

October 5, 2018

Pam Anderson  
292 Design Group  
3533 E. Lake St.  
Minneapolis, MN 55406

**Re: Agreement for Professional Services - Site Civil Engineering & Landscape Architecture  
Blaine Senior Center  
Blaine, MN**

Dear Ms. Anderson,

Kimley-Horn and Associates, Inc. (herein referred to as "KH" or the "Consultant"), is pleased to submit this agreement for certain professional services to 292 Design Group (herein referred to as "the Client"). The proposed services will be provided in accordance with their terms and conditions set forth herein.

## **PROJECT UNDERSTANDING**

Kimley-Horn understands that 292 Design Group is providing architectural and design services to the City of Blaine for the proposed "Blaine Senior Center" located at 9150 Central Ave NE in Blaine, MN. The project area includes the existing Mary Ann Young Senior Center and an approximate 84,000 SF (1.93 acres) area to the south of the existing senior center. The site is located within the jurisdiction of the Coon Creek Watershed District, which will require their review and approvals process for stormwater management and erosion control items.

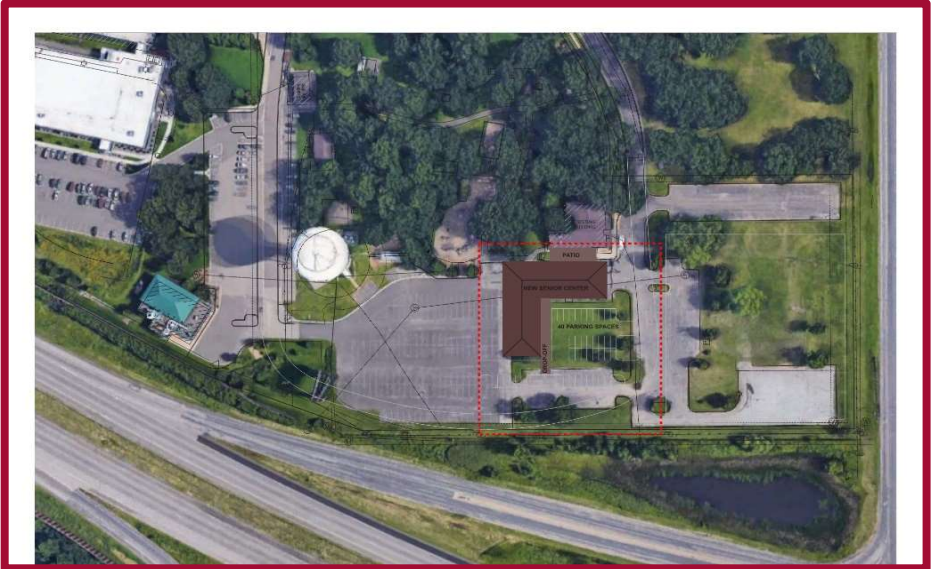
The City desires to build a new 15,000 SF senior center to replace the existing facility plus roughly 40 parking stalls and the associated utilities, walkways, stormwater management features, landscaping and possibly other site features to be confirmed by the City.

It is understood that 292 Design Group will lead the overall design team and support the City with pursuing the necessary regulatory approvals and construction administration services to complete this project. It is assumed that the planning, design and approvals/permitting process will be completed in one phase and one set of plans.

It is understood that the City is working with another consultant on a Master Plan for this area though this senior center will be a stand alone project.

A table summarizing our proposed scope of services, by task, is provided below. The table includes projected fees, fee type, and in-house expenses. Only tasks with accompanying fees are included in our proposed scope of services, though we are available to provide any of the tasks listed upon request. The tasks are organized in the order they are typically performed. Detailed descriptions of each task are provided later in this agreement, as are the notes and assumptions upon which our scope and fee are based.

Subject Site



### TASK AND FEE SUMMARY

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Item	Task	Fee	Fee Type
<b>100 Due Diligence Services</b>			
101	Information Gathering	\$500	LS
102	Pre-Application Meeting	\$350	H
	<b>Subtotal</b>	<b>\$850</b>	
<b>400 Basic Site Civil Engineering Services</b>			
403	Preliminary On-Site Civil Engineering	\$7,450	LS
404	Final On-Site Civil Engineering	\$6,900	LS
405	Storm Water Management Plan	\$2,950	LS
406	Storm Water Pollution Prevention Plan (SWPPP)	\$900	LS
408	Agency and Project Meetings	\$1,750	H
	<b>Subtotal</b>	<b>\$19,950</b>	
<b>500 Site Specific &amp; Specialty Civil Engineering Services</b>			
511	Stormwater Analysis, Modeling & Technical Report	\$4,900	LS
	<b>Subtotal</b>	<b>\$4,900</b>	
<b>700 Landscape Architectural Services</b>			
702	Landscape and Hardscape Design Development	\$2,900	LS
703	Landscape and Hardscape Construction Drawings	\$3,550	LS
708	Agency and Project Meetings	\$500	LS
	<b>Subtotal</b>	<b>\$6,950</b>	
<b>800 Construction Phase Services</b>			
801	Response to RFI / Submittals - Civil	\$1,200	H
802	Site Visits - Civil	\$800	H
804	Response to RFI / Submittals - Landscape	\$700	H
805	Site Visits - Landscape	\$500	H
	<b>Subtotal</b>	<b>\$3,200</b>	
	<b>Grand Total</b>	<b>\$35,850</b>	

