



April 30, 2025

Ms. Lori Chapin, P.E.
Director of Engineering
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205

Re: **Professional Services Agreement**
Design of Turtle Creek Interceptor Rehabilitation: Armstrong to Wycliffe

Dear Ms. Chapin:

Kimley-Horn and Associates, Inc. ("Kimley-Horn") is pleased to submit this letter agreement (the "Agreement") to the Town of Highland Park ("Town" or "Client") for providing professional engineering and consulting services.

PROJECT UNDERSTANDING

The Town has requested that Kimley-Horn provide engineering design for the rehabilitation of the existing 30-inch Turtle Creek Interceptor from Armstrong Avenue to Wycliffe Avenue. This rehabilitation will bridge the gap between the wastewater interceptor previously rehabilitated as part of the Lakeside Drive project and new interceptor under design as part of the ongoing Wycliffe Dam project.



Soil investigations were previously completed near the northern and southern limits of this project as part of prior projects, so no additional soil investigation is included in this scope. Cured-in-place-pipe (CIPP) rehabilitation was identified as the most feasible wastewater pipeline rehabilitation alternative for the Turtle Creek Interceptor as part of the prior Lakeside Drive Reconstruction project and is assumed for this scope of work. Kimley-Horn assumes that this project will be bid separately from the Wycliffe Transportation Project, but that the construction schedule will overlap with the Wycliffe Transportation Project; therefore, Bid Phase Services are included, but Construction Phase Services are omitted and will be included with a future Wycliffe Transportation Project construction support contract. Public Engagement is not included in this contract.

SCOPE OF SERVICES

Based on discussions with the Town, we understand the Town is requesting Kimley-Horn's assistance with the following:

- Designing the rehabilitation of approximately 1,360 linear feet of the existing 30-inch Turtle Creek Wastewater Interceptor along Lakeside Drive from Armstrong Avenue to Wycliffe Avenue and will include the rehabilitation of 130 LF of the existing 24-inch wastewater siphon at Armstrong Avenue.
 - This design includes a portion of one project identified in the Town's Wastewater Master Plan (WWMP): *Project #12: Turtle Creek Phase 3: Wycliffe to Armstrong*. Project #12 included rehabilitation of the Turtle Creek Interceptor from Armstrong Avenue to the south Town limit. Design of a new, open-cut replacement interceptor from Wycliffe Avenue to the south Town limit is already included in the Town's Wycliffe Transportation Project (separate contract).
 - This project is referenced in the Town's Capital Outlay budget as the *30" Interceptor – Wycliffe to Armstrong* project.
- Designing approximately 1,000 linear feet of sidewalk on the east side of Lakeside Drive between Armstrong Avenue and Wycliffe Avenue including up to 100 linear feet of guardrail and non-structural retaining wall (maximum 3' height) at Prescott Street
- Topographic survey as required to augment survey previously completed under the ongoing Wycliffe Transportation Project and prior Lakeside Drive Reconstruction project

1. Stakeholder Meetings and Project Management

This task includes meetings with Town staff, general project management, and administration items. Kimley-Horn assumes that submittals will be sent to the Town and to University Park (City) staff simultaneously, and that City staff will attend the joint review meetings and/or provide review comments by email; no separate meetings with University Park staff are included

- Prepare for and attend a kickoff meeting with Town staff
- Prepare for and attend progress meetings with Town staff. Up to six (6) biweekly meetings are anticipated throughout design. Half of these meetings are anticipated to be virtual and half of these meetings are anticipated to be in person.
- Develop project production plan and schedule. Update schedule throughout the course of design.

