



June 18, 2019

Mr. Kent Collins
City of Coppell
816 S Coppell Rd
Coppell, TX 75019

Re: Professional Services Agreement
Denton Tap Road Intersection Improvements

Dear Mr. Collins,

Kimley-Horn and Associates, Inc. ("Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Coppell ("City") for providing design services for intersection improvements on Denton Tap Road at Parkway Boulevard, Sandy Lake Road, Bethel School Road, and E. Belt Line Road.

Project Understanding

The City of Coppell, Texas has requested a proposal for providing professional engineering services for construction plans, specifications, and opinions of probable construction cost for four intersection improvement projects:

- Denton Tap Road/Parkway Boulevard
 - Design of westbound, eastbound, and southbound right-turn lanes
 - Design of an additional northbound left-turn lane
- Denton Tap Road/Sandy Lake Road
 - Design of southbound right-turn lane
- Denton Tap Road/Bethel School Road
 - Design of northbound, westbound, eastbound, and southbound right-turn lanes
- Denton Tap Road/E. Belt Line Road
 - Design of an additional southbound left-turn lane

The project will generally include paving, drainage, traffic signal and sidewalk/ramp design for the improvements listed above.

Scope of Services

Basic Services

Task 1 – Project Engineering

Consultant will provide at each project location, except as specifically noted, the services specifically set forth below.

1. Consultant will participate in up to three (3) meetings with City staff regarding project status, coordination, design, and review. Perform up to two (2) site visits as needed. Subconsultant coordination will be included.

2. Consultant will perform data collection for roadway, drainage and traffic criteria.
3. Design of approximately 4,400 linear feet of auxiliary lane improvements at the project locations. It is anticipated that the improvements will utilize the existing cross slopes and vertical alignment of the existing facilities. Improvements will be developed in accordance with City standards and specifications. Turn lane improvements storage lengths are anticipated to conform to the following:
 - a. Major Arterial: 100-foot Taper, 315-foot Total Length
 - b. Minor Arterial: 50-foot Taper, 210-foot Total Length
 - c. Collector: 50-foot Taper, 160-foot Total Length

If lengths cannot be achieved, Consultant will discuss alternative criteria with City. One additional alternative will be developed per turn lane. The Consultant will prepare typical sections and plan sheets for the proposed improvements. The Consultant will rely on record drawings for design of pavement section as part of this design. If pavement section is considered sub-standard by City criteria, City standard pavement design will be used. Landscape restoration will be limited to grading, topsoil, sod, and irrigation repairs. The design of any construction phasing and temporary traffic control plans, if necessary, will be considered Additional Services.

4. Driveways within the turn lane improvement limits shall be analyzed. These driveways will be defined vertically by spot elevations. Consultant will develop design cross-sections on 50' station intervals and at driveway centerlines showing pavement and subgrade, right-of-way limits, side slopes, pavement cross slopes, curbs, sidewalks, and retaining walls (if applicable) Cross-sections will not be provided in the bid documents but will be made available to the City and Contractor for use during construction. In locations where the elevation difference between the roadway and adjacent property warrants, provide design details to construct retaining walls no more than three (3) feet in height. The design of any retaining walls greater than three (3) feet in height to accommodate the proposed design, if necessary, will be considered Additional Services.
5. Consultant will do the following:
 - a. At the intersection of Denton Tap Road and Bethel School Road – Consultant will compile hydrological and hydraulic data; will develop project drainage area map to determine conveyance paths, channel slopes, time of concentration, and runoff coefficients to calculate design-year flows. Consultant will subdivide the overall drainage area into sub-areas and calculate discharge to each inlet. Analyze inlet capacity, adjust inlet locations and sub-areas as needed to meet City design criteria.
 - b. The Consultant will rely upon the existing record drawings for drainage areas and runoff calculations for remaining intersection locations.

Design of drainage lateral extensions (if needed) and inlet replacements are included. The design of any stormdrain main line capacity improvements and/or offsite drainage improvements to accommodate the proposed widening, if necessary, will be considered Additional Services.

