Upon termination of this Agreement by Westwood or due to forces or acts beyond Westwood's control that prevent Westwood from performing the Services or a particular project's completion, the license granted herein for such project shall immediately terminate, and Client shall immediately return the Deliverables and/or Instruments of Service to Westwood.
- B. *Reuse.* Deliverables and/or Instruments of Service are not intended or represented to be suitable and are not licensed to Client or anyone else for reuse, change, or alteration on extensions of the project at issue or on any other project without the express written permission of Westwood. Any unauthorized use of the Deliverables and/or Instruments of Service will be at the user's sole risk without liability to Westwood, and Client hereby agrees to indemnify and hold harmless Westwood, its officers, directors, partners, employees, and consultants, if any, from and against any and all third-party claims for costs, losses, and damages, including the cost of defense and attorney fees, arising out of any such unauthorized use.

## 6.01 GENERAL CONSIDERATIONS

- A. *Standard of Care.* The standard of care ("**Standard of Care**") for all Services performed or furnished by Westwood under this Agreement will be the care and skill ordinarily used by members of Westwood's profession practicing under similar circumstances at the same time and in the same locality. Westwood shall perform its Services as expeditiously as is consistent with such professional skill and care and in accordance with the orderly progress of each project under this Agreement.
- B. **DISCLAIMER OF WARRANTIES AND GUARANTEES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.01.A ABOVE, WESTWOOD MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO WESTWOOD'S SERVICES UNDER THIS AGREEMENT OR ANY PROJECT ORDER. WESTWOOD HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THESE SERVICES AND THIS DISCLAIMER EXTEND TO ALL WESTWOOD DELIVERY SERVICES, SOFTWARE, DATA, CLIENT PORTALS, AND ALL OTHER WESTWOOD WORK PRODUCT AND INTELLECTUAL PROPERTY. FURTHER, WESTWOOD NEITHER GUARANTEES THE PERFORMANCE OF ANY THIRD PARTY, INCLUDING CONTRACTORS, USING THE DELIVERABLES OR SERVICES NOR ASSUMES ANY RESPONSIBILITY FOR ANY THIRD PARTY'S FAILURE TO FURNISH OR PERFORM ANY WORK THAT USES THE DELIVERABLES OR SERVICES.**
- C. *Compliance with Laws.* The Parties will apply the Standard of Care identified in Section 6.01.A and will comply with applicable laws, codes, regulations, and ordinances in effect during the term of this Agreement, which to the best of each Party's knowledge, information, and belief, apply to each Party's respective obligations.
- D. *Right of Entry.* If required for the performance of the Services, Client grants to Westwood, and, if a project's site is not owned by Client, warrants that permission has been granted for, a reasonable right of entry, access, and/or easement from time to time by Westwood, its employees, agents, and/or consultants upon such project site for the purpose of providing the Services. Upon written request and approval by Westwood, Westwood may assist Client in obtaining necessary permits and/or licenses related to rights of entry and/or easements in order for Westwood

and Westwood's consultants, if any, to adequately access and perform Services at a project site applicable under this Agreement.

