



City of Hutto

MINUTES

City Council Meeting

Thursday, December 3, 2020 at 7:00 PM

City Council Chambers

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at www.huttotx.gov

1. CALL SESSION TO ORDER - *7:00 PM*
2. ROLL CALL

Members of City Council present were Councilmember Robin Sutton, Councilmember Dan Thornton, Councilmember Mike Snyder, Councilmember Peter Gordon, Councilmember Tanner Rose and Councilmember Patti Martinez

Members of staff that were present were Warren Hutmacher, City Manager; Stacy Schmitt, Assistant to City Manager; Samuel Ray, Director of Engineering Holly Nagy, City Secretary and Cristian Rosas-Grillet, Assistant City Attorney

3. INVOCATION
4. PLEDGE OF ALLEGIANCE
5. CITY COUNCIL COMMENTS
 - 5.1. General Comments from City Council
 - 5.2. City Council Liaison Reports
6. PUBLIC COMMENT

Kelly Lewis- via email
Terrance Owens

7. CITY MANAGER COMMENTS

- Holidays in Hutto event

8. CONSENT AGENDA ITEMS

Councilmember Sutton made a motion to move items 10.3 and 10.4 up.
Councilmember Rose seconded the motion. The motion passed unanimously.

Councilmember Gordon made an amendment to do consent first then item 10.3

and item 10.4 Councilmember Martinez seconded the motion. The motion passed unanimously.

- 8.1. Consideration and possible action on approving the February 20, 2020 City Council meeting minutes.
- 8.2. Consideration and possible action on a resolution approving the proposed Wilco Ranch Phase 2 Section 1 Final Plat, 15.878 acres, more or less, of land, 84 residential lots, located at CR 119 at Limmer Loop.(Ashley Lumpkin)
- 8.3. Consideration and possible action on approving Resolution No. R-2020-132 authorizing the City Manager to accept the Infrastructure Improvements for the Cross Creek Phase 2 Subdivision. (Anthony Host)
- 8.4. Consideration and possible action on approving Resolution No. R-2020-133 authorizing the City Manager to accept the infrastructure improvements for the Brooklands Section 3 subdivision. (Anthony Host)
- 8.5. Consideration and possible action on Ordinance No. O-2020-033 accepting and approving Annual Service and Assessment Plan Update for Co-Op Public Improvement District. (Second Reading)(City Attorney)

A revised Resolution No. R-2020-133 for Consent Agenda item 8.4, Acceptance of Brooklands Infrastructure, Phase 3, was provided to Council by City Staff prior to the start of the December 3, 2020 City Council meeting.

Councilmember Gordon made a motion to approve consent agenda items as presented tabling item 8.5. Councilmember Martinez seconded the motion. The motion passed unanimously.

9. ORDINANCES

10. RESOLUTIONS

- 10.3. Consideration and possible action to approve Resolution No. R-2020-128 of the City of Hutto, Texas, ordering a special election to be held on March 6, 2021, for the purpose of filling a vacancy for Mayor; designating election day precincts and polling places; providing for early voting and election day voting; providing for performance of required administrative duties; making provisions for the conduct of such election; certifying provision of required accessible voting systems; and providing for other matters related to such election.

Councilmember Sutton made a motion to approve item 10.3 as presented. Councilmember Rose seconded the motion. The motion passed unanimously.

- 10.4. Consideration and possible action on Resolution No. R-2020-139 declaring the purported Separation Agreement of November 22, 2019 between Odis Jones and the City of Hutto void or alternatively, avoiding and rescinding the purported Separation Agreement and establishing an effective employment termination date. (City Attorney)

Councilmember Sutton made a motion to approve as presented with the word alternatively struck, added after the determination date of December 31, 2019.

Councilmember Rose seconded the motion.

Council convened into executive session at 7:23 PM.

Council reconvened into open session at 7:53 PM.

Councilmember Martinez would like to amend the motion to add back the word alternatively and remove the date December 31, 2019. Councilmember Thornton seconded the motion. The motion passed unanimously.

Councilmember Martinez made a motion to approve item 10.4 as presented. Councilmember Thornton seconded the motion. The motion passed unanimously.

Councilmember Rose made a motion to move item 11.3 up. Councilmember Martinez seconded the motion. The motion passed unanimously.

