



March 25, 2016

Mr. John Foreman, AICP
Assistant Director of Planning/Codes
City of Seguin
205 N River Street
Seguin TX, 78155

RE: *Master Thoroughfare Plan and Roadway Impact Fee Development, Seguin, TX*

Dear Mr. Foreman,

Kimley-Horn and Associates, Inc. (Kimley-Horn) is pleased to submit this Letter Agreement to the City of Seguin (City or Client) to provide professional consulting services for an update to the Master Thoroughfare Plan and the development of Roadway Impact Fees for the City. Our Project Understanding, Scope of Services, Schedule, and Fee are below.

Project Understanding

This project consists of providing professional services associated for updating the City's 2040 Master Thoroughfare Plan (MTP) based on the principles in the City's Comprehensive Plan and developing Roadway Impact Fees in accordance with Chapter 395 of the Texas Local Government Code. This project is anticipated to include the following components:

1. Data Collection
2. Master Thoroughfare Plan Development and Documentation
3. Roadway Impact Fee Development and Documentation
4. Meetings and Public Engagement
5. Adoption and Implementation Support

Scope of Services

TASK 1: DATA COLLECTION

Kimley-Horn will work with staff to conduct the following research and collect the following data:

1.1. COLLECTING AVAILABLE TRANSPORTATION PLANS AND DATA

Kimley-Horn will collect available transportation related data from the region and City of Seguin. This data may include:

- City contacts – The City will provide the organizational structure for the project team for the completion of the Master Thoroughfare Plan and Roadway Impact Fee Study.
- City of Seguin Comprehensive Plan, including future land use plan and future thoroughfare plan and previous plan amendments
- City of Seguin Street and Streetscape Standards
- City of Seguin Water and Wastewater Impact Fee Update with land use assumptions

- Alamo Area MPO Regional Bicycle & Pedestrian Planning Study
- Alamo Area MPO MTP and TIP
- VIA long-range plan / needs assessment
- Guadalupe County Transportation Plan
- Adjacent Cities' Plans
- TxDOT Preservation Plan
- Other available plans, such as a Sidewalk Plan, Neighborhood/Area Plans, or Corridor Studies
- Historic traffic counts
- Available GIS basemapping data (i.e. orthophotos, contours, lakes, streams, railroads, roads, highways, other natural features, appraisal district parcel data, available ROW information, existing utility locations, future land use maps, current zoning, FEMA flood plain data etc.). The GIS files will be in ESRI ArcGIS10.x format and be projected in NAD 83 State Plane, South Central Texas Zone coordinates

Kimley-Horn will collect the following data:

- 24-hour bi-directional machine tube counts at up to fifteen (15) locations to supplement the historic traffic counts. These locations will be determined jointly by Kimley-Horn and the City.

1.2. EXISTING BASE NETWORK SET-UP

Kimley-Horn will coordinate with the City of Seguin to create an inventory of existing roadways (arterials and collectors only) based on aerial photography. Kimley-Horn will create the database framework for the existing inventory. This inventory database is anticipated to show the number of lanes, condition (ultimate or not) estimated pavement width, and estimated available ROW/constraints based on appraisal parcel data. The City will fill in the necessary information into the database. Kimley-Horn anticipates spending one day in Seguin verifying the existing network.

Deliverables:

Shapefile that will contain existing roadway information.

TASK 2: MASTER THOROUGHFARE PLAN DEVELOPMENT AND DOCUMENTATION

2.1. DEFINING CROSS SECTIONS

Kimley-Horn will develop the cross sections for the Seguin Master Thoroughfare Plan for the MTP roadways. It is anticipated that the cross sections will be developed with a design matrix that will tie land use and street functional classification together.

2.1.1 Land Use Context

Kimley-Horn will create a set of summary categories based on Seguin's Comprehensive Plan. Using data provided by the City, Kimley-Horn will translate existing character area designations into one of the agreed upon summary categories.