- Prepare for and attend 60% wastewater design review meeting with Town and City staff
- Prepare for and attend 90% wastewater design review meeting with Town and City staff
- Prepare for and attend up to one (1) meeting with Town executive staff or Town Council to provide briefings and/or updates
- Prepare meeting agendas and summaries
- General coordination with Town throughout design
- Project correspondence and invoicing
- Quality control and internal plan reviews

2. Topographic Survey

Kimley-Horn (through a Subconsultant) will perform a topographic and boundary survey within the limits of the proposed improvements to augment survey already acquired as part of adjacent Town projects. The following items will be performed:

- Data Collection and Property Research
 - Gather existing plat information
 - Collect property owner information
 - Gather existing right-of-way and easement information based on available plats and record drawings. Title research, if required by the Town, can be provided as an Additional Service
 - Coordinate with Texas811 to locate and mark existing franchise and public utilities prior to performing the field survey
 - Town shall arrange and make provisions for Kimley-Horn's Subconsultant to perform the survey. Kimley-Horn will prepare right-of-entry letters for topographic survey.
- Perform Topographic Survey of the project limits
 - Perform field survey ground control
 - Locate pertinent objects and above-ground features, typically including:
 - Roadway pavement
 - Drainage structures (i.e. culverts, ditches, inlets, manholes, and outfalls)
 - Utilities (signs or markers showing the presence of underground utilities, valves, manholes, flowlines, meters, backflow preventers, vents, poles, and guy wires)
 - Trees and other plantings located within maintained landscaped areas
 - Fences (including material type) and gates
 - Sidewalks
 - Signs (roadway and private)
 - Right-of-Way monumentation
 - Process survey data to create plan view of existing features
- Prepare a final topographic drawing in digital format (including contours and break lines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions

3. Engineering Design

Kimley-Horn will prepare engineering plans for the rehabilitation of approximately 1,360 LF of existing 30-inch wastewater gravity pipeline using CIPP. The plans will include the rehabilitation of 130 LF of the existing 24-inch wastewater siphon at Armstrong Avenue, as well as sidewalk and limited guardrail/retaining wall improvements east of Lakeside Drive. The plan view layout for the sidewalk, guardrail, and retaining wall will be shown on the wastewater plan/profile sheets. Associated sidewalk, guardrail, and retaining wall detail sheets will be included with other detail sheets.

- Preliminary (60%) Design
 - Attend project site visit to walk proposed project area
 - Conduct preliminary bypass pumping design and coordination with pump vendors
 - Conduct preliminary odor control analysis
 - Prepare schematic construction phasing, working space requirements, and traffic control strategy
 - Prepare preliminary plan set. Anticipated sheets include:
 - Cover
 - General notes
 - Sheet locator and project control
 - Plan and profile sheets for gravity interceptor (4 assumed) at 1" = 20' scale with sidewalk, guardrail, and retaining walls shown in plan view
 - Siphon rehabilitation plan and profile sheet
 - Bypass pumping schematic plan
 - Erosion control plan
 - Schematic construction phasing plan. This sheet will include a narrative summary of anticipated construction phasing, park closures, and impacts to road access. A full traffic control plan is not included.
 - Construction details
 - Prepare a 60% opinion of probable construction cost (OPCC)
 - Submit digital PDF of plans and OPCCs plus up to three hard copies (either full or half-size) to the Town. Hard copies will be 22"x34" full-size, 11"x17" half-size.
- Final (90%) Design
 - Incorporate the preliminary design (60%) review comments from both the City and the Town. Prepare a comment response spreadsheet.
 - Revise plan sheets as appropriate for 90% design level
 - Attend project site visit to walk proposed project area
 - Hold up to four (4) meetings with pipeline contractors, bypass pumping vendors, or other contractors to discuss project, including constructability, access, and design considerations
 - Submit transmittal letter to TCEQ. If TCEQ replies with requirement for plan submittal, prepare and submit plans for TCEQ review.
 - Prepare 90% compiled plan set. Anticipated sheets include:
 - Cover
 - General notes
 - Sheet locator and project control

