

May 26, 2021

Alex Tynberg
Northline Leander Development Company, LLC
2501 Tarry Hill Place
Austin, Texas 78703
atyberg@tynberg.com

Re: Professional Services Agreement
Northline Leander – Town Square

Dear Mr. Tynberg:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (this “Agreement”) to Northline Leander Development Company, LLC (“Client”) for providing professional civil engineering services.

Project Understanding

We understand that the Client is interested in the development of a ±1.32 -acre Town Square project (the “Project”) located in Leander, Texas (the “City”) as a public, Civic Space to be conveyed by the Client to the City upon the substantial completion of the Project. The Client is acting as the agent for the City in connection with the construction of the Project in accordance with the Development Agreement for The Northline PUD (the “Development Agreement”) dated June 7, 2018, between the City and AREA One Leander, LP, the Client’s predecessor-in-interest, which Development Agreement is recorded under Document No. 2018050888 in the Official Records of Williamson County, Texas, and which has been provided to, and reviewed by, Kimley-Horn. Kimley-Horn shall be acting as the “Project Engineer” with respect to the Project, and the obligations of Kimley-Horn and the Client under this Agreement are expressly made subject to and conditioned upon the approval of Kimley-Horn as the Project Engineer for this Project and the terms of this Agreement by the City.

Kimley-Horn assumes the following in preparation of this Agreement:

Assumptions

- The site is located in the full purpose zoning jurisdiction of the City;
- The site is zoned Planned Unit Development (PUD) and allows for the proposed use;
- The site is subject to the City’s SmartCode, as modified by The Northline Planned Unit Development. The landscape and building design plans necessary for completion of the Project will be provided by the Project Manager and the Project Architect, respectively. It is anticipated that Design Workshop, Inc. will be the initial Project Manager and Brown Reynolds Watford Architects, Inc. will be the initial Project Architect;
- The preliminary site layout will be provided by Project Manager. Kimley-Horn will assist in preliminary site planning coordination under Task 1 below. Any revisions to the final site plan after completion of Task 1 below will be considered an additional service;
- The site is currently platted and therefore no plat will be required;
- No Traffic Impact Analysis (TIA) or off-site roadway improvements will be required;
- Access improvements are limited to sidewalk connections only, and reconstruction of adjacent roadways will not be required;

- No off-site roadway improvements will be required by the Client or the City;
- The adjacent water, wastewater, and storm sewer mains are adequate in size to serve the proposed use and no offsite extensions or improvements will be required. No design or study of offsite improvements to water, wastewater, roadways, traffic signals, or any other utility or improvement is known at this time and is therefore excluded;
- Extension and connection to City reclaimed waterlines will not be required for the Project; provided, the Project will be designed to allow conversion from connection of the Project's irrigation system to the City's potable water system to the City's reclaimed water system when that system is available to serve the Project;
- No storm water quality treatment facilities or detention facilities will be required for this site, and an off-site regional pond will be utilized for water quality controls. A regional drainage study was conducted as part of the PICP and it was determined that detention is not required;
- The site is located in the Edwards Aquifer Contributing Zone per the Texas Commission on Environmental Quality (TCEQ). A Contributing Zone Plan (CZP) modification application to the TCEQ will be required. It is assumed this will be handled by the Wantman Group, Inc. ("WGI"). If WGI does not handle such modification, Kimley-Horn may provide it as an alternative service;
- Retaining wall design, if required, may be provided by Kimley-Horn as an alternative service;
- Design of City required code landscape and lighting plans will be provided by Project Manager;
- The required TDLR/TAS submittals for site accessibility requirements will be made by the Project Architect;
- Kimley-Horn has been provided survey information for it to use for its design. Kimley-Horn will not be liable for errors or omissions in its work that were contributed to by errors or omissions in the survey;
- Separate instrument easements will be prepared by the Client's professional surveyor, as required;
- The Mechanical/Electrical/Plumbing (MEP) will be provided by the Project Architect, which will coordinate with the electrical and gas companies related to providing service to the proposed buildings;
- Fire suppression requirements, including fire department connection(s) and minimum flows/pressures, will be provided by the MEP or NFPA certified designer;
- The site is not located within a floodplain, wetlands, or other environmental sensitive area;
- No structural engineering has been included in this scope of services;
- The Project Architect will coordinate with the MEP engineer and/or a Fire Protection consultant to determine domestic and fire suppression system demands, the anticipated wastewater effluent rate, and to coordinate electrical and gas services to the proposed buildings;
- The Client will be responsible for establishing franchise utility services to the buildings. Kimley-Horn will provide limited assistance;
- Kimley-Horn will show light pole locations on the site plan for coordination purposes. We will coordinate with the Project Manager and the Client's lighting vendor and/or electrical engineer who will provide all site electrical and photometric design;
- The preparation of the Construction Contract is not included in this scope;
- The Client has retained professional geological and environmental services. The use of the reports, additional exploratory effort, and revisions will be the responsibility of the Client's

