



April 28, 2021

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

Re: ***Professional Services Agreement  
Phase II: Design of Turtle Creek Interceptor Rehabilitation + Lakeside Drive  
Reconstruction***

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**

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

- Designing the rehabilitation of approximately 3,400 linear feet of the existing 30-inch Turtle Creek Wastewater Interceptor along Lakeside Drive from Beverly Drive to Armstrong Avenue
  - This design encompasses two projects identified in the Town's Wastewater Master Plan (WWMP): *Project #1: Turtle Creek Phase 1: Armstrong to Lexington – Turtle Creek Interceptor Rehabilitation and Siphon Route Analysis* and *Project #3: Turtle Creek Phase 2: Lexington to Beverly – Turtle Creek Interceptor Rehabilitation*.
  - This project is referenced in the Town's Capital Outlay budget as the *Lakeside Drive Reconstruction & 30" Sewer Line*.
- Designing the full-depth reconstruction of approximately 3,400 linear feet of Lakeside Drive between Beverly Drive and Armstrong Avenue including associated small diameter water line improvements within the same limits
- Public outreach throughout the duration of the project to keep residents informed of design elements and construction status

Topographic survey, soil investigation, line locating, base mapping, and a preliminary engineering report were previously completed as part of the "Phase I" contract. Cured-in-place-pipe (CIPP) rehabilitation was identified as the most feasible wastewater pipeline rehabilitation alternative.

## SCOPE OF SERVICES

### 1. Stakeholder Meetings and Project Management

This task includes meetings with Town staff, City of University Park (City) staff, and general project management and administration items. Public Engagement is not included in this task; it is included in a separate task below. The budgeted fee for this task is based upon approximately 260 hours of labor.

- Prepare for and attend a kickoff meeting with Town staff
- Prepare for and attend progress meetings with Town staff. Up to twelve (12) 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.
- Wastewater design review: Prepare for and attend 60% design review meeting with Town staff
- Roadway design review: Prepare for and attend a 30% conceptual design review meeting with Town staff
- Prepare for and attend 90% design review meeting with Town staff (includes both wastewater and roadway design)
- Prepare for and attend up to four (4) meetings with Town executive staff or Town Council sessions to provide briefings and/or updates
- Prepare meeting agendas and summaries
- General coordination with Town and City throughout design
- Project correspondence and invoicing
- Quality control and internal plan reviews

### 2. Wastewater Rehabilitation Design

Kimley-Horn will prepare engineering plans for the rehabilitation of approximately 3,400 LF of existing 30-inch wastewater gravity pipeline using CIPP. Pipeline improvements will be in Lakeside Drive from just south of Beverly Drive to Armstrong Avenue and will include design for evaluation and potential rehabilitation of the 24-inch wastewater siphon at Armstrong Avenue. These plans will be incorporated with the water line design plans (described in task 3) and roadway design plans (described in task 4) in one combined construction package. This task includes:

- Preliminary (60%) Wastewater Design
  - Attend project site visit to walk proposed project area
  - Preliminary bypass pumping design and coordination with pump vendors
  - Preliminary odor control analysis
  - 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 (9 assumed) at 1" = 20' scale
- 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, impacts to road access, and roadway reconstruction timeline. A full traffic control plan is not included.
- Construction details
- Water line design plans (see task 3) and roadway design plans (see task 4) will not be included in this submittal. Wastewater, water, and roadway will be combined for the 90% submittal.
- Prepare a 60% opinion of probable construction cost (OPCC)
- Submit digital PDF of plans and OPCCs plus up to three hard copies to the Town. Plans will be 22"x34" full-size, 11"x17" half-size.
- Final (90%) Wastewater 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
    - Siphon rehabilitation plan and profile sheet
    - Bypass pumping plan
    - Erosion control plan
    - Construction phasing plan. This will be developed in conjunction with the Traffic Control Phasing Plan (see Lakeside Drive: Roadway Design task)
    - Construction details
    - Water line design plans and roadway design plans. See Water Line Design task and Roadway Design task for more detail. Wastewater, water, and roadway plan sheets will be combined into one submittal package for the 90% review submittal.
  - 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 to the Town. Plans will be 22"x34" full-size, 11"x17" half-size.
- Final Wastewater 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.

### 3. Water Line Design

Kimley-Horn will prepare engineering plans for the replacement of approximately 2,300 LF of existing 14-inch and 12-inch cast iron water line in Lakeside Drive from Beverly Drive to the alley south of Euclid Avenue. The proposed pipe will be 12-inch PVC pipe. It also includes a detail for the connection to the Town's existing large diameter transmission main in Beverly Drive. These plans will be incorporated with the wastewater rehabilitation design plans (described in task 2) and roadway design plans (described in task 4) in one combined construction package. This task includes:

- Preliminary (60%) Water Design
  - Site visit will be incorporated with wastewater 60% design site visit
  - Schematic construction phasing, working space requirements, and traffic control strategy
  - Prepare preliminary plan set. Anticipated sheets include:
    - Plan and profile sheets at 1" = 20' scale (5 assumed)
    - Incorporate water line phasing into overall project phasing plan sheet
    - Construction details

