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## PROFESSIONAL SERVICES AGREEMENT – HOURLY SERVICES

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This Professional Services Agreement ("Agreement") effective as of \_\_\_\_\_ ("Effective Date")

between CITY OF KELLER ("Client") and Peloton Land Solutions, Inc. ("Peloton").

Client's Project, of which Peloton's Services (defined herein) under this Agreement are a part, is generally identified as follows:

Conceptual design of approximately 4,000 feet of 8-inch wastewater line shown on Attachment C. The line will start at Norma Lane near Homestead Street and go westward to Hwy 377 then northward to approximately 1,000 feet south of Mt. Gilead Road. ("Project").

Project Name: Hwy 377 Wastewater Extension

Peloton Project Number: KLR17002

Client Project Number: \_\_\_\_\_

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**Peloton's professional services ("Services") under this Agreement are generally identified as follows:**

See Attachment A

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### Basis of Payment – Hourly Rates Plus Direct Expenses

In accordance with the terms of the Agreement, Client will compensate Peloton as follows ("Compensation"):

See Attachment B: The total Compensation for Services and Direct Expenses is estimated not to exceed \$122,500.00

The Compensation amount billed monthly for Services will be an amount equal to the cumulative hours charged to the Project by each class of Peloton's employees times standard hourly rates for each applicable billing class, plus Direct Expenses and Peloton's consultants' charges, if any.

Peloton's standard hourly rates and Direct Expense rates are attached as Appendix 1.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Client:

BY \_\_\_\_\_ Title

Signature \_\_\_\_\_ Date

Address \_\_\_\_\_  
\_\_\_\_\_

Peloton Land Solutions, Inc.

RANDY ALEXANDER, President/VP  
BY \_\_\_\_\_ Title

[Signature] 7/24/17  
Signature \_\_\_\_\_ Date

Engineering Firm Registration Number: TX 12207  
Survey Firm Registration Number: TX 10177700

**Terms and Conditions**

Client and Peloton further agree as follows:

**A. Basic Agreement and Authorization to Proceed:** Peloton will provide, or cause to be provided, the Services set forth in this Agreement. If authorized by Client, or if required because of changes in the Project, Peloton will furnish services in addition to those set forth above. Execution of this Agreement will be recognized as authorization to proceed with Services.

**B. Payment Procedures:** Peloton will prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due Peloton for Services and Direct Expenses (as defined herein) within 30 days after receipt of Peloton's invoice, then the amounts due Peloton will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.

**C. Termination:** Either the Client or Peloton may terminate this contract by giving 14 days' written notice to the other party. In such event Client, will promptly pay Peloton in full for all work or work related product authorized to-date and performed prior to the date of termination.

**D. Successors, Assigns, and Beneficiaries:**

1. Client and Peloton are hereby bound and the successors, executors, administrators, and legal representatives of Client and Peloton (and to the extent permitted the assigns of Client and Peloton) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

2. Neither Client nor Peloton may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

3. Unless expressly provided otherwise, nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Client or Peloton to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Peloton and not for the benefit of any other party. In the event that Peloton is not licensed or registered in another jurisdiction to provide services under this Agreement, Peloton may assign, with Client's consent, this contract for professional services to an entity related to Peloton and qualified to provide professional services in that jurisdiction.

**E. Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Peloton under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Peloton makes no warranties, express or implied, under this Agreement or otherwise, in connection with Services provided. Subject to the foregoing standard of care, Peloton (or its subconsultants as the case may be) may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

**F. Construction Services:**

1. Peloton will not at any time supervise, direct, control, or have authority over any contractor's work, nor will Peloton have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

2. Peloton 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 between Client and such contractor. Peloton is not responsible for variations between actual construction bids or costs and Peloton's opinions or estimates regarding construction costs.

3. Peloton will not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Peloton's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application,

interpretation, or clarification of the construction contract other than those made by Peloton.

**G. Governing Law and Venue:** This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. Venue is the county where the Project is located.

**H. Ownership of Documents:** If requested by Client, Peloton will transfer the electronic and paper data/material, design, specifications, and other documents furnished by or through Client once full and complete payment is received for Services performed to-date. The engineering documents are legal instruments of service for use solely with respect to contracted project scope. Peloton will be deemed the author of the work product and will retain common law, common statutory, and any other reserved rights. Any reuse of the work product without written consent by Peloton for any related purpose for the project will be at the Client's sole risk. Peloton will not incur any liability or legal exposure to the company, employees, officers, directors, agents, insurers, partners, and sub-consultants.

**I. Limits of Liability:** To the fullest extent permitted by law, Client and Peloton:

1. Waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages including loss of use, profit or revenue, arising out of, resulting from, or in any way related to the Project, and

2. Agree that Peloton's total liability to Client under this Agreement will be limited to the total amount of compensation received by Peloton under this Agreement.