environmental consultant(s). As part of its basic services, Kimley-Horn will facilitate such efforts on behalf of the Client as requested;

- Kimley-Horn's plans will establish proposed finished grade elevations outside the buildings. The Client understands that there is the potential for vertical movement of flatwork after construction is complete. The amount of vertical movement can be mitigated by preparing the subgrade beneath the flatwork like the subgrade under the building. We recommend that the Client obtain building and flatwork subgrade preparation recommendations from the geotechnical engineer. Our plans will direct the contractor to the Geotechnical Report for subgrade recommendations. The Client understands that even with proper subgrade preparation of the building and the flatwork there is still the potential for vertical movement and finely graded areas, ADA routes, etc. may need to be adjusted and maintained in the future if they move;
- A Traffic Control Plan (TCP) will be the responsibility of the contractor and deferred to the time of construction unless a concurrent TCP is required by the City for approval of the SDP or is requested by the Client, it can be included as an additional service;
- Kimley-Horn will have legal access to the property; and
- The Client will assume payment for any application, review, or permit fees.

(this space intentionally blank)

Scope of Services

Basic Site Civil Engineering Services

Task 1 - Preliminary On-Site Engineering Services

Kimley-Horn will prepare on-site preliminary civil engineering plans consisting of the following:

Preliminary Grading Plan: Kimley-Horn will conduct meetings with the Client and its Project team to discuss grading intent and desires for the Project as necessary. Kimley-Horn will prepare a preliminary grading plan that will show finished floors, suggested building splits, retaining wall locations and heights, and paving grades – all to a low level of detail compared to final construction drawings, but conceptually workable. Kimley-Horn will prepare up to two volume analyses of the plan in Civil 3D and make up to two minor adjustments to the plan based on results of volume analysis. Kimley-Horn will then conduct one meeting with the Client and Project team to present plan and volume analysis results.

Preliminary Utility Plan: Kimley-Horn will prepare a Preliminary Water, Sanitary Sewer, and Storm Sewer Plan and present them to the Project team at one of the meetings described above.

Task 2 - Final Civil Engineering

Upon the Client and the City approving the preliminary engineering plans, Kimley-Horn will prepare on-site civil engineering plans for the proposed Project. The plan set will comply with the applicable requirements of the City for approval of a SDP, and at a minimum will consist of the following sheets:

- A. Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes and Project Specifications: Showing general notes related to proposed construction based on City requirements and standards.
- C. Dimension Control Plan: Showing the site layout (provided by the Project Architect) and property boundary with dimensional ties for building envelopes, parking, and roadway(s).
- D. Erosion Control Plan: Showing initial erosion control measures to be installed prior to disturbance of the site. The erosion control measures will be maintained and modified throughout site construction by the Contractor, and it is the Contractor's responsibility to modify the plan during construction as necessary to comply with the conditions of their permits. This task does not yield a Storm Water Pollution Prevention Plan (SWPPP) document.
- E. Grading Plan: Showing proposed finished floor elevations and, as applicable, spot elevations and one-foot contours for public sidewalks, drives, and parking areas. Detailed grading of landscape areas will be coordinated with, but designed by, the Landscape Architect. Retaining walls needed to accomplish the grading will be shown with proposed top and toe elevations in a "wall zone". The selection of the wall system and the structural design of the walls is beyond the scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client as alternative services.
- F. Paving and Striping Plan: Showing proposed paving type for parking areas, fire lanes, and drives based upon recommendations in the geotechnical report provided by the Client. This plan will show handicap parking signage.
- G. Fire Protection Plan:

Demonstrating adequate exterior access and water service to the proposed facility per the published City requirements. Exterior doorways, means of egress, and fire suppression information, including size, occupancy, and construction type, will be provided by the Project Architect. If allowed by applicable ordinances, codes, and regulations of the City, this information may instead be shown on the Dimension Control Plan.

- H. Water and Wastewater Plan: Showing on-site water and wastewater plan layouts to within five feet of proposed building(s).
- I. Drainage Area Map: Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site to be used as the basis for drainage system sizing and layout. Landscaped areas will be shown as individual drainage areas for sizing of a receiving pipe. Small drainage areas for each individual landscape drain will not be shown and will be designed by the Project Manager.
- J. Storm Drainage Plan: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plain view. The plan will also show private storm drain to collect roof downspouts, for which the pipe size will be determined by the MEP engineer. Kimley-Horn will coordinate design and location of area drains with the Project Manager and design a pipe system to collect the area drains.
- K. Construction Details: The applicable construction details required by the City will be included. If deemed necessary by Kimley-Horn, and allowed by the City, additional construction details for certain site civil engineering improvements will be included in the plan set.

Task 3 - Submittals and Permitting

Kimley-Horn will submit the Final Civil Engineering plans and related data as prepared in the above Tasks as necessary to comply with the requirements for the City Site Development Permit application. We will monitor the status, respond to all comments provided by the City staff, and make required revisions to complete the application in accordance with staff comments as required to obtain approval. Based on our previous experience we believe this task may also include at least weekly Project team meetings by conference call, meetings with city staff, general project coordination, and coordination with the Project team during the approval and closing phases of the Project. Based upon the current Project Understanding and the anticipated scope, Kimley-Horn anticipates seventy-five (75) hours of effort will be necessary to complete this task. If additional effort is required, it will be billed per the then current hourly rate schedule.

Task 4 - Franchised Utility Coordination

Kimley-Horn will provide assistance to the Client to arrange franchised utility service (gas, electric, cable/data, and telephone) for the Project. Design of franchise utilities will be by the franchise utility companies. Kimley-Horn will coordinate locating these utilities on the site utility plan as they relate to the storm drain, water, and wastewater layouts. If provided in a timely manner and in AutoCAD format by the franchise utility companies, the franchise utility layouts will be shown on the civil plans.

Task 5 - Meetings and Team Coordination

Kimley-Horn will attend meetings with the Client, Consultant team, and City staff as requested. This task has been provided on an hourly basis due to the unknown level of effort required at this time and includes sixty (60) hours of effort. This anticipates ten (10) hours of meetings monthly for the Kimley-Horn project team. If additional effort is required, it will be billed per the then current hourly rate schedule.

Site Specific & Specialty Civil Engineering Services**Task 6 - Miscellaneous Easement Support**

Kimley-Horn will prepare application and support documents. Separate instrument easements will be prepared by the Client's attorney and professional surveyor, as required. Kimley-Horn will attest to the suitable conveyance (drainage easements only), and submit easement documents to the City. We will attend meetings with review staff and, if required, address staff comments and resubmit for approval.