11.3. Presentation of Parks Annual Report.

Chairperson Perry Savard presented the report.

10.1. Consideration of a public hearing and possible action on a resolution approving the Landing Preliminary Plat, 46.017 acres, more or less, of land, 3 multifamily lots, located on Exchange Boulevard. (Ashley Lumpkin)

Public hearing opened: 8:33 PM

Public hearing closed: 8:33 PM

No one was present to speak during public hearing.

Councilmember Martinez made a motion to approve item 10.1 as recommended by the Planning and Zoning Commission. Councilmember Gordon seconded the motion. The motion passed (5:1) with Councilmember Sutton against.

10.2. Consideration and possible action to approve Resolution No. R- 2020-109 approving and authorizing the City Manager to execute a cost sharing agreement with Developer for The Bridge Community Church for the installation of an offsite wastewater line related to the Lakeside Estates Lift Station decommissioning project. (Samuel Ray).

Councilmember Martinez made a motion to approve item 10.2 as presented. Councilmember Rose seconded the motion. The motion passed unanimously.

11. OTHER BUSINESS

11.1. Discussion on Senior Tax Exemption.

Discussion ensued. Item will be brought back for further discussion and consideration.

- 11.2. Consideration of and possible appointments, re-appointments and/or removals to City Boards, Commissions, Task Forces, and Local Government Corporations. (City Secretary)

No action taken.

- 11.4. Consideration and possible action to excuse absences of Councilmember Martinez on September 17, 2020 and November 5, 2020.

Councilmember Gordon motion to approve item 11.4 as presented. Councilmember Thornton seconded the motion. The motion passed unanimously.

- 11.5. Discussion on the Brushy Creek Amphitheater.

Discussion ensued.

- 11.6. Lakeside Sidewalk Update/Solution. (Samuel Ray)

Discussion ensued.

12. EXECUTIVE SESSION: *Entered: 10:08 PM*

- 12.1. Receive legal advice pursuant to Texas Local Government Code Section 551.071 relating to the CO-OP Master Development Agreement executed August 17, 2017, as amended and ancillary agreements entered into pursuant to the CO-OP Master Development Agreement executed August 17, 2017, as amended.
- 12.2. Receive legal advice pursuant to Texas Government Code Sec. 551.071 related to Pending Legal Requests, Potential Claims and City Council Legal Requests.
- Kimley Horn invoices.

13. ACTION RELATIVE TO EXECUTIVE SESSION: *Reconvened: 11:20 PM*

- 13.1. Consider and possible action on legal advice pursuant to Texas Local Government Code Section 551.071 relating to the CO-OP Master Development Agreement executed August 17, 2017, as amended and ancillary agreements entered into pursuant to the CO-OP Master Development Agreement executed August 17, 2017, as amended.

- No action taken.

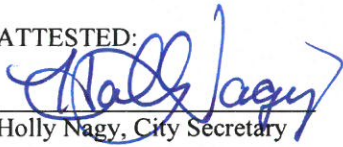
- 13.2. Possible action related to legal advice received pursuant to Texas Government Code Sec. 551.071 related to Pending Legal Requests, Potential Claims and City Council Legal Requests. - Kimley Horn invoices.

Councilmember Martinez made a motion to authorize the payment of the Kimley Horn invoices in an amount not to exceed \$825,839.50 from the taxable series 2019 Bonds for services and deliverables related to the projects authorized by those Bonds. Councilmember Gordon seconded the motion. The motion passed (5:1) with Councilmember Rose against.

**NOTE* Please see attached documentation for this item.*

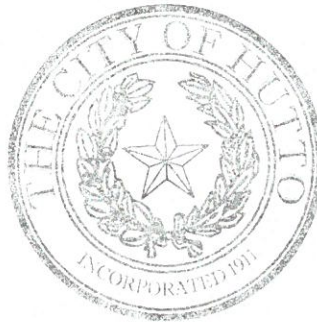
14. ADJOURNMENT *11:25 PM*

ATTESTED:


Holly Nagy, City Secretary



Mike Snyder, Mayor Pro Tem





CITY OF HUTTO, TEXAS
ATTN: MISTI HANCOCK
500 W. LIVE OAK STREET
HUTTO, TX 78634

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

SUMMARY OF OUTSTANDING INVOICES AS OF 10/28/2020

This is not an invoice. It is a summary of outstanding invoices.
Please disregard this notice if you have already sent payment for the invoices referenced below.