**J. Dispute Resolution:** Client and Peloton agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

**K. Direct Expenses:** Direct expenses ("Direct Expenses"), including but not limited to, standard mileage rates, material and printing incurred on or directly for the project will be on the basis of actual charges plus ten percent (10%) when provided by commercial sources or on the basis of usual commercial charges when furnished by Peloton.

**L. Additional Services:** For additional services of Peloton's employees engaged directly on the Project, Client will pay Peloton an amount equal to the cumulative hours charged to the Project by each class of Peloton's employees times standard hourly rates for each applicable billing class; plus Direct Expenses and Peloton's consultants' charges, if any. Peloton's standard hourly rates are attached as Appendix 1. Outside technical or professional services and related Direct Expenses if arranged and invoiced through this Agreement will be reimbursed at cost plus ten percent (10%).

**M. Entire Agreement:** This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Client and Peloton and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**N. Miscellaneous Provisions:**

1. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by commercial courier service. All notices are effective upon the date of receipt.

2. Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

3. Severability: If any provision or part of this Agreement is held to be void or unenforceable under governing law, all remaining provisions will continue to be valid and binding.

4. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision; nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of completion.

## Appendix 1

## DFW Rate Schedule (2017)

<b>Classification</b>	<b>Bill Rate Per Hour (Not Including OT)</b>
Project Principal .....	\$200 - 240
Sr. Project Manager.....	\$170 - 190
Project Manager .....	\$140 - 165
Project Engineer .....	\$100 - 130
Sr. Civil Designer .....	\$100 - 115
Engineer In Training I .....	\$ 67 - 95
Engineer In Training II .....	\$ 95 - 115
Sr. Planner .....	\$125 - 145
Planner .....	\$ 80 - 95
CADD Technician .....	\$ 80 - 90
RPLS .....	\$150 - 175
Survey Technician .....	\$100 - 120
Survey Field Crew .....	\$125 - 170
Environmental Scientist.....	\$ 70 - 150
Administrative Assistant I .....	\$ 70 - 80
Administrative Assistant II .....	\$100 - 115

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Rates for Direct Expenses are as follows:

Mileage (Auto) .....	IRS Std. Rate
Mileage (Field Truck).....	IRS Std. Rate
Field Survey / GPS Equipment .....	\$200/day
Meals and Lodging .....	at cost x 1.10
Reprographics .....	at cost x 1.10
Other Direct Expenses .....	at cost x 1.10

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*Rates are subject to revision at the beginning of each calendar year. Rates for expert witness tasks will be negotiated on a case-by-case basis, but will generally be two (2) times the rates shown above.*

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## Attachment A – Hwy 377 Wastewater Extension

### Scope of Services

Peloton Land Solutions, Inc. (Peloton) understands this project, known as Hwy-377 Wastewater Extension, located in Keller, Texas, to consist of a conceptual design for approximately 4,000 LF of 8-inch wastewater main identified in the Wastewater Master Plan. The wastewater main will serve an undeveloped area bound by Hwy 377, Mt. Gilead Road, and Homestead Drive. An approximate alignment is shown in Attachment C for purposes of defining the scope of services.

Peloton will contract with Stateside ROW to acquire easements for the future installation of the wastewater main.

#### I. Engineering:

**A. Project Management:** This task includes meeting with City staff to review study findings, coordinate with sub consultants and regulatory agencies. Six (6) meetings are estimated for this task.

**B. Routing:** Peloton will identify up to three (3) horizontal alignments for review and discussion with City staff. LIDAR will be used to establish an existing ground profile. Exhibits and estimated costs will be prepared for the alignments. Data collection including record drawings and TxDOT research will be included in this task. From this task a preferred alignment will be selected for conceptual design.

Deliverables: • Alignment Exhibits • Cost Estimate

**C. Topographic Survey:** Conduct field topographic survey along the selected alignment, approximately 50 feet wide by 4,000 feet. This task will include locating property corners, surface features, fences, visible utility markers, and natural grade. Peloton will work with Stateside ROW to gain access to private property.

**D. Conceptual Design:** After the preferred alignment has been selected, Peloton will prepare a conceptual plan and profile for future use in preparing construction documents. The design will include a plan and profile of the pipe, existing grade line, ground features, critical crossing, and suggest installation methods. Proposed temporary and permanent easements will be shown on the plan.

Deliverables: • Conceptual Plan and Profile • Cost Estimate

#### II. Easement Acquisition

**A. Easement Legal Descriptions:** Peloton will prepare up to 30 metes and bounds legal descriptions and graphic exhibits for the purpose of describing permanent easements and temporary construction easements.