Construction Phase Services**Task 7 - Bidding Services**

Kimley-Horn will prepare and assemble construction bidding documents for the work described in the SDP, including specifications for the subject work and the construction contract, based on "Standard General Conditions of the Construction Contract" (EJCDC No. C-700, 2002 edition) prepared by the Engineers Joint Contract Documents Committee (EJCDC) as the same may be modified or supplemented as required by the City or the Client. The bids shall be prepared and submitted in accordance with the public bidding and other requirements for payment by the City as "City Improvements" under the Development Agreement. Without limiting the foregoing, Kimley-Horn will advertise the work for sealed competitive bids in compliance with Chapter 2253 of the Texas Local Government Code; will provide the Client, the City Engineer, and the City's purchasing agent a copy of the documents and materials soliciting bids, including the notice to bidders, instructions to bidders, construction contract with the general, special, and supplemental conditions, and technical specifications. Kimley-Horn will coordinate the receipt and opening of the bids with the City Engineer and will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. Kimley-Horn will provide copies of the bids and bid tabulations to the City Engineer, and will make recommendation for the lowest qualified bidder/contractor to the Client and the City Engineer. Kimley-Horn will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. If requested by the Client, Kimley-Horn will notify the selected Contractor.

Task 8 - Construction Phase Services

Kimley-Horn can provide professional construction phase services as specifically stated below as directed by the Client per the then current hourly rate schedule.

Pre-Construction Conference: Kimley-Horn will attend the pre-construction conference prior to commencement of Work at the Site.

Site Visits: Kimley-Horn will visit the site as appropriate for periodic observation of construction of the work described in the SDP at such times and frequency (but not less frequently than weekly) as may be necessary to be familiar with the progress and quality of the work to determine and advise the Client and the City Engineer if such work is being completed substantially in accordance with the approved plans, specifications, and permits. Kimley-Horn shall advise the Client and the City Engineer of known or observed defects and deficiencies, and shall have no responsibility for such defects and deficiencies to the extent it has advised the Client and the City Engineer of the same.

Clarifications and Interpretations: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue clarifications and interpretations of the Contract Documents to Client. Any authorization of variations from the Contract Documents will be made by Client and the City.

Review and Response to Shop Drawings: Kimley-Horn will review and respond to certain Shop Drawings, Samples, and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.

Record Drawings: The Contractor will provide redlined set of the site civil drawings to Kimley-Horn showing all changes made to the approved design during construction. Kimley-Horn will review the redlined drawings provided and will prepare Record Drawings. The Record Drawings will show only those changes exported by the Contractor to Kimley-Horn and considered to be significant and will contain a note to this effect. Record Drawings are not "As Built" drawings and no independent verification will be done by Kimley-Horn. Kimley-Horn will submit the Record Drawings to the local jurisdiction and provide the files to the Client in PDF format.

Alternative Service

Alternative Service will be performed by Kimley-Horn if requested in writing by the Client and will as mutually agreed in writing by Kimley-Horn, the City and the Client.

Task 9 - Storm Water Pollution Prevention Plan (SWPPP)

Kimley-Horn will prepare a SWPPP for the site in general accordance with current published Texas Commission on Environmental Quality (TCEQ) standards. This task will incorporate the Erosion Control Plan for the site, prepared under a separate task, to be included with the SWPPP report. Kimley-Horn is responsible for all permit application, inspections, record keeping, and adjustments to the SWPPP during construction in accordance with the terms of the permit.

Task 10 - TCEQ - Contributing Zone Plan (CZP) Modification

The site is located within the Contributing Zone of the Edwards Aquifer; therefore, a CZP application will be required. Kimley-Horn will prepare one (1) CZP application package and submit to TCEQ for review and comment. The intent of the CZP application will be to provide the required documentation of the permanent water quality controls and the additional impervious cover associated with the Project.

Additional Services

Any services requested in writing by the Client and the City that are not specifically provided for in the above scope will be billed as additional services and performed on such terms as may be mutually agreed in advance in writing by Kimley-Horn, the City and the Client. at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Traffic control plans;
- Offsite improvements;
- Landscape, Tree Mitigation, and Irrigation Plans;
- Design of retaining walls or other structures;
- License agreements; and
- Any item not specifically noted in this agreement.