6. Consultant will design the following signal modifications:
 - a. Denton Tap Road/Parkway Boulevard
 - i. New NB signal pole and mast arm
 - ii. New pedestrian signal pole on the NEC
 - iii. New SB signal pole and mast arm
 - iv. New pedestrian signal pole on the SWC
 - v. New WB signal pole and mast arm
 - vi. New pedestrian signal pole on the NWC
 - vii. New signal cabinet and signal service
 - viii. Upgrade all approach to FYA

- ix. All existing signal poles and equipment not specifically mentioned above shall remain
- b. Denton Tap Road/Sandy Lake Road
 - i. New pedestrian signal pole on the NWC
 - ii. All existing vehicular signal poles shall remain
 - iii. Upgrade all approaches to FYA
 - iv. Existing signal cabinet and service shall remain
 - v. All existing signal poles and equipment not specifically mentioned above shall remain
- c. Denton Tap Road/Bethel School Road
 - i. New EB signal pole and mast arm
 - ii. New NB signal pole and mast arm
 - iii. New signal cabinet and signal service
 - iv. All existing signal poles and equipment not specifically mentioned above shall remain
- d. Denton Tap Road/E. Belt Line Road
 - i. New WB signal pole and mast arm
 - ii. New pedestrian signal pole on the NWC
 - iii. Upgrade all approaches to FYA
 - iv. Existing signal cabinet and service shall remain
 - v. All existing signal poles and equipment not specifically mentioned above shall remain
- 7. Consultant will identify conflicts and adjustments required for existing water line. Water line design is not included and will be considered Additional Services.
- 8. Consultant will identify conflicts and adjustments required for existing sanitary sewer line. Sanitary sewer line design is not included and will be considered Additional Services.
- 9. Consultant will prepare erosion control plan using Best Management Practices (BMPs) from NPBDES Phase II initiative. Consultant does not anticipate any environmental permitting required as part of the scope of this contract. If permitting is identified during design, this will be considered Additional Services and performed only upon written City authorization.
- 10. Consultant will incorporate the design submittal review comments. Consultant will prepare roadway details to clarify intent of design. Compile applicable City standard details, and modify standard details as needed.
- 11. Consultant will provide plan sheets for City coordination with franchise utility owners. Consultant will participate in up to two (2) coordination meetings with franchise owners if necessary due to potential conflicts.
- 12. Deliverables will include a conceptual design (30%), preliminary design (60%), pre-final design (90%), and final bidding documents. The final design and final bidding document deliverables will consist of City standard bidding and contract documents modified as appropriate for the project. An Opinion of Probable Construction cost will be provided to City for each deliverable submittal. Plan sheets will be prepared on 22x34 sheets (At a scale of 1"=20' horizontal). Each submittal will include two (2) hard copies and a PDF copy. Final bidding documents will include DWG electronic files as well.
- 13. Coordination with TDLR and a Registered Accessibility Specialist (RAS) will be included.

Task 2 – Project Bidding

- 1. Attend Pre-Bid Conference.
- 2. Address bidder questions and issue up to two (2) Addenda.

3. Attend bid opening.
4. Prepare bid tabulation.
5. Review the qualifications of the apparent low bidder.
6. Prepare construction contracts for execution.

Task 3 – Construction Administration

Consultant will provide Construction Administration as outlined in this section. Specific tasks under this scope include:

1. Attend Pre-Construction Conference.
2. Respond to and process up to ten (10) RFIs. Such clarifications, interpretations, and plan revisions will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.
3. Review and respond to up to 10 product submittals or shop drawings. Review and respond to up to 5 project resubmittals or resubmittals of shop drawings.
4. Consultant will prepare record drawings based on information provided by the Contractor. Record drawings will be prepared on full size 22"x34" sheets. One electronic DWG copy of all sheets will be provided and individual sheets will also be prepared in TIFF format.