- E. *Underground Data and Investigative Equipment.* Client shall advise and provide Westwood with all information and data in its possession concerning the type and location of all underground utilities, both public and private, as applicable for each project. Client recognizes that the use of investigative equipment and practices may unavoidably alter the existing project site conditions and affect the environment in the area being studied despite the use of reasonable care. Client shall indemnify and hold Westwood harmless from claims for damages caused by reasons of Westwood's provision of Services under this Section.
- F. *Reliance on Client-Provided Data.* Client shall be responsible for—and Westwood and its consultants, if any, may use and/or rely upon—the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client or Client's consultants, if any, including but not limited to Client's contractors, manufacturers, and/or suppliers (collectively, "**Client-Provided Data**"). Westwood may use such Client-Provided Data in performing or furnishing the Services under this Agreement, and Westwood shall coordinate the Services with those services provided by Client and/or Client's consultants for each project.
- G. *Corrections.* Within 60 days of delivery, if Client reasonably and timely notifies Westwood in writing of a deficiency(ies) with Westwood's Services on a particular project, Deliverables, and/or Instruments of Service, Westwood—as Client's sole and exclusive remedy—shall correct such deficiency(ies) without additional compensation to Client within 60 days after Westwood's receipt of Client's written notice, except to the extent such action is directly attributable to deficiencies in Client-Provided Data. If for any reason Westwood is not able to correct such deficiency(ies) within 60 days after Westwood's receipt of Client's written notice under this Section, Westwood will notify Client and will advise in writing the time frame needed to correct the deficiency(ies) as expeditiously as possible.
- H. *Responsibility for Others.* Westwood shall not be responsible for the acts, errors, or omissions of any consultant(s), contractor(s), subconsultant(s), subcontractor(s), and/or supplier(s), or of any of their agents or employees or any other persons (except Westwood's own employees or those for whom Westwood is legally responsible) furnishing or performing any work or for any decision made on interpretations or clarifications of Deliverables or Instruments of Service without the consultation and advice of Westwood.
- I. *Non-Construction Phase Work.* It is understood and agreed that if Westwood's Services for a particular project under this Agreement do not include construction-phase work, and that such work will be provided by Client or others on behalf of Client, then Client assumes all responsibility for interpretation of the Deliverables and/or Instruments of Service for construction observation, and/or review. In such instances, if applicable, Client waives any and all claims against Westwood that may be in any way connected thereto. Further, Westwood shall not be required to make exhaustive or continuous on-site inspections of a project to check the quality or quantity of the work for construction but will report to Client known deviations, defects, and/or deficiencies, if any.
- J. *Hazardous Environmental Conditions.* The Parties acknowledge this Agreement does not include any Services related to a hazardous environmental condition. Such conditions include, but are not limited to the presence of, asbestos, polychlorinated byphenyls, petroleum, toxic substances or waste, and/or radioactive materials (collectively, "**Hazardous Environmental Conditions**"). If Westwood or any other entity or individual encounters a Hazardous Environmental Condition, Westwood may, at its option and without liability for consequential, liquidated, or any other damages, suspend performance of Services on the portion of the project affected thereby until Client (i) retains an appropriate specialist consultant and/or contractor to identify and, as appropriate, abate, remediate, and/or remove the Hazardous Environmental Condition and (ii) warrants that the site is in full compliance with applicable laws, codes, regulations, and ordinances then in effect, if any. Westwood shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons or property to any such Hazardous Environmental Condition in any form at the project site.
- K. *Substitutions.* Westwood shall not be responsible for Client's directive, substitution, or acceptance of non-conforming work that is made or given without Westwood's written approval.

## 7.01 ALLOCATION OF RISKS

- A. **INDEMNITY BY WESTWOOD. TO THE FULLEST EXTENT PERMITTED BY LAW, WESTWOOD SHALL INDEMNIFY AND HOLD HARMLESS (BUT SHALL NOT DEFEND) CLIENT, CLIENT'S**

OFFICERS, DIRECTORS, PARTNERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, OR EMPLOYEES IN THE PERFORMANCE OF WESTWOOD'S OBLIGATIONS UNDER THIS AGREEMENT. IN NO EVENT SHALL WESTWOOD'S INDEMNITY OBLIGATIONS EXTEND BEYOND ANY APPLICABLE ANTI-INDEMNITY STATUTE OR THE LIMITS OF LIABILITY CONTEMPLATED IN SECTION 7.01.C BELOW.

**B. *INDEMNITY BY CLIENT.*** TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WESTWOOD, WESTWOOD'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND WESTWOOD'S CONSULTANTS, IF ANY, FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS FOR COSTS, LOSSES, OR DAMAGES TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF CLIENT OR CLIENT'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, OR CLIENT'S CONSULTANTS IN THE PERFORMANCE OF CLIENT'S OBLIGATIONS UNDER THIS AGREEMENT.