- Wastewater design plans (see task 2) and roadway design plans (see task 4) will not be included in this submittal. Wastewater, water, and roadway plan sheets will be combined for the 90% submittal.
  - Show connections to existing lines and abandonments where applicable
  - Prepare a 60% opinion of probable construction cost (OPCC)
  - Submit digital PDF of plans and OPCCs plus up to three hard copies to the Town. Plans will be 22"x34" full-size, 11"x17" half-size.
- Final (90%) Water 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 (to be coordinated with site visit for wastewater 90% design)
  - Prepare 90% compiled plan set. Anticipated sheets include:
    - Plan and profile sheets at 1" = 20' scale
    - Construction details
  - Prepare technical specifications
  - Prepare a 90% opinion of probable construction cost (OPCC)
  - General sheets (cover, general notes) are included with the wastewater design task. The wastewater, water, and roadway 90% plan sets will be combined and submitted together. See tasks 2 and 4.
- Final Water Design
  - Incorporate the final design (90%) review comments.
  - Finalize technical specifications for the project manual. Full project manual is included with the wastewater design task.
  - Prepare final OPCC
  - Final wastewater, water, and roadway design plan sets will be combined and submitted together. See tasks 2 and 4..

#### 4. Roadway Design

Kimley-Horn will prepare engineering plans for the full-depth replacement of Lakeside Drive from Beverly Drive to Armstrong Avenue. These plans will be incorporated with the wastewater rehabilitation design plans (described in task 2) and water line design plans (described in task 3) in one combined construction package. Design assumptions include:

- The existing streets will be designed to their existing width
- The pavement section is anticipated to be concrete over stabilized subgrade with an asphalt driving surface
- It is anticipated driveway tie-ins at adjacent properties will occur within Town right-of-way
- Final pavement sections and thicknesses will be based on geotechnical recommendations
- Sidewalks and ramps will be evaluated during this project and replaced as needed to meet ADA requirements

- Drainage is conveyed along the gutter-line of the roadway and ultimately to an on-street inlet

Sub-tasks include:

- Conceptual Plan Layout and Typical Section (30% design)
  - Identify significant design constraints
  - Coordinate with franchise utility companies for record information. Franchise utility relocation is not included in this scope.
  - Establish and document design criteria
  - Establish project centerline/baseline
  - Evaluate and document potential construction sequencing approaches (narrative only)
  - Develop typical sections, including subgrade and pavement design recommendations from the geotechnical report
- Drainage Analysis
  - Compile the hydrological and hydraulic data from Town records
  - Develop the existing drainage area map (determine conveyance path and runoff coefficients to calculate design flow, subdivide the drainage areas into sub-areas and calculate the discharge at each design point)
  - Analyze existing curb inlet capacities and resulting spread
  - Analyze existing street capacities and resulting spread
  - Enclosed storm drain design can be provided as an Additional Service
- Conceptual (30%) Roadway Design
  - Typical sections showing lane widths and general location of existing utilities
  - Conceptual roll plot (1" = 100', or appropriate scale as determined by the engineer) submittal to include the following:
    - Control data
    - Existing right-of-way and easements
    - Existing topography
    - Existing pavement
    - Existing trees
    - Existing storm drain locations
    - Existing water line locations
    - Existing sanitary sewer line locations
    - Existing franchise utility locations (relying upon information provided by franchise utilities)
    - Proposed centerline alignment and horizontal curve data
    - Proposed curb and paving limits
    - Proposed wastewater line (approximate location based on wastewater preliminary engineering report)
    - Proposed limits of construction
  - Planning level OPCC
  - Submit digital PDF of conceptual roll plot and OPCC plus up to three hard copies to the Town.

- Final (90%) Roadway Design
  - Prepare paving plan and profile sheets at 1" = 20' scale
  - Analyze impacted cross-streets within the project. Cross-streets will be defined vertically by spot elevations.
  - Develop design cross-sections
    - Develop on 50' intervals
    - Show pavement, subgrade, cross-slopes, right-of-way limits, easements, side slopes, and ditches
    - Prepare cross-section plan sheets at 1" = 20' scale horizontal and 1" = 2' scale vertical
  - Incorporate comments from the conceptual design (30%) review meeting
  - The 90% plan set may include the below sheets.
    - Typical Sections
    - Roadway Plan and Profile
    - Pavement Marking and Signing
    - Traffic Control Phasing Plan
    - Drainage Area Map
    - Erosion Control Plan
    - Roadway Cross-Sections
    - Standard Details, including water line related details
  - General sheets (cover, general notes) are included with the wastewater design task. The wastewater, water, and roadway 90% plan sets will be combined and submitted together. See tasks 2 and 3.
- Final Roadway Design
  - Incorporate the final design (90%) review comments
  - Technical specifications for the project manual. Full project manual is included with the wastewater design task.
  - Prepare final OPCC
  - Final wastewater design, water design, and roadway design plan sets will be combined and submitted together. See Wastewater Design task.