Special Services**Task 4 – Survey**

1. Survey
 - a. Data Collection and Property Research
 - b. Gather existing plat information.
 - c. Collect property owner and record information.
 - d. Gather existing right-of-way and easement information. Identify easements available through typical research methodologies (i.e. plats, court house filings, etc.). Undocumented easements may not be identified.
 - e. The City will arrange and make all provisions for access to perform the services specified within this scope. The surveyor will provide the City with Right of Entry letters if required for the City's distribution.
2. Design Survey
 - a. The limits of the survey will include the following.
 - 1) Denton Tap Road/ Parkway Boulevard:
 - Along Denton Tap Road:
 - A 40-foot wide swath for a length of approximately 375 linear feet along the location of the proposed Denton Tap Road northbound deceleration lane. (Left-Turn Lane)
 - A 40-foot wide swath for a length of approximately 500 linear feet along the location of the proposed Denton Tap Road southbound deceleration lane. (Right-Turn Lane)
 - Along Parkway Boulevard:
 - A 40-foot wide swath for a length of approximately 350 linear feet along the location of the proposed Parkway Boulevard eastbound deceleration lane. (Right-Turn Lane)
 - A 40-foot wide swath for a length of approximately 350 linear feet along the location of the proposed Parkway Boulevard westbound deceleration lane. (Right-Turn Lane)
 - NE, NW, SE, SW corners of intersection, including an area of 15' behind face of curb. 10' past each curb return on the major road and cross street.
 - 2) Denton Tap Road/ Sandy Lake Road:
 - Along Denton Tap Road:
 - A 40 to 60-foot wide swath for a length of approximately 500 linear feet along the location of the proposed Denton Tap Road southbound deceleration lane. (Right-Turn Lane)
 - NE and NW corners of intersection, including an area of 15' behind face of curb. 10' past each curb return on the major road and cross street.
 - 3) Denton Tap Road/ Bethel School Road:
 - Along Denton Tap Road:
 - A 40-foot wide swath for a length of approximately 610 linear feet along the location of the proposed Denton Tap Road northbound deceleration lane. (Right-Turn Lane)
 - A 40 to 50-foot wide swath for a length of approximately 500 linear feet along the location of the proposed Denton Tap Road southbound deceleration lane. (Right-Turn Lane)

- Along Bethel School Road:
 - A 40 to 80-foot wide swath for a length of approximately 350 linear feet along the location of the proposed Bethel School Road eastbound deceleration lane. (Right-Turn Lane)
 - A 100-foot wide swath for a length of approximately 420 linear feet along the Bethel School Road westbound approach. (Right-Turn Lane)
 - NE, NW, SE, SW corners of intersection, including an area of 15' behind face of curb. 10' past each curb return on the major road and cross street.
- 4) Denton Tap Road/ E Belt Line Road:
 - Along Denton Tap Road: A 40-foot wide swath for a length of approximately 500 linear feet along the location of the proposed Denton Tap Road southbound deceleration lane. (Left-Turn Lane)
 - NE and NW corners of intersection, including an area of 15' behind face of curb. 10' past each curb return on the major road and cross street.
- b. Establish horizontal control points.
- c. Establish a vertical control benchmark circuit as needed throughout the project. City to provide established monument information for the area.
- d. Set control points, which will be based on NAD-83, at each intersection. Before setting the control points.
- e. Perform a field survey to identify and locate existing topographic elements within the roadway corridor including, but not limited to the following:
 - 1) Property corner monumentation;
 - 2) Existing pavement, curbs, sidewalks, barrier free ramps, etc.;
 - 3) Roadway and lane striping;
 - 4) Driveway limits and elevations;
 - 5) Existing storm sewer inlets, manholes, junction boxes (including culvert sizes and invert elevations);
 - 6) Outfalls and erosion control;
 - 7) Existing driveway culverts and swales;
 - 8) Guardrail;
 - 9) Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities;
 - 10) Traffic signal poles, cabinets, and other signal equipment;
 - 11) Signs (excluding temporary signs);
 - 12) Trees, including species and caliper (for 6" caliper and up, and perimeter of landscape beds);
 - 13) Buildings and permanent structures;
 - 14) Retaining walls;
 - 15) Fence limits and material types (excluding temporary fences);
 - 16) Other applicable physical features that could impact design.
- f. Perform cross-sections throughout project limits at 50-foot intervals and at grade breaks.
- g. Prepare cross-section field notes.
- h. Prepare a final topographic drawing in digital format (including contours and breaklines) showing the features located in the field as well as right-of-way information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

Task 5 – Subsurface Utility Engineering (SUE) (provided by sub-consultant)

All SUE services provided for this project will be completed in conformance with the ASCE/CI 38-02 “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data” and performed through our subconsultant.