**C. *LIMITATION OF LIABILITY.***

1. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THIS AGREEMENT TO CLIENT AND WESTWOOD, THE RISKS HAVE BEEN ALLOCATED SUCH THAT CLIENT AGREES, TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF WESTWOOD AND WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS TO CLIENT OR TO ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ACTS, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF ANY WARRANTY, EXPRESS OR IMPLIED, OF WESTWOOD OR WESTWOOD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONSULTANTS, SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED BY WESTWOOD UNDER THIS AGREEMENT OR \$50,000.00, WHICHEVER IS GREATER.
2. FURTHER, WESTWOOD'S TOTAL LIABILITY TO CLIENT AND ANYONE CLAIMING BY, THROUGH, OR UNDER CLIENT FOR ANY COST, LOSS, OR DAMAGES CAUSED IN PART BY THE NEGLIGENCE OF WESTWOOD AND IN PART BY THE NEGLIGENCE OF CLIENT OR ANY OTHER NEGLIGENT ENTITY OR INDIVIDUAL SHALL NOT EXCEED THE PERCENTAGE SHARE THAT WESTWOOD'S NEGLIGENCE BEARS TO THE TOTAL NEGLIGENCE AT ISSUE.
3. IT IS INTENDED BY THE PARTIES THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL NOT SUBJECT WESTWOOD'S INDIVIDUAL SHAREHOLDERS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OR EMPLOYEES TO ANY PERSONAL LEGAL EXPOSURE FOR THE RISKS ASSOCIATED WITH WESTWOOD'S SERVICES UNDER THIS AGREEMENT.
4. UNDER NO CIRCUMSTANCES SHALL WESTWOOD BE LIABLE FOR EXTRA COSTS, DAMAGES, FEES, OR OTHER CONSEQUENCES DUE TO CHANGED CONDITIONS OR FOR THE FAILURE OF OTHER ENTITIES OR INDIVIDUALS TO PERFORM WORK IN ACCORDANCE WITH THE DESIGN PLANS AND SPECIFICATIONS.

**D. *WAIVER OF CERTAIN DAMAGES.*** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY WAIVES AGAINST THE OTHER, INCLUDING THEIR EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, AND INSURERS, ANY AND ALL CLAIMS FOR OR ENTITLEMENT TO INCIDENTAL, SPECIAL, CONSEQUENTIAL, LIQUIDATED, INDIRECT, EXEMPLARY, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, THE PROJECT, THE DELIVERABLES, INSTRUMENTS OF SERVICE, AND/OR EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF

**THE POSSIBILITIES OF SUCH DAMAGES. THIS PROHIBITION EXTENDS TO ANY CLAIMS BY CLIENT OR A THIRD PARTY(IES) FOR LOSS OF PROFITS, REVENUE, OPPORTUNITY, GOOD WILL, COST OF SUBSTITUTE FACILITIES, GOODS, SERVICES, AND/OR COST OF CAPITAL.**

**8.01 CLAIMS AND DISPUTES**

- A. *Notice.* In addition to the provisions of Section 4.01 above regarding payment disputes, if any other dispute, controversy, or claim (“**Dispute**”) should arise between the Parties relating to this Agreement, written notice of the Dispute shall be provided by the aggrieved Party to the other Party within fourteen (14) days of the instance giving rise to the Dispute.
- B. *Informal Dispute Resolution.* After written notice of a Dispute, the Parties shall attend an in-person meeting, or by remote means if mutually agreeable, in the county where the project from which the Dispute arises is located or at another mutually agreeable venue. Each Party shall designate at least one person with authority to act and bind the company on its behalf to attend the meeting in a good faith effort to resolve the Dispute and in a timely and cost-effective manner before any further escalation as detailed in this Section.
- C. *Mediation.* Should any Dispute fail to resolve during the meeting required under Section 8.01.B, such Dispute shall be submitted to mediation in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association as a condition precedent to arbitration. The Parties shall agree upon a mediator in the county where the project from which the Dispute arises is located or in another venue if mutually agreed in writing by the Parties. The Parties shall split any mediation fee(s) payable to the mediator to conduct the mediation. The Parties shall each be responsible for and bear their own separate costs and fees for the mediation.
- D. *Arbitration.* Should mediation fail, the Dispute shall be resolved by binding arbitration to be held in the county where the project from which the Dispute arises is located or in another venue if mutually agreed in writing by the Parties. Further, unless the Parties mutually agree otherwise, the arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the Effective Date of this Agreement. The Parties agree to the following arbitration procedures:
1. A demand for arbitration shall be made in a writing delivered to the other Party to the Agreement and filed with the person or entity administering the arbitration. The Party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.
  2. A demand for arbitration by either Party shall be made within a reasonable time after a Dispute has arisen and after mediation has failed. In any event, a demand for arbitration must be made before the time litigation would be barred by the applicable statute of limitations.
  3. The arbitration shall be conducted by a panel of three (3) arbitrators. Within 14 days after the filing of a notice of demand for arbitration, each Party will select one (1) person to act as arbitrator and will notify the other Party of their selection in writing. The two (2) arbitrators so named will then jointly nominate a third arbitrator within 14 days of their selection and will notify the Parties of their nomination in writing. The third arbitrator nominated will serve as chairperson of the panel. All three (3) arbitrators must be independent, impartial, and disinterested in the arbitration and have at least five (5) years’ experience in construction arbitration proceedings. If Client fails to select its arbitrator, or if the arbitrators selected by the Parties cannot agree on a person to be nominated as chairperson within such 14 day period, Westwood shall make the necessary selection(s) for such arbitrator(s) and/or the chairperson. Once an arbitrator is chosen to serve on the panel and the Parties have been so notified, no arbitrator shall have any ex parte communications with either Party.
  4. Unless the Parties mutually agree otherwise, the arbitration panel shall provide a reasoned opinion in accordance with Rule 47(c) of the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association.
  5. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- E. *Subpoenas and Document Production.* In the event Westwood is asked or forced through subpoena, deposition, or otherwise to participate in a dispute resolution proceeding between Client and a third-party(ies), including but not limited to providing trial and pre-trial testimony and searching, reviewing, and/or producing documents, Westwood