**B. Detailed Title Research:** Peloton will contract with Stateside Right of Way to conduct title research.

**C. Easement Negotiation and Acquisition:** Peloton will contract with Stateside Right of Way to negotiate and acquire easements from property owners along the preferred alignment. This task does not include condemnation services. Condemnation services will be billed as additional services. See Attachment D for detailed scope.

Deliverables: • Recorded Easements

**Assumptions:**

- Record drawings of existing infrastructure provided by client
- City pays negotiated fee for easements
- Subsurface utility engineering provided by the City
- City provides easement language

**Exclusions:**

- Subsurface Utility Investigations
- Construction plans
- City and agency submittal fees
- Structural drawings
- Bidding
- Attorney fees
- Title insurance
- Appraisal fees
- Environmental services
- Condemnation services

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**ATTACHMENT B – Hwy 377 Wastewater Extension**

Fee: Hourly

I.	Engineering Services	
	A. Project Management	\$ 8,000.00
	B. Routing	\$ 12,000.00
	C. Topographic Survey	\$ 9,500.00
	D. Conceptual Design	\$ 10,000.00
	<b>Subtotal</b>	<b>\$ 39,500.00</b>
II.	Easements Acquisition	
	A. Legal Descriptions	\$ 18,000.00
	B. Detailed Title Research	\$ 7,500.00
	C. Negotiation and Acquisition	\$ 52,500.00
	<b>Subtotal</b>	<b>\$ 78,000.00</b>
	<b>Hourly Total</b>	<b>\$ 117,500.00</b>

**ESTIMATED APPLICATION FEES & EXPENSES:**

- Reimbursables/Fees \$ 5,000







## ATTACHMENT D

July 10, 2017

Ben Raef, P.E.  
Peloton Land Solutions  
9800 Hillwood Parkway, Suite 250  
Fort Worth, TX 76144

Re: City of Keller, Hwy 377 Wastewater Extension

Mr. Raef,

Thank you for the opportunity to propose on the Highway 377 wastewater extension project in the city of Keller. Stateside Right of Way has performed right of way activities in Tarrant County for nearly 8 years and we look forward to working with the city of Keller and Peloton Land Solutions to acquire the easements needed for this project.

Based on our conversation, Stateside would be happy to perform any or all of the following services –

- Work with appropriate party to create and approve forms, templates and processes
- Meet with city of Keller for update on previous interactions with landowners
- Title and ownership research
- Title curative
- Obtain title commitments
- Prepare and mail an introduction package to impacted landowners
- Obtain right of entries
- When possible, prepare valuation estimates
- Order and oversee appraisal process
- Order and oversee appraisal review processes
- Work with appropriate party to approve values/appraisals
- Work with Peloton to complete property surveys
- Prepare and mail initial and final offer packages
- Negotiations in person and via phone as needed
- Request and deliver payments
- Closings with or without a title company

In association with these services, we would need the city of Keller to review and approve the documents to be used with the project, approve of offer and settlement amounts, sign agreements and any closing documents, and fund parcel closings. Also, we can provide survey services but I believe you said Peloton would be able to provide those. We can also provide any relocation



services that are needed. However, it appears that the properties are vacant and this will not be necessary. If something were to change, a relocation agent could become involved at that time.

There are also a number of pass through costs such as mileage, copies for the county clerk's office, recording fees, etc.

As discussed, I would like to set up an agreement for payments on an hourly rate to perform the work needed. This allows us to spend as little or as much time needed to work with the landowners and the city of Keller to reach a mutually agreeable settlement. It also allows us to easily perform any miscellaneous work needed.

**Fees:**

Our hourly rates are as follows:

- |                         |       |
|-------------------------|-------|
| • President or Director | \$130 |
| • Agent                 | \$110 |
| • Title/Technician      | \$ 80 |
| • Administrative        | \$ 70 |

**Invoice:**

Stateside accounting requires invoicing on a month end basis. Payment is expected within 30 days of the date of the invoice.

Please feel free to call if you would like additional details about any of these services. For the services listed above, the estimate per parcel is \$3,500. Based on our conversation, there are estimated 10 to 15 parcels for the project. This would be approximately \$52,500 for 15 parcels. If these terms are agreeable, please execute on the following page. We look forward to working with you.

Sincerely,



Carrie Weir  
Right of Way Director  
Stateside Right of Way Services, LLC

This Agreement is hereby executed on this \_\_\_\_\_ day of July, 2017.

PELTON LAND SOLUTIONS

BY: \_\_\_\_\_

NAME: BEN RAEF, P.E.

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

ADDRESS: 9800 HILLWOOD PKWY, STE 250

FORT WORTH, TX 76144

TELEPHONE: \_\_\_\_\_

STATESIDE RIGHT OF WAY SERVICES, L.L.C

BY: 

NAME: DIANE B. VALEK

TITLE: PRESIDENT

ADDRESS: P.O BOX 1424

ENNIS, TX 75120

TELEPHONE: 817-369-3191