**Fee Types:**

LS = Lump Sum Fee

H = Hourly Fee Budget Estimate. Actual fee depends on effort expended.

**Expenses:**

All reimbursable expenses will be invoiced at cost plus a markup of 15.00%.

**OUR SCOPE AND FEE ARE BASED ON THE FOLLOWING****For all projects:**

- 1 Fees are to perform each task one time including two sets of revisions to address City review comments and one set of revisions to address Watershed review comments. Additional revisions will be made on an hourly basis under the appropriate Submittals and Permitting Task.
- 2 Our scope of services terminates five feet from the building(s) and at the project limits boundary.
- 3 Our services will be performed in general accordance with current published City design standards.
- 4 Effort resulting from changes to the building, site plan, or utility design after commencement of our work will be additional services.
- 5 The improvements we design will be publicly bid and built in one phase (our fees do Not include calculating bid quantities for the site work)
- 6 Private utility information (gas, electric, cable, and telephone) will be shown on the plan for reference only if provided by the appropriate entities in a timely manner. Design of franchise utilities is beyond the scope of this agreement.
- 7 Inspections and Certifications during construction, if required, will be performed by others and is beyond the scope of this agreement.
- 8 We shall be entitled to rely on the accuracy and completeness of information provided to us by the others. The following items are anticipated:
  - Offsite easements, if needed.
  - A dimensionally correct and zoning compliant site plan in AutoCAD format.
  - Mechanical, Electrical, and Plumbing plans for the buildings showing size, location, and depth of all domestic and fire protection meters and lines, roof drains, sanitary sewer services, and electrical facilities.
  - A geotechnical investigation report with paving and building subsurface design recommendations.
  - A current title commitment with legible copies of the Schedule B exceptions.
  - Timely participation by other members of the consultant team.
  - Any previously prepared surveys, reports, or documents with bearing on our scope of services.
  - ADA review, if required.
- 9 Design of Life Safety lighting and signage is beyond the scope of this agreement.
- 10 KH does not guarantee the issuance of permits or approvals. If permits are issued for this project, the conditions and expiration dates are the sole responsibility of the Client.
- 11 KH has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of Probable Construction Costs (OPCC) are based on the information known to KH at the time and represent only KH's judgment as a design professional. KH cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.
- 12 Additional tasks may be necessary to complete the project based on City/Client requirements. If necessary KH will provide the Client with a separate scope and fee for this effort.
- 13 KH shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract Documents. The owner shall not allow the contractor to take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the owner shall direct the contractor to promptly submit the matter to the owner before the improvements are built. The owner shall promptly make a determination and issue the necessary instructions to the contractor in writing. Any adjustment by the contractor without this determination and instructions shall be at the contractor's own risk and expense. The Work is to be made complete as intended by the Contract Documents.

- 14 In the performance of any services during construction, KH shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. KH shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. KH will not be responsible for any inspections or certifications during or after completion of the project.
- 15 Any standard details or specifications provided or referenced on KH plans are for the convenience of the client only. The client understands that jurisdictions often mandate use of their standard and that these standards have not been modified or designed by KH. The client has declined to have these standards updated or made specific to this project and will not hold KH responsible for errors or omissions in these standards should an issue arise from their use.