shall recover its costs, fees, and expenses (including its attorney fees) and be compensated for all time spent at the highest rate provided in Westwood's fee schedule in effect at that time.

- F. *Prevailing Party.* In the event of a Dispute, mediation, arbitration, or litigation related to the enforcement of this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorney fees, expenses, and costs in bringing or defending the action. As used herein, a "**Prevailing Party**" means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to the totality of claims, including counterclaims and crossclaims, if any, and having the greatest value or importance as determined by the court, mediator, or arbitrator(s) allowing for all of the claims and defenses asserted. In claims for money damages, the total amount of recoverable attorney fees, expenses, and costs shall not exceed the net monetary award or judgment of the prevailing party.
- G. *Consolidation/Joinder.* The Parties agree to consolidation and/or joinder with another pending dispute resolution proceeding, if any, to the extent such consolidation and/or joinder (i) substantially involves common questions of law or fact; (ii) is in the interest of justice or is otherwise necessary to afford complete relief to the Parties hereto; and (iii) is permitted by the judge, arbitrator, mediator, or other decision maker in the other dispute resolution proceeding. The Parties consent to consolidation and/or joinder under this Section even if the other dispute resolution proceeding is in a venue not provided for in this Agreement and/or otherwise is not selected by the Parties hereto.
- H. *Performance.* Client shall continue its payment obligations in accordance with this Agreement during the pendency of any dispute resolution proceedings, including informal dispute resolution, mediation, arbitration, and/or litigation.

#### **9.01 TERM AND TERMINATION**

- A. *Term.* This Agreement shall commence on the Effective Date and remain in full force and effect thereafter for a period of five (5) years. Upon expiration, this Agreement shall continue in full force and effect until either Party notifies the other in writing of its intent to terminate this Agreement, in which case this Agreement shall terminate thirty (30) days from the date of the written notice. The Parties may review this Agreement from time to time and revise as necessary by mutual written agreement signed by both Parties.
- B. *Termination.* Subject to Section 9.01.A above, this Agreement may otherwise be terminated:
  - 1. By either Party upon thirty (30) days written notice in the event of failure by the other Party to perform in accordance with the Agreement's terms through no fault of the terminating party.

Notwithstanding the foregoing, this Agreement will not terminate as a result of a failure to perform in accordance with the Agreement if the Party receiving a notice of failure to perform begins within seven (7) days of receipt of such notice to correct its failure and proceeds diligently to cure such failure within thirty (30) days of receipt of said notice, provided, however, that if and to the extent such failure cannot be reasonably cured within such thirty (30) day period, and if such Party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.

- 2. By Westwood:
  - i. Upon seven (7) days written notice if Westwood believes that Westwood is being requested by Client to furnish or perform services contrary to Westwood's responsibilities as a licensed professional;
  - ii. Upon seven (7) days written notice if Westwood's Services for a project are delayed or suspended for more than ninety (90) days for reasons beyond Westwood's control; or
  - iii. Upon seven (7) days written notice if Client fails to make any payment due to Westwood in accordance with this Agreement.

Westwood shall have no liability to Client as a result of such termination in this Section.

3. *Demobilization.* In the event of a termination of this Agreement, the terminating Party may set the effective date of termination at a time up to thirty (30) days later than would otherwise be provided to allow Westwood time to demobilize personnel and equipment from project site(s); to complete tasks providing value to Client that would otherwise be lost; to prepare notes as to the status of completed and uncompleted tasks; and/or to assemble project materials in orderly files. Westwood shall be compensated for the time required to complete such tasks.