## 5. 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 more detailed location information via SUE will be identified during detailed wastewater, water, or roadway design. SUE work shall be either Quality Level A (QL "A") or Quality Level B (QL "B"). SUE quality levels are 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. Up to three (3) QL "A" potholes inside pavement and up to 12' deep are 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.

## 6. Bid Phase Services

The budgeted fee for this task is based upon approximately 55 hours of labor and 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 addenda 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

## 7. Construction Phase Services

The scope of services listed below may or may not be performed as part of our construction phase services. Kimley-Horn's role during construction is limited and services are only provided upon request of the Town and billed on a reimbursable basis as labor and direct expenses are incurred. The budgeted fee for this task is based upon approximately 160 hours of labor and assumes a single project. Kimley-Horn will not exceed the proposed budget without written authorization by the Town.

Kimley-Horn may provide the following professional services during the construction phase:

- Pre-Construction Conference. Kimley-Horn will conduct or attend a Pre-Construction Conference prior to commencement of Work at the Site.
  - Visits to Site and Observation of Construction. Kimley-Horn will provide on-site construction observation services during the construction phase to monitor whether the Contractor's work is generally proceeding in accordance with the Contract Documents. Kimley-Horn will make



- visits at intervals as directed by Town in order to observe the progress of the Work. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Kimley-Horn's exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep Town informed of the general progress of the Work based upon Kimley-Horn's exercise of professional judgement and industry standards.
- The purpose of Kimley-Horn's site visits will be to enable Kimley-Horn to better carry out the duties and responsibilities specifically assigned in this Agreement to Kimley-Horn, and to provide Town a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Kimley-Horn shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall KHA have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents. Kimley-Horn shall timely notify and consult with Town about any of Kimley-Horn's concerns about the Contractor's work and its adherence to the Contract Documents.
  - Clarifications and Interpretations. Kimley-Horn will respond to reasonable Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Town as needed for the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Town.
  - Shop Drawings and Samples. Kimley-Horn will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
  - Limitation of Responsibilities. Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor.

## 8. Public Outreach

Kimley-Horn will assist the Town with public outreach activities throughout the duration of design. The budgeted fee for this task is based upon approximately 150 hours of labor and includes expense costs for the materials indicated below. This task includes:

- Preparing materials for and hosting up to four neighborhood meetings with Town residents and staff. The meetings may be virtual (hosted video meeting such as a Microsoft Teams

meeting, which can be recorded and provided to residents via Town staff), an outdoor meeting at the project site, or a combination of various formats.

- Developing and printing project posters. The posters will include written descriptions and graphics explaining the need for and method of wastewater pipeline rehabilitation. These posters are anticipated to be hung on the temporary fencing surrounding Lakeside Park while the park is closed for pipeline rehabilitation activities. This task includes printing costs for up to eight (8) 2.5'x4' vinyl banners.
- Project photography. This includes professional-grade photography and drone footage, if desired, to be captured at up to five sessions throughout project design and construction.
- Resident newsletters. This includes effort to create monthly newsletters for distribution to residents. Kimley-Horn will compile photographs and descriptions of recently performed and upcoming work into a two-page PDF letter to provide to Town staff. The Town will be responsible for printing and mailing costs and/or distributing digital copies of the letter to residents. Up to ten (10) letters are anticipated.

## 9. 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 and new water lines

### 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 services in Tasks 2 – 4 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 Wastewater Rehabilitation Design.....	\$177,700
Task 3 Water Line Design.....	\$38,000
Task 4 Roadway Design.....	\$135,600
Total Lump Sum Fee (Basic Services) .....	\$351,300

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 5 – 9 on a labor fee plus expense basis with the maximum fee shown below.

Task 1 Stakeholder Meetings and Project Management.....	\$63,200
Task 5 Subsurface Utility Engineering.....	\$13,800
Task 6 Bid Phase Services.....	\$13,100
Task 7 Construction Phase Services.....	\$35,700
Task 8 Public Outreach.....	\$43,200
Task 9 Record Drawings.....	\$14,300
Maximum Fee (Special Services).....	\$183,300

**Total (Basic and Special Services).....\$534,600**

Kimley-Horn will not exceed the total maximum fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Maximum fee of \$183,300 includes anticipated expenses. Any additional permitting, application, or similar project fees not included in this scope will be paid directly by the Client. Fees will be invoiced in accordance with the Standard Provisions.

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 \_\_\_\_\_

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

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.**

G. Brad Tribble, P.E.  
Senior 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  
Certificate of Insurance

## Kimley-Horn and Associates, Inc.

### Standard Rate Schedule

(Hourly Rate)

Analyst	\$115 - \$185
Professional	\$165 - \$215
Senior Professional I	\$185 - \$260
Senior Professional II	\$250 - \$275
Senior Technical Support	\$120 - \$200
Support Staff	\$85 - \$125
Technical Support	\$75 - \$105

Effective through June 30, 2021  
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 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 30 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 30 days at the rate of 12% per year beginning on the 31<sup>st</sup> day. 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. 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 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.