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 reasonably requested by Kimley-Horn and necessary to perform its services under this Agreement, including but not limited to the following

- Names of consultants on Project team;
- Geotechnical report, including foundation and paving design recommendations;
- MEP utility (water, wastewater, electric, gas) service locations, size, and depth;
- Code Landscape Architecture and Irrigation Plans required for Site Development Permitting;
- Final Site Plan (ACAD 2012 Format); and
- Executed copy of this Agreement and access to property.

(this space intentionally blank)

The services in this agreement will be billed as follows:

Basic Site Civil Engineering Services

Task 1 Preliminary On-Site Engineering Services	\$ 4,000	(HM)
Task 2 Final Civil Engineering	\$ 22,000	(HM)
Task 3 Submittals and Permitting	\$ 15,500	(HM)
Task 4 Franchised Utility Coordination	\$ 4,000	(HM)
Task 5 Meetings and Team Coordination	\$ 13,500	(HM)

Site Specific & Specialty Civil Engineering Services

Task 6 Miscellaneous Easement Support	\$ 2,500	(HM / EA)
---------------------------------------	----------	-----------

Construction Phase Services

Task 7 Bidding Services	\$ 5,000	(HM)
Task 8 Construction Phase Services	\$ 8,000	(HM)

Total Estimated Fee \$ 74,500

Alternative Services

Task 9 SWPPP	\$ 2,000	(HM)
Task 10 TCEQ CZP Modification	\$ 6,000	(HM)

For Lump Sum (LS) tasks, lump sum fees will be invoiced monthly based upon the overall

For Hourly Max (HM) tasks, labor fee will be billed on an hourly basis according to our then-current rates. Kimley-Horn will not exceed the total maximum labor fee shown for these tasks without authorization from the Client.

As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

In addition to the matters set forth herein, this 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 Northline Leander Development Company, LLC and the City of Leander.

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

____ Please email all invoices to __atynberg@tynberg.com_____

____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute a copy of this Agreement in the spaces provided below and return a copy 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 the Project so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

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

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Robert J. Smith, P.E.
Assistant Secretary



Allison M.L. Moczygemba, P.E.
Project Manager



Rebecca Hicks
Contract Lead

NORTHLINE LEANDER DEVELOPMENT COMPANY, LLC

By  _____

Alex Tynberg, President

CITY OF LEANDER

By: _____
Richard B. Beverlin, III , City Manager

Attachments –Standard Provisions & Hourly Rate Schedule

**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 in writing by the Consultant, the Client, and the City, the Consultant will perform Alternative Services and/or Additional Services, which shall be governed by these provisions unless otherwise agreed to in writing.

(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 in addition to the City Engineer.

(b) Provide all information and criteria as to the Client's and the City's requirements, objectives, and expectations for the project and all standards of development, design, or construction.

(c) Provide upon request of the Consultant such available studies, plans, or other documents pertaining to the Project, such as existing surveys, engineering data, environmental information, etc., that is reasonably necessary for the performance of the Consultant's services, all of which the Consultant may rely upon.

(d) Arrange for access to the site and other property owned by the Client as reasonably 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 reasonably requested by the Consultant.

(g) Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client and the City.

(h) Give prompt written notice to the Consultant whenever the Client or the City becomes aware of any defect or noncompliance in any aspect of the Project related to the services provided by the Consultant.

(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.** . It is agreed that Client is acting as the authorized agent for the City with respect to this Agreement. Payment for the fees to Consultant under this Agreement is the responsibility and obligation of the City, and the Client has no obligation or liability for the payment of such fees. The City shall pay Consultant as follows:

(a) Invoices will be submitted periodically for services performed and expenses incurred. No sales tax shall be due for these services to and for the benefit of the City..