Project	Project Name	Invoice Date	Invoice	Invoice Amount	Amount Received	Balance Due
Project Manager: KERBY, JONATHAN						
	HUTTO MIXED USE	11/30/19	064105015-1119	27,690.80	0.00	27,690.80
	HUTTO MIXED USE	12/31/19	064105015-1219	22,648.70	0.00	22,648.70
TOTAL FOR HUTTO MIXED USE OUTSTANDING INVOICES				50,339.50	0.00	50,339.50
	PERFECT GAME HUTTO	11/30/19	064105017-1119	185,500.00	0.00	185,500.00
	PERFECT GAME HUTTO	12/31/19	064105017-1219	390,000.00	0.00	390,000.00
	PERFECT GAME HUTTO	01/31/20	064105017-0120	200,000.00	0.00	200,000.00
TOTAL FOR PERFECT GAME HUTTO OUTSTANDING INVOICES				775,500.00	0.00	775,500.00
				TOTAL AMOUNT DUE		\$825,839.50

Payment Information

Please Send Payments to:

KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

For Electronic Payments:

ABA#: 121000248
Bank Name and Address: Wells Fargo Bank, N.A., San Francisco, CA 94163
Account Number: 207 308 915 9554
Account Name: Kimley-Horn and Associates, Inc.

Please be sure to include the project number(s) and invoice number(s) in the addenda records.
Wire transfer information is available upon request.

If you have questions or concerns regarding this invoice, please call Bridgette Shamburger at (972) 770-3028.

CITY OF HUTTO
ATTN: MICHAEL SORRELL
500 W. LIVE OAK STREET
HUTTO, TX 78634

Invoice No: 064105015-1119
Invoice Date: Nov 30, 2019
Invoice Amount: \$27,690.80
Project No: 064105015
Project Name: HUTTO MIXED USE
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

For Services Rendered through Nov 30, 2019

Federal Tax Id: 56-0885615

LUMP SUM

KHA Ref # 064105015.1-14284832

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
BOUNDARY, IMPROVEMENTS, & TOPO SURVEY	51,000.00	100.00%	51,000.00	51,000.00	0.00
DRAINAGE DUE DILIGENCE MEMO	5,500.00	100.00%	5,500.00	5,500.00	0.00
FRANCHISE UTILITY COORDINATION	4,000.00	100.00%	4,000.00	4,000.00	0.00
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS	5,000.00	100.00%	5,000.00	5,000.00	0.00
TRIP GENERATION, DISTRIBUTION, & ASSIGNMENT	2,500.00	100.00%	2,500.00	2,500.00	0.00
DATA COLLECTION	5,000.00	100.00%	5,000.00	5,000.00	0.00
CAPACITY ANALYSIS	11,000.00	80.00%	8,800.00	0.00	8,800.00
DOCUMENT STUDY RESULTS	5,000.00	80.00%	4,000.00	0.00	4,000.00
MEETINGS	4,000.00	60.00%	2,400.00	0.00	2,400.00
ADDT'L MEETINGS, TXDOT COORD, & ADDT'L COMMENT RESPONSE	7,500.00	30.00%	2,250.00	0.00	2,250.00
OFFICE EXPENSE (6%)	6,030.00	90.00%	5,427.00	4,380.00	1,047.00
Subtotal	106,530.00	90.00%	95,877.00	77,380.00	18,497.00
Total LUMP SUM					18,497.00

LUMP SUM

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
BOUNDARY, IMPROVEMENTS, & TOPO SURVEY	16,000.00	100.00%	16,000.00	16,000.00	0.00
OFFICE EXPENSE (6%)	960.00	100.00%	960.00	960.00	0.00
Subtotal	16,960.00	100.00%	16,960.00	16,960.00	0.00
Total LUMP SUM					0.00

CITY OF HUTTO
ATTN: MICHAEL SORRELL
500 W. LIVE OAK STREET
HUTTO, TX 78634

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Federal Tax Id: 56-0885615

Invoice No: 064105015-1119
Invoice Date: Nov 30, 2019
Invoice Amount: \$27,690.80