#### 10.01 MISCELLANEOUS PROVISIONS

- A. *Insurance.* Westwood shall maintain insurances during the term of this Agreement as indicated in **Exhibit “C”**, attached and incorporated by reference herein.
- B. *Independent Contractor.* Nothing contained in this Agreement shall be construed to mean that Westwood and Client are engaging in an employer/employee relationship, joint venture, agency, fiduciary relationship, or partnership. The Parties shall at all times be and remain independent contractors of one another. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever. Neither Party shall have any obligation or duty to the other Party except as expressly and specifically set forth herein, and no such obligation or duty shall be implied by or inferred from this Agreement or the conduct of the Parties hereunder.
- C. *Successors and Assigns.* The Parties and the partners, successors, executors, administrators, and legal representatives of each Party are each hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other Party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Party may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) under this Agreement without the written consent of the other, except to the extent that (i) any assignment, subletting, or transfer is mandated or required by law or (ii) Client assigns this Agreement to a lender providing financing information for a project so long as the lender agrees to assume Client’s rights and obligations under this Agreement, including any payments due to Westwood up to the date of the assignment.

In the event of an assignment to a lender, Client shall furnish any applicable certifications and/or consents for Westwood’s review and edit, if necessary, at least 14 days prior to the requested date(s) of execution. Westwood shall not be required to execute certifications and/or consents that would require knowledge, Services, or responsibilities beyond the scope of this Agreement.

- D. *No Third-Party Rights.* This Agreement shall not create any rights or benefits to entities other than to Client and Westwood, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of Client and Westwood. No third party shall have the right to rely on Westwood’s Deliverables, Instruments of Service, or opinions rendered in connection with the Services without the written consent of Westwood and the third party’s agreement to be bound to the same conditions and limitations as Client.
- E. *Force Majeure.* An event of force majeure (“**Force Majeure**”) occurs when an event beyond the control of the Party claiming Force Majeure prevents such Party from fulfilling its obligations under this Agreement. An event of Force Majeure includes, without limitation, floods, hurricanes and other adverse weather conditions, war, riot, civil disorder, acts of terrorism, disease, epidemic, pandemic, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or the inability to provide a safe working environment.

In the event of a Force Majeure, the obligations of Westwood to perform Services shall be suspended for the duration of the event of Force Majeure. In such event, Westwood shall be compensated for time expended and expenses incurred during the event of Force Majeure, and a project schedule shall be equitably extended by a like number of days as the event of Force Majeure.

If Services are suspended for 30 days or more, Westwood may, in its sole discretion and upon five (5) days prior written notice, terminate this Agreement, the amendments hereto, if any, the affected Work/Change Order(s), if any, or any of the above. In the case of such termination, and in addition to the compensation and time extension set forth above, Westwood shall be compensated for all reasonable termination expenses.

- F. *Coronavirus Pandemic Impact.* Client acknowledges and agrees that due to the dynamic and fluid nature of the COVID-19 pandemic (the “**Coronavirus Pandemic**”), Westwood may face uncertainty regarding its ability to perform the Services contemplated by the Agreement in accordance with the project’s schedule and contracted price. As a result of the Coronavirus Pandemic, a project’s schedule and related scope and fee provided in the Agreement may be impacted due to issues outside of Westwood’s control, including, but not limited to, the following: (i) shortages in labor (including employees and consultants); (ii) direction or guidance from any applicable governmental authority or applicable law that renders Westwood’s or its consultants’ performance impossible, impracticable, or contrary to such direction or guidance; (iii) delays in governmental approvals; or (iv) other causes beyond Westwood’s reasonable control, regardless of whether such impacts are direct or indirect.

If due to the impacts of the Coronavirus Pandemic, Westwood determines in good faith and in Westwood’s sole discretion, that it is not feasible for Westwood or its consultants to perform the Services in accordance with the project’s schedule, Westwood shall promptly notify Client, and the Parties shall cooperate in good faith to negotiate equitable adjustments to the project’s schedule and/or contract price. Notwithstanding anything to the contrary set forth in this Agreement, including any related work or change order, Westwood shall not be liable to Client for any damages (actual, direct, consequential, incidental, punitive, liquidated, or nominal) as a result of delays or cost adjustments in connection with the Coronavirus Pandemic.