- Plan and profile sheets for gravity interceptor (including sidewalk, guardrail, and retaining wall improvements)
 - Siphon rehabilitation plan and profile sheet
 - Bypass pumping plan
 - Erosion control plan
 - Construction phasing plan
 - Traffic Control Phasing Plan
 - Construction details
 - Prepare front end specifications
 - Prepare technical specifications. Sections are anticipated to include:
 - CIPP liner
 - Bypass pumping requirements. In addition to detail shown on plan sheet, specifications are anticipated to include provisions for screening and noise control.
 - Odor control requirements
 - Concrete structure rehabilitation
 - Point repairs and obstruction removals
 - Concrete manholes
 - Compile front end and technical specifications into a project manual. Project manual will include:
 - Town front end documents
 - Bid Form with quantities
 - Town specifications
 - Technical specifications
 - Revise OPCC
 - Submit digital PDF of plans and specifications plus up to three hard copies (either full or half-size) to the Town. Hard copies will be 22"x34" full-size, 11"x17" half-size.
- Final Design
 - Incorporate the final design (90%) review comments. Prepare a comment response spreadsheet.
 - Make final revisions to plan sheets
 - Incorporate SUE data
 - Attend final project site visit with Town
 - Prepare final OPCC
 - Submit digital PDF copy and up to three (3) copies of final plans to the Town. Submit up to three (3) copies of the Project Manual and updated OPCC with the final design submittal.
 - Submit final plans to the Texas Department of Licensing and Regulation (TDLR) for review in accordance with the Elimination of Architectural Barriers Act. The application fees will be paid by the Town.

4. Subsurface Utility Engineering (through a subconsultant)

This task includes subsurface utility engineering (SUE) through a subconsultant to locate water, franchise, storm, or other utilities in the design corridor. The need to gather detailed location information via SUE will be identified during detailed wastewater design. SUE work shall be performed at the quality levels (QL) defined below.

- QL “A” includes collecting three dimensional (x,y,z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. One (1) QL “A” pothole inside pavement and up to 12’ deep is included in this task.
- QL “B” provides two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. This quality level provides the horizontal position of subsurface utilities within approximately one to two feet. Up to 500 feet up QL “B” SUE are included in this task.

The Town may reallocate the quantities for either quality level if needed. If additional SUE is required, Additional Services may apply.

5. Bid Phase Services

The budgeted fee for this task assumes a single construction package. Kimley-Horn will not exceed the proposed budget without written authorization by the Town.

- Final bid documents submittal
 - Prepare plan set and project manual for electronic bidding (PDF)
 - Print up to three (3) 11”x17” sets and three (3) Project Manuals for Town’s use during bidding
 - Furnishing additional hard copies for bidding documents for bidders will be considered Additional Services
- Kimley-Horn will post the project on an online site such as CivCast
- Town will be responsible for posting required newspaper ads
- Prepare for and attend a pre-bid meeting with prospective bidders
- Issue one addendum as appropriate to interpret, clarify, or expand the bidding documents
- Attend the Bid Opening
- Contact contractor references and provide letter of award recommendation to Town

6. Record Drawings

Kimley-Horn shall prepare construction Record Drawings based on the Town of Highland Park requirements. The budgeted fee for this task is based upon approximately 60 hours of labor. We will not proceed with performance of services beyond the hours budgeted without written authorization by the Town.

- The Town will furnish to Kimley-Horn a “marked-up” field set of plans that identifies any modifications to the “As-Bid” contract documents. Kimley-Horn will be entitled to rely upon the “marked-up” field set for the purpose of preparing the record drawings.
- The record drawings shall be prepared in accordance with current Texas Board of Professional Engineers’ requirements.
- Kimley-Horn shall submit to the Town a completed set of record drawings for Town review and approval. Upon Town approval, Kimley-Horn will submit the following:

- Two blackline (22" x 34") sets of the plans, including all sheets of the approved civil drawings with cover sheet, details, etc.
- Record drawings digital files will be submitted to the Town and include the following:
 - An electronic copy of the record drawings submitted on CD/DVD or flash drive in the following formats:
 - AutoCAD (.dwg file format)
 - Adobe Portable Document Format (PDF file format)
- Kimley-Horn will update the Town's GIS geodatabase with corrected alignment, size, and material information for the rehabilitated wastewater interceptor

Information Provided By Client

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

- Signed copy of this agreement
- Permission to access Lakeside Park for project photography

Fee and Expenses

Basic Services

Kimley-Horn will perform the basic services in Task 2 and Task 3 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 2 Topographic Survey.....	\$12,000
Task 3 Engineering Design.....	\$214,600
Total Lump Sum Fee (Basic Services)	\$226,600

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Special Services

Kimley-Horn will perform the services in Tasks 1 and 4 – 6 on a labor fee plus expense basis with the maximum fee shown below.