2.2.2 Street Functional Classification

A method of expressing the primary function of the street will be determined through collaboration with Kimley-Horn and the City. This may include a direct expression of existing functional classification or a process whereby the local function and role in the system is communicated.

2.2. DESIGN MATRIX

Kimley-Horn will utilize the land use context, street functional classification, and design parameters established in the Institute of Transportation Engineers as an ITE Recommended Practice: *Designing Walkable Urban Thoroughfares, A Context Sensitive Approach* to develop the City of Seguin Design Matrix. The intent of this design matrix is to communicate priority design features. The design matrix will include elements from edge of right-of-way to edge of right-of-way. The matrix will be organized around the street typology and communicate design characteristics and elements where design flexibility can be exercised due to constraints that prohibit the construction of the typical street typology cross-section.

2.3. DEVELOPMENT OF A THOROUGHFARE PLAN MAP**2.3.1. Alignment Considerations**

Kimley-Horn will analyze alignment alternatives at a conceptual level for the Thoroughfare Plan. Kimley-Horn will work with the City and use available contours, parcel data/right-of-way information, utilities, and flood plain data to aid in the recommendation of alignment. Kimley-Horn will rely upon the accuracy of the data collected during Task 1. This task anticipates looking at the Thoroughfare Plan roadways (new and existing) and approximately five additional roadways. No roadway design or survey services are included in this scope of services.

2.3.2. Number of Lanes

Future number of lanes will be determined based on the capacity necessary to supply a build out condition. The build out condition will be developed with the Roadway Impact Fee task for the area within the existing City limits using the land use assumptions and future traffic demands. For the future roadways in the ETJ, roadways will be based on general planning principles and not a detailed analysis. No travel demand modeling is included in this scope of services.

2.3.3. Typological Map

Once the Land Use Context and Street Functional Classifications are confirmed, they will be applied to the system of streets and expressed in map form.

2.4. CROSS SECTION DEVELOPMENT

Kimley-Horn will review the existing City of Seguin Design Standards for typical street cross sections and recommend changes to the typical cross sections for MTP roadways. On-street bicycle facility recommendations identified in the Alamo MPO Bicycle and Pedestrian Planning Study will be incorporated and refined through this process. Kimley-Horn will provide an exhibit illustrating updated cross section recommendations. This task is not

intended to update the design standards, but will provide information for the City to initiate a design standards update.

2.5. DOWNTOWN SUB AREA ANALYSIS

2.5.1 Cross-Sections

Using the Comprehensive Plan as a framework, Kimley Horn will develop typical cross-sections (one per street) based on existing and proposed conditions within the area bounded by San Marcos, Guadalupe, College, and Live Oak streets that focus on pedestrian safety and comfort.

For up to four block lengths around the Courthouse Square and Central Park, cross-sections will consider a “Shared Space Street,” known as “Shared Ground Plane” in the Comprehensive Plan.

2.5.2 Plan View Concepts

Plan view concepts will be developed for two downtown streets that are also State roadways (Court St from Travis St to Crockett St; Austin St from Washington St to Ireland St). For these concepts, appropriate locations for pedestrian amenities such as benches, street trees, and enhanced pedestrian crossings will be identified. The concepts will also include approximate right-of-way, potential modifications to lane geometry, bicycle facilities, and on-street parking. Intersection treatments will include design concepts for accommodating bicycles and pedestrians at intersections. The concepts will be prepared over aerials and no survey, formal design, or approval by TxDOT is included as part of this task. One meeting with TxDOT is included in conjunction with one of the trips in Task 4.

2.5.3 Couplet/Trolley

Kimley Horn will provide a planning-level cost estimate for a streetcar/trolley system linking downtown and the station district and associated costs and considerations for converting Austin and River streets to one-way as recommended in the Comprehensive Plan.