- G. *Choice of Law.* This Agreement and any Disputes arising out of or relating hereto and/or to this Agreement, its formation, and/or the Exhibits hereto shall be governed by the laws of the State where the project at issue is located, excluding that jurisdiction’s choice of law rules, except to the extent a Dispute between the Parties also involves the property owner, in which case, if another choice of law applies that is enforceable and applicable to this Agreement, the law selected in the Prime Contract shall govern.
- H. *Survivability.* Sections 5.01, 6.01.A-B, 7.01, and 8.01 included in this Agreement shall survive this Agreement’s completion or termination for any reason.
- I. *Invalidity.* Any provision or part of this Agreement held to be invalid, void, or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties. To the fullest extent permitted by law, the stricken portion shall be revised to the extent necessary to make that provision legal and enforceable and shall give effect to the Parties’ intentions and purposes in executing this Agreement.
- J. *Conflicting Provisions.* In the event the terms of this Professional Services Master Agreement conflict with the Agreement Exhibits or the Prime Contract, if any, the terms of this Professional Services Master Agreement as between Client and Westwood shall govern unless the Parties expressly agree in writing otherwise.
- K. *Notices.* Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement, and shall be deemed to be properly given (i) when delivered personally; by registered or certified mail, return receipt requested, postage prepaid; or by UPS/FedEx express courier service or (ii) when sent by e-mail with receipt confirmation requested, provided, that a hard copy of such notice shall also be sent in accordance with the methods described in clause (i) of this Section within two (2) business days of such email. All notices shall be sent to the address set forth on the signature page of this Agreement or to such other address or person as may be designated by a Party in writing to the other Party pursuant to this Section.
- L. *Total Agreement.* This Agreement constitutes the entire Agreement between the Parties and supersedes all prior written or oral understandings regarding this subject. This Agreement may only be amended, supplemented, superseded, or modified by a mutually executed written instrument by both Parties. No waiver of any condition or of the breach of any term of this Agreement shall be deemed to be a further or continuing waiver of any such condition or of the breach of any term of this Agreement.
- M. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument.

#### **11.01 PRE-LIEN NOTICE:**

- A. **ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.**



The Parties hereto have executed this Agreement as of the Effective Date first indicated above.

**CLIENT:**  
City of Keller

**WESTWOOD:**  
Westwood Professional Services, Inc.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Client Address/Contact for giving notices:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Westwood Address/Contact for giving notices:**

Westwood Professional Services, Inc.  
C/O General Counsel  
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093  
Email: legal@westwoodps.com

**EXHIBITS:**     **A Project Work Order Template**  
                  **B Project Change Order Template**  
                  **C Insurance**

**EXHIBIT A**

***THIS IS AN EXAMPLE. DO NOT SIGN.***

**PROJECT WORK ORDER TO  
PROFESSIONAL SERVICES MASTER AGREEMENT**

DATE: *Insert Date of Proj. Work Order here*

PROJECT TITLE (the “**Project**”): 2024 MSA

CLIENT NAME (“**Client**”): City of Keller

PROJECT WORK ORDER NO.: *Insert Proj. Work Order No. here*

PROJECT LOCATION: {{Contract.\_ProjectLocationtext}}

PROJECT NUMBER: {{Contract.\_ProjectPorRnumber}}

This Project Work Order between Client and Westwood is set forth pursuant to our Professional Services Master Agreement (the “**Agreement**”) effective on or about *insert date*.

**I. Contract Documents**

- A. This Project Work Order, any Project Change Order(s) hereunder, and the Agreement comprise the contract documents.
- B. There are no other general or supplementary conditions further stipulated.

**II. Project Description**

- A. *Description of the Project.*
- B. *Briefly describe scope of Services.*

**III. Client and Westwood Responsibilities**

- A. Client Responsibilities:
  - 1. Payment for Services and as otherwise indicated in the Agreement.
  - 2. *Define any other Client responsibilities under this Project Work Order.*
- B. Westwood Responsibilities:
  - 1. *Identify Westwood responsibilities from the associated Project Proposal.*
  - 2. *Define any other Westwood responsibilities under this Project Work Order.*

**IV. Deliverables**

- A. *Clearly define the Deliverables.*

**V. Schedule**

- A. Pursuant to this Project Work Order, Services will commence on *date* and will proceed for \_\_\_ number of working days.
- B. Notice to Proceed is understood to be this Project Work Order signed, dated, and fully executed by both Parties.