Based upon our understanding of the project’s requirements the general description of the scope of work involves researching available existing utility records and performing in-field utility designating (Quality Level A and B) with the objective of finding and mapping the horizontal and vertical location of existing utilities, estimated 15,000 linear feet, within specified limits of this project. It is anticipated that up to eight (8) Level A designations will be provided.

1. Records Research will include the following:
 - a. Contact the applicable “one call” agency and acquire records from all available utility owners including local municipalities (cities, counties, etc.), and City.
 - b. Perform in-field visual site inspection. Compare utility record information with actual field conditions. Record indications of additional utility infrastructure and visual discrepancies with record drawings.
 - c. Interview available utility owners for needed clarification, resolution of found discrepancies, and details not provided on the record drawings.
2. The Designating Effort (Level B) will include the following:
 - a. Select and employ the appropriate suite of industry standard geophysical equipment to search for existing utilities within the limits specified on the project. For metallic/conductive utilities (e.g. steel pipe, electrical cable, telephone cable) electromagnetic induction, and magnetic equipment will be employed. We will attempt to designate non-metallic/non-conductive utilities using other proven methods, such as rodding, probing, and Ground Penetrating Radar (GPR). As agreed to with the City, this scope of work includes mapping of the following utilities: water, wastewater, natural gas, gas/oil pipelines, electric, telephone, fiber, duct banks, cable TV, and storm sewer. Unless specifically requested, utility service lines and irrigation lines are not included in this scope.
 - b. Interpret the surface geophysics and mark the indications of utilities with paint or pin flags on the ground surface for subsequent depiction on deliverable utility maps. The existing utilities will be designated within the project limits.
 - c. Record all marks on electronic field sketches and correlate such data with utility records and above ground appurtenances obtained from visual inspection to resolve differences and discrepancies. Denote any utilities found where ownership/utility type is not available from records as “unknown” facilities.
 - d. Survey the existing utility designating marks and above ground utility appurtenances according to the project control and record the data for subsequent depiction on the plan deliverables.
 - e. We do not anticipate maintenance of traffic for lane closures will be required for completion of designating (Quality Level B) work on this project. Normal traffic control, included within Quality Level B service, is considered standard placement of traffic cones and freestanding warning signage. Traffic control requiring lane closures, traffic detouring, police support, flag-persons, etc. is considered additional and may be added to the scope of work at the request of the City.

3. The Locating Effort (Level A) will include the following:
 - a. Employ vacuum excavation to verify horizontal and vertical location of existing utility at eight (8) test hole locations as determined by the Consultant. The following information will be provided:
 1. Utility type
 2. size
 3. material
 4. depth to top of line
 5. general direction
 - b. Original fill material will be replaced in six (6) inch compacted lifts, base material and surface pavement will be completed in place as necessary.
 - c. Subconsultant will notify surveyor when bore holes have been completed. Surveyor to acquire location data and provide to Consultant for incorporation in design survey.