2.6. PRIORITIZATION WITH METHODS OF EFFECTIVENESS

This task will focus on the development of a list of high priority roadway and intersection mobility improvement projects for the City (a fiscally constrained 5-year plan with a 10-year priority list). This project listing will identify existing bottlenecks and projects that are most needed to develop a long-term mobility network consistent with the 2040 Comprehensive Plan. Kimley-Horn will work with the City to establish a methodology for project-level prioritization. As with the system-level evaluation methods, the project-level prioritization will use a diversified approach that considers transportation performance metrics as well as influencing factors related to mobility objectives, land use and economic vitality. This prioritization process will be quantitatively based using available data and summarized in the plan documentation. This approach will result in a process that can be replicated in subsequent studies and analyses by the City.

2.7.1 THOROUGHFARE PLAN DOCUMENTATION

Kimley-Horn will prepare a preliminary report that documents the Master Thoroughfare Planning effort subject to staff review prior to beginning the adoption process. This document is anticipated to include the following major sections:

- Executive Summary;
- Purpose and Community Review - "State of the City";
- Vision and Goals;
- Data Analysis: Demographics, Coordination with Cities and Region;
- Future Trends;
- Proposed Master Thoroughfare Plan;
- Subarea analysis for downtown;
- Transportation Safety;
- Short-, Mid-, and Long-Term Needs;
- Prioritization methods at the system and project level;
- Alternative Modes of Travel;
- Recommendations for refinement to the Alamo Area MPO Regional Bicycle & Pedestrian Planning Study based on the new MTP map;
- Conclusions and Recommendations.

Deliverables:

- Electronic (.pdf) copy of the Draft MTP Report with street typology, MTP map, design matrix, and cross sections;
- Five (5) 8.5" x 11" hard copies of the Draft MTP Report;
- Revisions (up to two rounds) as necessary prior to adoption;
- Upon final approval of the MTP, Kimley-Horn will provide five (5) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final MTP Report; and
- Original editable files for all documents

TASK 3: ROADWAY IMPACT FEE DEVELOPMENT AND DOCUMENTATION

3.1. SERVICE AREA DEVELOPMENT AND CONFIRMATION OF LAND USE ASSUMPTIONS

3.1.1. Service Areas

Kimley-Horn will meet with the City to develop the roadway impact fee service area boundaries within the existing City limits consistent with the six (6) mile limit required by law. Kimley-Horn anticipates two (2) service areas will be required for roadway impact fees.

3.1.2. Data Collection

Kimley-Horn will coordinate with the City to obtain the following data:

- Building Permit History – The City shall provide Kimley-Horn with available building permit history (both residential and non-residential) for the previous ten (10) years.

- Currently adopted Land Use Assumptions for Water and Wastewater Impact Fees.

3.1.3. Ten-Year Land Use Assumptions

Chapter 395 states that impact fees may only be used to pay for items included in the Impact Fee capital improvements plan and attributable to new service units projected over a period of time not to exceed ten (10) years. Based on guidance from the City regarding projected development patterns and growth rates, Kimley-Horn will develop the Ten-Year Land Use Assumptions for the 2016 – 2026 planning window. Kimley-Horn will complete the demographic table for each roadway service area.

3.1.4. Documentation

Kimley-Horn will incorporate the Land Use Assumptions information prepared by the City into the final Impact Fee Report. No separate documentation will be completed for the land use assumptions.

3.2. ROADWAY IMPACT FEE CAPITAL IMPROVEMENTS PLAN (CIP)

3.2.1. Data Collection

Kimley-Horn will coordinate with the City to obtain the following data:

- Historical Project Costing Information – The City shall provide Kimley-Horn with available data on the actual City costs for previously completed arterial roadway improvement projects to assist in the development of planning level project costs for future projects and to include any project costs for previously completed projects with excess capacity available to serve future growth.