Task 1 Stakeholder Meetings and Project Management.....	\$30,300
Task 4 Subsurface Utility Engineering.....	\$17,200
Task 5 Bid Phase Services.....	\$21,600
Task 6 Record Drawings.....	\$10,600
Maximum Fee (Special Services).....	\$79,700
Total (Basic and Special Services).....	\$306,300

Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

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

Fees will be invoiced monthly. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

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

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

Please email all invoices to hcerda@hptx.org

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. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Steven Galloway, P.E.
Vice President


Ashlyn Morgan, P.E.
Project Manager

Town of Highland Park
A Municipality

(Signature)

(Date)

(Print or Type Name and Title)

(Email Address)

_____, Witness

_____(Print or Type Name)

Official Seal:

Attachments: Standard Rate Schedule
Standard Provisions

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Analyst	\$165 - \$250
Professional	\$235 - \$300
Senior Professional I	\$260 - \$360
Senior Professional II	\$345 - \$380
Senior Technical Support	\$160 - \$285
Support Staff	\$110 - \$150
Technical Support	\$125 - \$155

Effective through June 30, 2025
Subject to annual adjustment thereafter

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client's representative in writing 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 not heretofore mentioned 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 agreed upon by the parties for delays or suspensions due to circumstances caused by any factor outside of the party's reasonable control. Neither party shall have liability of be deemed breach due to such delays or suspensions. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated, subject to Section 7 below.

(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 30 days of receipt. The Client shall also pay any applicable sales tax, unless excuse from such payments by law. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the maximum rate allowed by law, all as provided in the Texas Prompt Payment Act (Tex. Gov't Code ch. 2551). Further, if Client fails to pay any properly invoiced undisputed amount under this Agreement within 5 days after the expiration of the applicable 30-day period, and such failure continues for 10 business days after written notice thereof from Consultant, Consultant may suspend its services and withhold deliverables under this Agreement until such delinquent amounts are paid in full.
- (b) [SUBSECTION DELETED]
- (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 30 days of receipt.
- (d) [SUBSECTION DELETED]
- (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 to the extent permitted by law, including the provisions of Article XI, §§ 5 and 7 of the Texas Constitution. 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 may hire an independent cost estimator at Client's expense. Consultant's services required to bring costs within any limitation established by the Client and/or Client's independent cost estimator will be paid for as Additional Services.

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

(10) [SECTION DELETED]

(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. Notwithstanding the above, nothing in this Section shall be construed as limiting or restricting Client's ability to respond to a lawful Public Information Act request. Client agrees to timely notify Consultant of any such request involving Consultant's confidential material, however Client shall be under no obligation to assist Consultant in challenging any such disclosure pursuant to the Public Information Act.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas, and any disputes, actions, or proceedings arising in connection with the Agreement shall be heard in a court of competent jurisdiction in Dallas County, 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.

(19) Insurance. Consultant shall maintain all insurance policies and coverage amounts required by the Town for performance of its obligations under this Agreement (see attached Town insurance requirements). Evidence demonstrating possession and maintenance of such coverage shall be provided in a form and manner acceptable to the Town within three (3) business days of execution of this Agreement.

(20) INDEMNIFICATION. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, COSTS, DAMAGES, EXPENSES, FINES, JUDGMENTS, OR LOSSES, TO THE EXTENT CAUSED BY CONSULTANT'S NEGLIGENCE OR WHICH ARE CAUSED BY INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS") THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).