**For this project we assume:**

- 1 The property is zoned to allow the intended use. Changes to the zoning and/or request for variances or special use permits will not be required.
- 2 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, except for the potential for a new stormwater management feature beyond the approximate 1.9-acre project area (City needs to confirm where the new stormwater management features will be located). 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.
- 3 Electrical design (such as site lighting), structural design (such as retaining walls), and site signage design is beyond the scope of this Agreement.
- 4 The site development is not anticipated to impact United States Army Corps of Engineers jurisdictional areas or other Environmentally Sensitive Areas.
- 5 Traffic control plans, if required, will be prepared by the Contractor or others and is not part of our scope.
- 6 Access improvements are limited to driveway connections only, and reconstruction of adjacent roadways will not be required. Deceleration/Acceleration or modifications to existing medians for left-turn lanes will not be required.
- 7 The site development is not anticipated to impact any published FEMA floodplain or wetland area(s).
- 8 Stormwater management will be required to meet the City's and Watershed's requirements, which may involve new stormwater features to be added around the building or within a nearby area also owned by the City.
- 9 A Traffic Impact Analysis will not be required.
- 10 KH has been provided survey information and instructed to use it for our design. KH will not be liable for errors or omissions in our work that were contributed to by errors or omissions in the survey.
- 11 Our plans will establish proposed finished grade elevations outside the building. 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.
- 12 Our plans show a drainage system to within five feet of the building. The Architect is responsible for directing the Mechanical, Electrical, and Plumbing Engineer to connect all building downspouts and drainage systems to the underground drainage system. KH is responsible for the Landscape Architecture design and plans.

## TASK DESCRIPTIONS

### Task 101 - Information Gathering

KH will work to obtain Record Drawings for existing water, sanitary sewer, storm drainage, and roadway improvements on or immediately adjacent to the site. KH will work to obtain current site and civil engineering design guidelines, applications, and checklists published by the local jurisdiction to be used for the civil engineering and landscape design of the project.

### Task 102 - Pre-Application Meeting

KH will request, schedule, prepare for, and attend a pre-application meeting with the primary local jurisdiction. KH will prepare and distribute notes with suggested follow-up actions to the design team and Client following the meeting.

### Task 403 - Preliminary On-Site Civil Engineering

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

Preliminary Grading Plan: KH will conduct one meeting with the Client and project team to discuss grading intent and desires for the project. KH will prepare one preliminary grading plan that will show finished floors, suggested building splits, retaining wall locations and heights (only for walls shorter than four feet tall), and paving grades – all to a low level of detail compared to final construction drawings, but conceptually workable. KH 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. KH will then conduct one meeting with the Client and project team to present plan and volume analysis results.

Preliminary Utility Plan: KH will prepare a Preliminary Water, Sanitary Sewer, and Storm Sewer Plan and present them to the project team at the meeting described above.

Preliminary Site Plan: KH will use the Architect's draft site plan as the basis to produce the civil site plan.

### Task 404 - Final On-Site Civil Engineering

KH will prepare on-site civil engineering plans consisting of the following:

Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.

General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.

Dimension Control Plan: Showing the building envelope (provided by architect) and property boundary with dimensional ties for building envelopes, parking, and roadway(s).

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 the Landscape Plan. 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 limited scope of this agreement and will be provided by KH or others under a separate agreement with the Client.

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.

Utility Plan: Showing on-site water service and sanitary sewer utilities to within five feet of the building.

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.

Storm Drainage Plan: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan view. The plan will also show private storm drains to collect roof downspouts, for which the pipe size will be determined by the MEP engineer.

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 SWPPP document.

Construction Details: Typical construction details for proposed site civil engineering improvements will be included by reference to applicable jurisdictional standard details. If deemed necessary by KH, construction details for certain site civil engineering improvements will be included in the plan set.

**Task 405 - Storm Water Management Plan**

KH will perform design calculations to size one stormwater management facility. Facility sizing results, proposed finished grading elevations, and design water surface elevations will be shown on the plans. The Facility outfall improvements will be shown on the Storm Drainage Plan. Geotechnical recommendations for the project will be provided by Others and are not part of this limited scope.

**Task 406 - Storm Water Pollution Prevention Plan (SWPPP)**

KH will prepare a Storm Water Pollution Prevention Plan (SWPPP) for the site in general accordance with current published Minnesota Pollution Control Agency's NPDES permit and the Jurisdiction's requirements. This task will incorporate the Erosion Control Plan for the site, prepared under a separate task, to be included with the SWPPP report. The contractor is responsible for all permit application, inspections, record keeping, and adjustments to the SWPPP during construction in accordance with the terms of their permits.

**Task 408 - Agency and Project Meetings**

KH will prepare for and attend meetings with the design team, reviewing staff, City, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. This scope includes four project meetings.

**Task 511 - Stormwater Analysis, Modeling & Technical Report**

KH will prepare a drainage technical report based on the current requirements of the local jurisdiction (City and Watershed). The report will summarize the on-site conveyance and treatment system designed to meet the local jurisdictions' requirements related to volume and rate control of stormwater. This task includes addressing up to two rounds of ordinary and reasonable review comments from the local jurisdictions.

