



May 9, 2017

City of University Park
ATTN: Mr. Jacob Speer, Director of Public Works
3800 University Blvd.
University Park, Texas 75205

**Re: Northwest Highway Elevated Storage Tank
Repairs**

Dear Mr. Speer:

Kimley-Horn and Associates, Inc. (Consultant), is pleased to submit this agreement (the "Agreement") to the City of University Park (Client) for engineering services related to performing a condition assessment of the 2-million-gallon Northwest Highway Elevated Storage Tank (Tank) and associated piping and coatings. The following scope of services is based on observations included in the 2017 Condition Assessment Report developed by the Consultant.

BASIC ENGINEERING SCOPE OF SERVICES

The following tasks will be performed for the project:

TASK 1 PROJECT ENGINEERING (Lump Sum)

1. Preliminary Design

- A. Consultant will review available information for the tank. Consultant shall rely upon the accuracy of all information provided by the Client.
- B. Consultant will perform a site visit including a review of both the internal and external tank components.
- C. Consultant will prepare preliminary construction plans to include site access, blasting and coating containment requirements, structural repairs, regulatory repairs, mechanical (piping) repairs and coating requirements.
- D. Consultant will prepare preliminary bidding and construction contract documents based on Client standard documents. The project solicitation will be a competitive sealed proposal.
- E. Consultant will prepare preliminary technical specifications.
- F. Level of detail for these documents shall be preliminary only to communicate design intent for the purpose of Client review.

- G. Consultant will prepare a preliminary list of evaluation criteria for competitive sealed proposal solicitation.
- H. Consultant will prepare a preliminary Opinion of Probable Cost.
- I. Consultant will provide the City with a proposed construction schedule to aid the City in project planning.
- J. Consultant will submit an electronic PDF copy of the project documents for review.
- K. Consultant will meet with the Client to review Client comments.

2. Final Design

- A. Consultant will incorporate Client comments.
- B. Consultant will prepare final plans to include complete details for repairs.
- C. Consultant will prepare final bidding and construction contract documents.
- D. Consultant will prepare final technical specifications.
- E. Consultant will prepare a final list of evaluation criteria for competitive sealed proposal solicitation.
- F. Consultant will prepare a final Opinion of Probable Cost.
- G. Consultant will submit an electronic PDF copy of the project documents for review.
- H. Consultant will meet with the Client to review Client comments.

3. Prepare Bidding Documents

- A. Consultant will incorporate Client comments.
- B. Consultant will submit an electronic PDF copy of the bidding and construction contract documents and technical specifications for the Client's use during bidding.

TASK 2 PROJECT BIDDING (Lump Sum and Cost Plus)

Project solicitation shall be competitive sealed proposal.

- 1. Attend pre-proposal meeting (part of lump sum fee).
- 2. Answer proposer questions (part of lump sum fee).
- 3. Prepare addenda as necessary (part of lump sum fee).
- 4. Attend proposal opening if required by the City (part of cost-plus fee).
- 5. Prepare proposal summary and tabulation for proposal evaluation if required by the City (part of cost plus-fee).
- 6. Participate in a proposal evaluation meeting.

TASK 3 PROJECT CONSTRUCTION ADMINISTRATION (Lump Sum)

- 1. Attend pre-construction meeting.
- 2. Provide periodic onsite construction observation separate from on-site inspection services to review the overall progress of the project (assumes 8 visits).
- 3. Review progress pay applications.
- 4. Review the Contractor's schedule for the project.
- 5. Respond to Contractor questions.
- 6. Prepare up to two change orders if necessary.

7. Perform a substantial completion walkthrough.
8. Provide a substantial completion punch list.
9. Perform a final walkthrough.
10. Prepare a complete packet of construction documentation for the Client's records.

ADDITIONAL CONSTRUCTION ADMINISTRATION AND INSPECTION SCOPE OF SERVICES

TASK 4 CONSTRUCTION INSPECTION (Cost-Plus)

1. Provide NACE certified paint inspection.
2. Provide AWS certified welding inspection.
3. Generate daily inspection reports with photos.
4. Attend project construction meetings as needed.
5. Address Contractor questions and project issues.

ADDITIONAL ANNIVERSARY REVIEW SCOPE OF SERVICES

TASK 5 PROJECT ANNIVERSARY REVIEW (Lump Sum)

1. Coordinate 1 year anniversary project review.
2. Perform 1 year anniversary project review – float with water in tank for roof access.
3. Perform 1 year anniversary project review – dry with tank empty.
4. Prepare 1 year anniversary punch list.