3.2.2. Ten-Year Growth Projections and Capacity Analysis

- Kimley-Horn will identify the service units for new development and the average trip length. Using the 9th Edition of the Institute of Transportation Engineer’s (ITE) Trip Generation Manual, Kimley-Horn will incorporate trip generation and pass-by trip rates.
- Kimley-Horn will perform an analysis of existing conditions. This will include a determination of roadway capacities, volumes, vehicle-miles of supply, vehicle-miles of demand, existing excess capacity, and existing deficiencies.
- Kimley-Horn will project traffic conditions for the ten-year planning period, the target year for the impact fee growth projections. This will include growth and new demand for each service area established in Task 3.1.1. Kimley-Horn will determine the capacity available for new growth.

3.2.3. Roadway Impact Fee Capital Improvements Plan

- Kimley-Horn will assist the City with the development of a Roadway Impact Fee Capital Improvements Plan, which will include cost projections for anticipated projects to be included in the study. The Roadway Impact Fee Capital Improvements Plan will include existing oversized facilities and proposed facilities designed to serve future development. The Roadway Impact Fee Capital Improvements Plan shall include a general description of the project and a project cost projection. Planning level cost projections for future projects will be prepared based on discussion with local roadway construction contractors, City

staff, and previous experience with roadway construction costs. The City shall provide actual City cost information for previously completed projects with excess capacity and any cost contribution to County, State, Federal, or developer constructed projects.

- Due to the variety of unknowns associated with roadway project costs projections (ROW acquisition, utility relocations, etc.), the planning level project cost projections utilized in the roadway impact fee analysis should not be used for any future capital improvement planning within the City.
- Kimley-Horn will identify the portion of projected improvements required to serve existing demand and the portion of project improvements required to serve new development within the 10-year planning period.

3.3. MAXIMUM FEE CALCULATION AND RATE ANALYSIS

3.3.1. Pre-Credit Maximum Assessable Roadway Impact Fee Calculation

Using the newly developed ten-year growth projections, roadway impact fee capital improvements plan, and capacity available for new growth, Kimley-Horn will determine the cost of roadway improvements by service area, the maximum costs per service unit, and the resulting pre-credit maximum assessable roadway impact fees by service area. Kimley-Horn will incorporate the financial analysis performed in Task 3.3.2 to determine the maximum assessable impact fee per service unit.

3.3.2. Financial Analysis

A financial analysis for the credit calculation will not be performed as part of this scope; instead 50% of the pre-credit maximum assessable roadway impact fee calculated in Task 3.3.1 will be utilized to determine the maximum assessable roadway impact fee.

3.4. ROADWAY IMPACT FEE STUDY DOCUMENT

Kimley-Horn will provide both a draft and final Roadway Impact Fee Report. The report will include:

- Land Use Assumptions;
- Roadway service areas;
- Roadway CIP;
- Narrative of the impact fee methodology;
- Impact fee calculations;
- Land Use Vehicle-Mile Equivalency Table; and
- Supporting Exhibits.

Deliverables

- Electronic (.pdf) copy of the Draft Roadway Impact Fee Report;
- Five (5) 8.5" x 11" hard copies of the Draft Roadway Impact Fee Report;
- Upon final approval of the Roadway Impact Fee Analysis and new ordinance by the City Council, Kimley-Horn will provide five (5) 8" x 11" originals and one (1) electronic (.pdf) copy of the Final Roadway Impact Fee Report; and
- Original editable files for all documents.

Task 4: MEETINGS AND PUBLIC ENGAGEMENT

The following eight (8) in-person trips are included as part of this scope of services, inclusive of expenses:

- 4.1. KICKOFF WORK SESSION WITH STAFF**
- 4.2 WORK SESSION WITH STAFF**
- 4.3 MEETING #1 WITH CIP ADVISORY COMMITTEE; OPTIONAL SEPARATE MEETING WITH STAFF THE SAME DAY**
- 4.4 WORK SESSION WITH STAFF; OPTIONAL PUBLIC MEETING THAT NIGHT**
- 4.5 MEETING #2 WITH CIP ADVISORY COMMITTEE**
- 4.6 PUBLIC MEETING**
- 4.7 PUBLIC HEARING #1 FOR ROADWAY IMPACT FEES (AT A CITY COUNCIL MEETING)**
- 4.8 PUBLIC HEARING #2 FOR ROADWAY IMPACT FEES (AT A CITY COUNCIL MEETING)**