It is understood that the site disturbance will be greater than one acre. This will require the development of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the Minnesota Pollution Control Agency's NPDES permit and the Jurisdiction's requirements. KH will assist the Client and their Contractor in the preparation of the Notice of Intent (NOI) and the Notice of Termination (NOT). KH is not responsible for on-site erosion during construction.

**Task 702 - Landscape and Hardscape Design Development**

KH will prepare Landscape and Hardscape Design Development plans. The Design Development plans will show layout and details for City code review and preliminary pricing, but they will not include enough detail for construction. The Design Development plans are intended to guide the design, planning, and programming of the project and are to be used by the client to develop an approximate construction cost. KH will attend one meeting with the Client to review the plans. Based on input received during this meeting, KH will prepare the Final Design Development Plan that will become the basis of further design efforts.

**Task 703 - Landscape and Hardscape Construction Drawings**

Based on the Design Development plans, KH will prepare Landscape and Hardscape Construction Documents consisting of:

General Notes, Project Specifications, and Materials Legend: Showing general notes related to proposed construction based on jurisdictional standards.

Hardscape Plans and Layout Plans: Showing site hardscape materials and specifications, as well as dimensional control and layout for proposed hardscape.

Planting Plans: Showing plant species, sizes, and location with associated details for canopy trees, ornamental trees, shrubs and groundcover, and turf.

Landscape and Hardscape Details: Showing hardscape elements explicitly included in the Design Development package, consisting of details, sections, and elevation views. Certain submittals, shop drawings, samples, cut sheets and mockups will be listed for approval by Landscape Architect.

Design of signage, retaining walls, fountains, pools, pergolas, enclosures, grills, irrigation and/or other special features is not included in this scope.

### **Task 708 - Agency and Project Meetings**

KH will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders, to the extent requested by the client and budgeted for in this agreement.

### **Task 801 - Response to RFI / Submittals - Civil**

Clarifications and Interpretations: KH 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.

Review and Response to Shop Drawings: KH will review and approve or take other appropriate action with respect to Shop Drawings, Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.

### **Task 802 - Site Visits - Civil**

KH will visit the site to observe construction of improvements designed by KH. Visits will be periodic and observations will not be exhaustive or extend to every aspect of Contractor's work in progress. KH shall not, during such visits or as a result of such observations supervise, direct, control, influence, or have responsibility over Contractor's work. KH neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents or permits. KH has included three site visits for civil items.

### **Task 804 - Response to RFI / Submittals - Landscape**

Clarifications and Interpretations: KH 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.

Review and Response to Shop Drawings: KH will review and approve or take other appropriate action with respect to Shop Drawings, Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.

### **Task 805 - Site Visits - Landscape**

KH will visit the site to observe construction of improvements designed by KH. Visits will be periodic and observations will not be exhaustive or extend to every aspect of Contractor's work in progress. KH shall not, during such visits or as a result of such observations supervise, direct, control, influence, or have responsibility over Contractor's work. KH neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents or permits. KH has included two site visits for landscape items.



**FEE TYPES, EXPENSES, BILLING, STANDARD PROVISIONS**

Lump Sum (LS) tasks will be invoiced based on the percent completion of the tasks. Hourly (H) tasks will be invoiced according to the hourly rate schedule in effect at the time services are provided. Actual invoiced amounts for Hourly (H) tasks will be based on the effort expended.

Reimbursable Expenses: Direct reimbursable expenses such as FedEx, couriers, print-shop reproduction, travel, and other direct expenses will be billed at cost plus the markup as shown in the Task and Fee Summary Table.

All permitting, application, recording, and similar project fees will be paid directly by the Client.

Project billing will be monthly and payment will be due within 25 days.

The Consultant is not a Contingent Partner in this project. As such the Consultant will be paid in full for all Professional Services rendered.

This agreement is subject to, and only to, the attached Standard Provisions.

## AUTHORIZATION

We appreciate the opportunity to provide these services to you. This agreement must be signed within 60 days without being subject to our revision.

Very truly yours,

**KIMLEY-HORN AND ASSOCIATES, INC.**



William D. Matzek, P.E.  
Vice President



Mitchell Cookas, ASLA, LEED Green Associate  
Senior Project Manager

Agreed to by:

**292 Design Group**

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Signature

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Title

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Date

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Client email address for invoicing purposes

**STANDARD PROVISIONS**

- (1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- (2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
  - (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
  - (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
  - (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
  - (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- (3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- (4) **Method of Payment.** Client shall be pay Consultant 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 the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25th day. If the Client fails to make any payment due 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.
  - (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 and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it 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, 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 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) **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, 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 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 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. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

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

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within two years of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

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

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

(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. 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.