DESIGN STANDARDS

Design will conform to the current AWWA, API, TCEQ, NACE, and SSPC standards and regulations.

PROVIDED BY THE CLIENT

The Client shall provide access to all historical records concerning the NW HWY Elevated Water Tank.

EXCLUSIONS

The following tasks are specifically excluded from this scope:

1. Repair designs requested by the Client that are not included in the Review Report.

2. Site improvements or repairs.
3. Any other tasks not specifically identified herein

FEES

Engineering services can be provided based on the following breakdown of fees:

Basic Services:

Task 1 Engineering (Lump Sum)	\$ 63,700.00
Task 2 Bidding (Lump Sum)	\$ 9,200.00
Task 3 Construction Administration (Lump Sum)	\$ 41,800.00
Total Lump Sum Fee for Basic Services	\$114,700.00

Cost-Plus Services:

Additional Bidding Phase (Task 2.4 and 2.5) and Construction Phase Inspection Services (Task 4) can be performed for a Cost-Plus Expenses basis. It is recommended that the Client budget the following amount for these services. This amount will not be exceeded without Client approval.

Attend proposal opening if required by the City	\$2,000.00
Prepare proposal summary and tabulation for proposal evaluation if required by the City	\$4,200.00
Task 4 Construction Inspection (based on approximately 30 days of on-site presence)	\$ 69,000.00
Total for Cost-Plus Services (Recommended budget)	\$75,200.00

PROJECT TOTAL

\$ 189,900.00

The costs listed above are based on the assumptions and conditions contained herein. Any deviations in the project from these specified assumptions and conditions may result in additional costs. Additional costs must be approved by Client in advance.

INVOICES

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Hourly fees for additional services which were approved by Client in advance

will be invoiced monthly based on the actual hours of effort. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Cost plus expenses fees will be billed on a reimbursable basis for labor and direct expenses incurred. The budgeted fee for this task is based upon approximately 1500 hours of labor over 26 weeks of construction. We will not proceed with performance of services beyond the hours budgeted, without written authorization by the Client

RIGHT TO RELY

Consultant shall have the right to rely on all information provided by the Client.

ADDITIONAL SERVICES

Any services not specifically named in the Scope of Services above shall be considered Additional Services. Additional Services required from Consultant that may arise and are not outlined above shall be compensated on an hourly basis or under a separate scope according to the rate schedule attachment:

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 City of University 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 include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

Please email all invoices to Jodie Ledat – jledat@uptexas.org

Please copy Harry Shearouse – hshearouse@uptexas.org

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.

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: 

Brian J. LaFoy, P.E.
Senior Project Manager



Ryan Delmotte, P.E., CFM
Contract Specialist

Accepted by:

_____, Assistant to the Director of Public Works
Signature Title

Jodie Ledat _____
(Print or Type Name) (Date)

jledat@uptexas.org
(Email Address)

Attest:

_____, Secretary/Assistant Secretary

(Print or Type Name)

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information

Attachment – Standard Provisions

Attachment – Rate Schedule

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	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner	<input type="checkbox"/>

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, 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 described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, 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 including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of 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 for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of 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 timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of 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. The Client will be notified within three business days of any such delay. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt and upon Client approval of the invoice. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 30 days at the rate of 12% per annum beginning on the 25th day. If the Client fails to make any payment due to the Consultant 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 in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
- (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 30 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, including but not limited to drawings, specifications, reports, and data or programs stored electronically, 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. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation 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 developed in the development of application 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. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified 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 in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **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 undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(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) **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.

(12) **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 Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes. The parties agree that the law of the State of Texas shall apply to this Agreement, and that it is performable in Dallas County, Texas. Exclusive venue shall lie in Dallas County, Texas.

(13) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(14) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction 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) If the Consultant provides construction phase services, 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 the design professional 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 for 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.

(15) **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.

(16) **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.

(17) **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. Provided, however, that 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.



Attachment

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Engineer I / Senior Professional I	\$260 - \$295
Senior Engineer II / Senior Professional II	\$235 - \$275
Engineer / Professional	\$175 - \$240
CAD Technician	\$160 - \$175
Designer	\$120 - \$185
Analyst	\$150 - \$195
Support Staff /Technician	\$ 70 - \$ 130

Effective July 2016