Within the eight trips, actual number and topics of meetings may vary except for the statutory Roadway Impact Fee meetings, and Kimley-Horn shall be responsible for no more than two public meetings. The City of Seguin will be responsible for organizing the meetings, public outreach, and providing the meeting locations.

Task 5: ADOPTION AND IMPLEMENTATION SUPPORT**5.1. ADOPTION PROCESS**

Kimley-Horn will review the proposed Roadway Impact Fee Ordinance as prepared by the City Attorney. It is anticipated the City Attorney will require exhibits from the Roadway Impact Fee Report to be included in the ordinance. We recommend the City coordinate with their Attorney to ensure they will be able to prepare the ordinance during Task 4.

Kimley-Horn will collect information on actual roadway impact fees collected for up to six (6) benchmark cities for up to three (3) different land uses (likely residential, commercial, and industrial land uses). This information will be provided to the City in electronic (.xls) tabular format for use in the development of comparison tables.

5.2. ADMINISTRATION TOOLS AND IMPLEMENTATION SUPPORT

Kimley-Horn will create a Roadway Impact Fee estimator spreadsheet tool to assist in calculating a development's transportation impact fees based on the impact fee rates adopted in Task 5.

Kimley-Horn will provide implementation support to assist City staff as a program is rolled out. This implementation support is anticipated to be available via phone to answer questions for up to 10 hours.

Deliverables

- The spreadsheet table of impact fees for comparison developed with Section 5.1; and
- Roadway Impact Fee estimator spreadsheet.

Information to Be Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants or representatives.

Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered additional services and will be performed at our then current hourly rates. The following items will be considered additional services:

- Travel demand modeling
- Development of new land use assumptions
- Financial analysis
- Additional data collection and analysis
- Design services
- Additional meetings, including boards and commissions
- Reanalysis or recalculation to reflect project scope changes or policy changes requested by the City, addressing changes in direction previously approved by the City, or mandated by changing governmental laws.

Schedule

The above tasks will be completed in a mutually agreed upon schedule following receipt of a signed copy of this Letter Agreement. Additional services, if desired, will be performed within a mutually agreed upon schedule, once authorized by the Client in writing.

Fee and Billing

Kimley-Horn will perform the services in Tasks 1 – 5 for the total lump sum fee of \$150,000, inclusive of expenses. All permitting, application, and similar project fees will be paid directly by the City.

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

Payment will be due within 25 days of your receipt of the invoice.

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 City of Seguin.

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 _____

____ Please copy _____

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

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.



Thomas P. Grant, P.E., PTOE
Associate



Ryan Delmotte, P.E.
Contract Specialist

Attachments:
Hourly rates
Standard Provisions

Agreed to this ____ day of _____, 2016.

**City of Seguin
A Municipality**

(Date)

(Print or Type Name and Title)

(Email Address)

_____, Witness

(Print or Type Name)

Official Seal:

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional I	\$220 - \$240
Senior Professional II	\$180 - \$230
Professional	\$145 - \$195
Analyst	\$140 - \$155
Designer	\$105 - \$170
Technical Support	\$75 - \$155
Clerical/Administrative Support	\$65 - \$120

Effective July 2015, subject to annual adjustment

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.
 - (i) Bear all costs incidental to the responsibilities of the Client.
- (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. 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 25 days of receipt. 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 25 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 25 days of receipt.
 - (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- (5) **Use of Documents.** All documents, 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. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. 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, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(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) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **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.

(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 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.

(14) **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.

(15) 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.

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

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

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. 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.