(b) If the City objects to an invoice, it must advise the Consultant in writing within ten days of City receipt giving its reasons. If the City objects to only a portion of the invoice, payment for all other portions remains due.

(c) 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.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement. They are not intended or represented to be suitable for use or reuse by the City or the Client or others on extensions of this Project or on any other project. Any modifications by the City or 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 City's or the Client's sole risk and without liability to the Consultant, and the City or the Client, as applicable, 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 shall be the property of the City. Any electronic files not containing an electronic seal are provided only for the convenience of the City or the Client, and use of them is at the City's or 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 City or the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator.

(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 termination, and other reasonable, out-of-pocket expenses incurred by the Consultant as a 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) Insurance. In addition to such other insurance as Consultant may determine, Consultant shall be required to maintain a policy of commercial general liability insurance on the most current ISO CG 00 01 form in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and with umbrella coverage of not less than \$10,000,000. The City, the Client, and LPC Retail, LLC shall each be insured as an additional insured with coverage substantially the same as provided by ISO the ISO CG 20 26 04 13 form, by endorsement or general provision in such required liability insurance policy; such policy shall waive rights of subrogation against the City and the Client, and such policy shall be endorsed to provide that it shall be primary to and not contributory to any insurance carried by the City or the Client. Consultant shall provide to the City and the Client with a certificate of insurance evidencing of such required liability insurance policy, together with copies of the declarations page, the list of all endorsements, and the endorsement or general policy provision naming City, the Client, and LPC Retail, LLC as additional insureds.

(10) LIMITATION OF LIABILITY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, 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 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 THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED \$10,000,000; PROVIDED, THE AMOUNT OF SUCH LIABILITY SHALL BE REDUCED BY THE AMOUNT OF ANY PROCEEDS FROM CONSULTANT'S INSURANCE ACTUALLY RECEIVED BY THE CLIENT, THE CITY AND LPC RETAIL, LLC.

(11) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any speculative, special, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(12) 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 specification to the extent Consultant has performed the observations as required in this Agreement, has knowledge of such failure, and has advised the Client and the City of such failure. 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 specification. The Client acknowledges that all preliminary plans are subject to substantial revision until plans re fully approved and all permits obtained.

(13) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 5 days prior to the requested date of execution. The Consultant shall review and execute reasonable certificates, consents, or letters not later than 5 days after its receipt of such request. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to the services not provided by the Consultant, or that would cause the Consultant to violate applicable rules of professional responsibility.

(14) 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 the City, the Client, or Consultant must be commenced not later than allowed by applicable statutes.

(15) Hazardous Substances and Conditions. Consultant shall not be a deemed 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 City and 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.

(16) Construction Phase Services.

(a) The Consultant shall be responsible for interpretation of the documents prepared by the Consultant.

(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.

(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 City and the Client agree 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 City, the Client and the Consultant for all claims and liability arising out of job site accidents not related to the plans for which the Consultant is responsible under this Agreement; and that the City the Client, and the Consultant 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 City, the Client, LPC Retail, LLC, and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the City, the Client, LPC Retail, and the Consultant. Neither the City nor the Client shall assign or transfer any rights under or interest in this Agreement, 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; provided, Consultant shall remain fully responsible for the work performed by such subconsultants. 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.

(18) Photographs. The City and the Client consent to the use and dissemination by the Consultant of photographs of the Project.

(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 the City, the Client and the Consultant. Any conflicting or additional terms on any purchase order issued by the City or 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 nonenforcement 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.

Kimley-Horn and Associates, Inc.

STANDARD RATE SCHEDULE

Classification	(Hourly Rate)
Analyst	\$140 - \$230
Engineer / Professional	\$195 - \$260
Technical Support / CAD Technician	\$75 - \$125
Senior Engineer I / Senior Professional I	\$210 - \$325
Senior Engineer II / Senior Professional II	\$300 - \$345
Senior Technical Support / CAD Designer	\$135 - \$215
Support Staff / Technician	\$ 90 - \$ 130