**VI. Project Work Order Attachments**

- A. Westwood Proposal dated *insert date*, which is incorporated by reference herein.
- B. *Other attachments related to this Work Order (schedule, insurance, prime, etc.).*

**VII. Payment**

- A. The estimated Westwood cost/total estimate fee for this Project Work Order is \$ \_\_\_\_\_.
- B. Westwood will issue invoices under this Project Work Order on an approximate 4-week cycle.

**ACCEPTED AND AGREED:**

**CLIENT:**  
**City of Keller**

**WESTWOOD:**  
**Westwood Entity**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Client Address/Contact for giving notices:**  
*(if different than Agreement)*

**Westwood Address/Contact for giving notices:**  
*(if different than Agreement)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT B

***THIS IS AN EXAMPLE. DO NOT SIGN.***

### PROJECT CHANGE ORDER TO PROFESSIONAL SERVICES MASTER AGREEMENT

DATE: *Insert Date of Proj. Work Order here*

PROJECT TITLE (the “**Project**”): 2024 MSA

CLIENT NAME (“**Client**”): City of Keller

PROJECT WORK ORDER NO.: *Insert Proj. Work Order No. to which this Proj. Change Order applies here*

PROJECT CHANGE ORDER NO.: *Insert Proj. Change Order No. here*

PROJECT LOCATION: {{Contract.\_ProjectLocationtext}}

PROJECT NUMBER: {{Contract.\_ProjectPorRnumber}}

This Project Change Order between Client and Westwood is set forth pursuant to our Professional Services Master Agreement (the “**Agreement**”) effective on or about *insert date*. The purpose of this Project Change Order is to modify the conditions, deliverables, schedule, and/or the scope of work as set forth herein.

#### **I. Contract Documents**

- A. This Project Change Order, the Project Work Order to which this Project Change Order applies, and the Agreement comprise the contract documents.
- B. There are no other general or supplementary conditions further stipulated.

#### **II. Project Description**

- A. *Description of scope changes/additional services to the Project.*

#### **III. Client and Westwood Responsibilities**

- A. Client Responsibilities:
  1. *Define any changes to Client responsibilities under this Project Change Order.*
- B. Westwood Responsibilities:
  1. *Define any changes to Westwood responsibilities under this Project Change Order.*

#### **IV. Deliverables**

- A. *Clearly define any changes to the Deliverables.*

#### **V. Schedule**

- A. *Define changes in the Project Schedule.*
- B. Pursuant to this Project Change Order, Services will commence on *date (if not already commenced)* and will proceed for \_\_\_\_ *number of* working days.
- C. Notice to Proceed is understood to be this Project Change Order signed, dated, and fully executed by both Parties.

**VI. Project Change Order Attachments**

A. *Attachments related to this Project Change Order (proposal, scope, schedule, insurance, prime, etc.).*

**VII. Payment**

A. The estimated Westwood cost/total estimate fee for this Project Change Order is \$\_\_\_\_\_.

B. Because of this Project Change Order, the total estimated Westwood cost/fee is now \$\_\_\_\_\_.

1. *Define changes to Westwood's total estimated cost/fee.*

C. Westwood will issue invoices under this Project Change Order on an approximate 4-week cycle.

**ACCEPTED AND AGREED:**

**CLIENT:**

**City of Keller**

**WESTWOOD:**

**Westwood Entity**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Name – Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Client Address/Contact for giving notices:**  
*(if different than Master Agreement)*

**Westwood Address/Contact for giving notices:**  
*(if different than Master Agreement)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT C

### INSURANCE

Westwood shall, during the life of this Agreement, maintain the following insurances:

1. Commercial General Liability (occurrence form not less than):
  - \$2,000,000 General Liability
  - \$2,000,000 Products and Completed Operations Aggregate
  - \$1,000,000 Personal and Advertising Injury
  - \$1,000,000 Each Occurrence
  - \$10,000 Medical Expense
2. Commercial Automobile Liability (all scheduled auto, hired and non-owned autos):
  - \$1,000,000 Combined Single Limit
3. Umbrella
  - \$5,000,000 Aggregate
  - \$5,000,000 Each Occurrence
4. Workers Compensation and Employer's Liability
  - \$1,000,000 Each Accident
  - \$1,000,000 Policy Limit
  - \$1,000,000 Each Employee
5. Professional Liability
  - \$2,000,000 Per Claim
  - \$2,000,000 Aggregate

Professional Liability shall include prior acts coverage sufficient to cover the services performed under this Agreement and shall include limited contractual liability.