



November 19, 2025

David Van Riper
Director of Public Works
City of Deer Park
710 E. San Augustine St
Deer Park, TX

Re: Letter Agreement for Professional Services for - New Coy Water Well
2702 Coy Dr, Deer Park, TX

Dear Mr. Van Riper:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") submits this Letter Agreement ("Agreement") to City of Deer Park ("Client") for providing water engineering services to design a Public Water System well to replace the existing plugged Coy Water Well ("Project").

Project Understanding

The Client is looking to drill a new well to replace the existing plugged Coy water well at the same location. The well will be designed at 2,200 gallons per minute (gpm) to serve as an emergency water source if the Client's main water plant is offline. If any of these assumptions are not correct, then the scope and fee will change.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Topographic Survey

Kimley-Horn will prepare a survey to be substantially conforming with the current "Minimum Standard Detail requirements" for a Texas Society of Professional Surveyors (TSPS) topographic survey. Topographic Survey will be performed on an approximate 100' x-sections where available, including all visible grade breaks and changes in elevation. Topographic survey will show all improvements and elevations within 15 feet of the property lines and will include all improvement, elevations, striping, & observable utilities, located within the fence at 2700 Coy Dr at 100' x-sections within the subject area.

1. All Horizontal Survey Control shall be referenced to the Texas State Plane Coordinate System, South Central Zone, NAD83.
2. Vertical Topographic information will be based on the nearest existing NGS Benchmark, NAVD 1988, and existing site benchmarks recovered at the time of survey. Additional future TBM's will be set if necessary, at additional cost.
3. Surveyor is liable to show only that information which is marked and available at the time of survey. Surveyor is not responsible for other utility lines or plans that may exist or discovered during future investigation or uncovered during ongoing construction phases.
4. It is the contractor's responsibility to contact Digtess or other utility location service, for location of underground utilities, prior to construction.

5. The survey will graphically plot Special Flood Hazard areas as taken from the Flood Insurance Rate Map (FIRM) published by Federal Emergency Management Agency (FEMA).
6. Effort to address one (1) round of reasonable review comments received simultaneously from the Owner's or the Owner's attorney, title company, etc. is included in this task. Effort to address additional rounds of comments will be an Additional Service.

Task 2 – Preliminary Design.

Consultant will provide the professional services specifically listed below:

- a. Attend a project kickoff meeting with Client.
- b. Perform sizing calculations for the water well based on TCEQ Ch. 290. Sizing will be in accordance with the information provided from the Client of 2,200 gpm.
- c. Preliminary design will include reviewing nearby wells for anticipated well depth.
- d. Determine the total dynamic head (TDH) and operating point of the well pump based on the anticipated water demand.
- e. Preliminary design will include coordination with a registered hydrogeologist with local experience and an experienced well driller. The findings will be attached as an appendix in the PER (as defined below).
- f. Coordinate with pump manufacturers to select a well pump
- g. Prepare a preliminary engineering report (PER) with the general outline described below:
 - i. Introduction
 - ii. Description of area served;
 - iii. Flow projection and demands;
 - iv. Description of the proposed site and surroundings
 - v. Design data – pumping capacities;
 - vi. Emergency provisions
 - vii. Well design and testing memorandum
 - viii. Opinion of probable construction cost ("OPCC"); and
 - ix. Conclusion
- h. Coordinate with TCEQ and submit the PER to the City of Deer Park in electronic format for review

Task 3 – Final Design. Consultant will provide the professional services specifically listed below:

- a. Consultant will prepare a set of construction plans for the well which include the following:
 - i. Cover page;
 - ii. Sheet index;
 - iii. General notes;
 - iv. Overall site plan and dimension control plan;
 - v. Erosion control plan and details;
 - vi. Site drainage and grading plan
 - vii. Utility yard piping layout
 - viii. Water well plan, elevations, and details;

- ix. Water well pump and discharge piping mechanical components;
 - x. Electrical abbreviations, legends, and notes;
 - xi. Electrical site plan;
 - xii. Electrical one-line diagram;
 - xiii. Electrical control diagrams;
 - xiv. Electrical detail sheets; and
 - xv. Miscellaneous construction details;
- b. Consultant will prepare project specific technical specifications to be included in the project manual. Consultant will not prepare the up-front contract language, and this scope assumes the up-front language will be prepared by the Client.
- c. Consultant will prepare a 90% OPCC to be submitted to the Client for review.
- d. Consultant will submit 90% design level plans and specifications to Client for review and comment. This Letter Agreement assumes all submittals will be made electronically (PDFs). If hard copies are required, preparation of hard copies will be considered an additional expense.
- e. After the Client provides comments on the 90% plans and specifications Consultant will implement the updates and provide 100% construction documents to the Client.