Task 6 - Right-of-Way / Easement Instruments of Conveyance

- a. Prepare right-of-way instruments (narrative and graphic exhibits of right-of-way takes) and setting new property corners in the field
 1. Up to five (5) parcels
- b. Prepare easement instruments (narrative and graphic exhibits of easements required for drainage, City utilities, etc.)
 1. Up to five (5) parcels
- c. Individual parcel exhibits will be on 8 ½"x11" paper, will be sealed, dated, and signed by a Registered Professional Land Surveyor and will contain the following:
 1. Parcel number
 2. Area required
 3. Area remaining
 4. Legal description
 5. Current owner
 6. Any existing platted easements or easements filed by separate instrument including easements provided by utility companies
 7. Metes and bounds description of parcel to be acquired. The description will be provided on a separate sheet from the exhibit. Each type of easement will be described separately.
- d. Upon written notification by the City of acceptance of the right-of-way limits (to be determined during design tasks), exhibits and instruments, and as directed by the City, the surveyor will set all corners and points of curvature for the proposed right-of-way and submit final sealed documents, including location of the control points and their NAD-83 reference

Additional Services

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

1. Construction staking.

2. Title Research.
3. Design of any offsite drainage improvements beyond the improvements identified in the scope.
4. Storm Drainage Design other than tasks specifically described above to verify existing system.
5. Preparation for and attendance at additional public meetings.
6. Furnish additional copies of review documents and/or bid documents more than the number of the same identified above.
7. Assist the City as an expert witness in litigation about the project or in hearings before approving and regulatory agencies.
8. Redesign to reflect project scope changes requested by the City, required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City's acceptance of substitutions proposed by the contractor.
9. Traffic studies.
10. Street lighting design.
11. Design for street signs, way-finding or other special signs.
12. Franchise utility coordination.
13. Construction phase services that exceed the specific description of services identified above.
14. Landscape design.
15. Design of retaining walls in excess of three (3) feet in height.
16. Design of construction phasing and traffic control.
17. Temporary Signals
18. Irrigation design

Information Provided By City

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants or representatives. The City shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

1. Record drawings.

Fee and Expenses

Kimley-Horn will perform the services described above on either a Lump Sum or Reimbursable/Hourly basis in accordance with the following tasks:

Lump Sum

Task 1	Project Engineering	
	Preliminary Design (30%)	\$35,100
	Preliminary Design (60%)	\$44,700
	Final Design/Bidding Documents	\$45,800
Task 2	Project Bidding	\$10,100
Task 4	Special Services – Survey	\$25,300
Total Lump Sum Project Fee		\$161,000

Reimbursable/Hourly

Task 3	Construction Administration	\$31,700
Task 5	Special Services – Subsurface Utility Engineering (Levels A & B)	\$31,600
Task 6	Special Services – Instruments of Conveyance	\$20,000
Total Reimbursable/Hourly Project Fee		\$83,300

Total Project Fee **\$244,300**

Consultant will perform the **Lump Sum Tasks** identified above for the total lump sum fee of \$161,000. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the City.

Consultant will perform the **Reimbursable/Hourly Tasks** identified above on a labor fee plus expense basis with the maximum labor fee of \$83,300. Consultant will not exceed the total maximum labor fee shown without authorization from the City. Individual task amounts are provided for budgeting purposes only. Consultant reserves the right to reallocate amounts among tasks as necessary. Tasks identified as “additional services” will only be performed with authorization from the City.

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

Invoices will be submitted by cover letter from the project engineer. The letter will certify that the invoice properly represents work done. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. Invoices shall be based on percentage of work completed per identifiable unit of work. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

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 Exhibit A. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Coppell.

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

_____ Please email all invoices to _____

_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

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

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



By: David M. Halloin, P.E.
Project Manager



Eric Z. Smith
Assistant Secretary

CITY OF COPPELL, TEXAS

By: _____
(Signature)

(Print Name and Title)

(Date)

City's Federal Tax ID: _____

City's Business License No.: _____

City's Street Address: _____

Attachment – Request for Information

Attachment – Standard Provisions

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner		Agent for Owner		Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

Exhibit A

KIMLEY-HORN AND ASSOCIATES, INC. STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25th day. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and

source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice sent to the persons listed in this Section in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the date of the notice of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within two years of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal,

or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional II	\$240 - \$265
Senior Professional I	\$180 - \$250
Professional	\$160 - \$210
Senior Technical Support	\$115 - \$190
Technical Support	\$70 - \$100
Analyst	\$105 - \$175
Support Staff	\$ 75 - \$ 115

Effective July 2018