Task 4 – Submittals, Coordination, and Permitting

- a. It is anticipated approval from the following entities will be required for the plans: (i) TCEQ; (ii) City of Deer Park; and (iii) Harris Galveston Subsidence District (HGSD)
- b. Consultant will submit the applicable plans and specifications to the jurisdictional agencies list in 4(a) above. Consultant will make revisions to such plans and specifications to address up to one (1) reasonable review of comments made by the jurisdictional agencies to assist Client in seeking plan approvals necessary to commence construction.
- c. Consultant will coordinate with subsidence district to complete the application for well registration and apply for a well permit on behalf of the Client.
- d. Consultant will prepare and submit well completion report to TCEQ.
- e. This Task 4 does not include permitting or submittal fees (to be paid by the Client). Because of the extent of the effort is unknown at this time, this Task 4 assumes up to 80 hours of effort will be required. Should additional effort be requested from Consultant, such effort will be an additional service.

Task 5 – Bid Phase Services

Kimley-Horn will perform the following as part of this task:

- 1. Prepare and advertise the project on CivCast USA or another bidding advertisement platform that is of preference to the Client. Fees associated with advertising will be reimbursed by the Client.
- 2. Answer questions on the bidding advertisement platform and issue Addenda as appropriate to clarity, correct, or change the Bid Documents.

3. Kimley-Horn will consult with the Client as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by the Contractor for those portions of the Work as to which such acceptability is required by the Bid Documents.
4. Conduct a pre-bid conference and prepare a summary of meeting minutes for the project and distribute to all prospective bidders.
5. Attend the bid opening, prepare bid tabulations, assemble contract documents, assist the Client in both evaluating Bids or proposals, recommend award to the Client, and assist in awarding contracts for the Work.
6. Rebidding the project or negotiation of contracts is excluded from this task.
7. Prepare, compile, and issue conformance plans "Issued for Construction".

Task 6 – Construction Phase Services

Pre-Construction Conference. Consultant will attend a Pre-Construction Conference before the start of construction.

Site Visits and Construction Observation. Consultant will make visits (up to four (4) for the duration of construction) to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work.

Consultant will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. Consultant does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.

Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.

Construction Meetings. Consultant will attend up to ten (10) construction meetings virtually, via Teams. This task does not include in person construction meetings on site.

Recommendations with Respect to Defective Work. Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.

Clarifications and Interpretations. Consultant will respond to reasonable and appropriate (up to 10) Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client.

Change Orders. Consultant may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Shop Drawings and Samples. Consultant will review up to twenty (20) Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Substitutes and "or-equal/equivalent." Consultant will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.

Inspections and Tests. Consultant may require special inspections or tests of Contractor's work, and may receive and review certificates of inspections within Consultant's area of responsibility. Consultant's review will be solely to determine that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Consultant is entitled to rely on the results of such tests.

Disputes between Client and Contractor. Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.

Applications for Payment. Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

Substantial Completion. When requested by Contractor and Client, Consultant will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.

Final Notice of Acceptability of the Work. Consultant will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor.

Record Drawings. As an additional service if required, Consultant will prepare a record drawing showing significant changes reported by the Contractor or made to the design by Consultant. Record drawings are not guaranteed to be as-built, but will be based on information made available.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and

performed at Kimley-Horn's then-current hourly rates. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- a. Sizing and design of a new GST
- b. Sizing and design of a new hydropneumatic tank;
- c. Sizing and design of a new booster pump station;
- d. Sizing and design of a new elevated storage tank;

Information Provided By Client

Kimley-Horn 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 during the project, including but not limited to the following:

- a. Record drawings

Schedule

Kimley-Horn will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1- 6 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 Number & Name		Fee	Type
1	Topographic Survey (+sales tax)	\$8,580	Lump Sum
2	Preliminary Design	\$44,000	Lump Sum
3	Final Design	\$80,000	Lump Sum
4	Submittals, Coordination, and Permitting	\$21,000	Lump Sum
5	Bid Phase Services	\$18,000	Lump Sum
6	Construction Phase Services	\$54,000	Lump Sum
Total		\$225,580	

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 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, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Deer Park.

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

____ Please email all invoices to _____

____ Please copy _____

To proceed with the services, please have an authorized person sign this Agreement below and return 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 this project.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Stephen Kelly, P.E.

Associate

David Van Riper

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions

Request for Information

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

Client Identification

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

Property Identification

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

Property Owner Identification

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

Project Funding Identification – List Funding Sources for the Project

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

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn'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 Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - 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 Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn 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 Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn 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.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall 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 Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn 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 Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn 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 Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn 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 deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn 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. Kimley-Horn 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. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **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. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn'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 Kimley-Horn's performance of services, and it is agreed that Kimley-Horn 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 KIMLEY-HORN, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF KIMLEY-HORN AND KIMLEY-HORN'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, ATTORNEYS' FEES (INCLUDING ATTORNEYS' FEES OTHERWISE RECOVERABLE UNDER TEX. CIV. PRAC. & REM. CODE § 38.001), OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF KIMLEY-HORN OR KIMLEY-HORN'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY KIMLEY-HORN UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CLIENT TO INDEMNIFY KIMLEY-HORN.

- 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) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn 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.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims 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 one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn 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 Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn 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. Kimley-Horn 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 Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. 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 Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn 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.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. 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.