Project No: 064105015
Project Name: HUTTO MIXED USE
Project Manager: KERBY, JONATHAN

Client Reference:

For Services Rendered through Nov 30, 2019

HOURLY

KHA Ref # 064105015.2-15348131

Description	Amount Billed to Date	Previous Amount Billed	Current Amount Due
SITE PLANNING	10,000.00	10,000.00	0.00
ZONING PUD ASSISTANCE	8,660.00	490.00	8,170.00
MEETINGS; EXHIBITS	10,412.50	9,972.50	440.00
REIMBURSABLE EXPENSES	67.21	0.00	67.21
OFFICE EXPENSE	1,744.30	1,227.71	516.59
Subtotal	30,884.01	21,690.21	9,193.80
Total HOURLY			9,193.80

Total Invoice: \$27,690.80

CITY OF HUTTO, TEXAS
ATTN: MICHAEL SORRELL
500 W. LIVE OAK STREET
HUTTO, TX 78634

Invoice No: 064105015-1219
Invoice Date: Dec 31, 2019
Invoice Amount: \$22,648.70
Project No: 064105015
Project Name: HUTTO MIXED USE
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

For Services Rendered through Dec 31, 2019

Federal Tax Id: 56-0885615

LUMP SUM

KHA Ref # 064105015.1-15477593

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
BOUNDARY, IMPROVEMENTS, & TOPO SURVEY	51,000.00	100.00%	51,000.00	51,000.00	0.00
DRAINAGE DUE DILIGENCE MEMO	5,500.00	100.00%	5,500.00	5,500.00	0.00
FRANCHISE UTILITY COORDINATION	4,000.00	100.00%	4,000.00	4,000.00	0.00
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS	5,000.00	100.00%	5,000.00	5,000.00	0.00
TRIP GENERATION, DISTRIBUTION, & ASSIGNMENT	2,500.00	100.00%	2,500.00	2,500.00	0.00
DATA COLLECTION	5,000.00	100.00%	5,000.00	5,000.00	0.00
CAPACITY ANALYSIS	11,000.00	100.00%	11,000.00	8,800.00	2,200.00
DOCUMENT STUDY RESULTS	5,000.00	100.00%	5,000.00	4,000.00	1,000.00
MEETINGS	4,000.00	100.00%	4,000.00	2,400.00	1,600.00
ADD'T'L MEETINGS, TXDOT COORD, & ADD'T'L COMMENT RESPONSE	7,500.00	100.00%	7,500.00	2,250.00	5,250.00
OFFICE EXPENSE (6%)	6,030.00	100.00%	6,030.00	5,427.00	603.00
Subtotal	106,530.00	100.00%	106,530.00	95,877.00	10,653.00
Total LUMP SUM					10,653.00

LUMP SUM

KHA Ref # 064105015.L-15477592

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
BOUNDARY, IMPROVEMENTS, & TOPO SURVEY	16,000.00	100.00%	16,000.00	16,000.00	0.00
OFFICE EXPENSE (6%)	960.00	100.00%	960.00	960.00	0.00
Subtotal	16,960.00	100.00%	16,960.00	16,960.00	0.00
Total LUMP SUM					0.00

CITY OF HUTTO, TEXAS
ATTN: MICHAEL SORRELL
500 W. LIVE OAK STREET
HUTTO, TX 78634

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Federal Tax Id: 56-0885615

Invoice No: 064105015-1219
Invoice Date: Dec 31, 2019
Invoice Amount: \$22,648.70

Project No: 064105015
Project Name: HUTTO MIXED USE
Project Manager: KERBY, JONATHAN

Client Reference:

For Services Rendered through Dec 31, 2019

HOURLY

KHA Ref # 064105015.2-15661166

Description	Amount Billed to Date	Previous Amount Billed	Current Amount Due
SITE PLANNING	10,000.00	10,000.00	0.00
ZONING PUD ASSISTANCE	20,000.00	8,660.00	11,340.00
MEETINGS; EXHIBITS	10,412.50	10,412.50	0.00
REIMBURSABLE EXPENSES	67.21	67.21	0.00
OFFICE EXPENSE	2,400.00	1,744.30	655.70
Subtotal	42,879.71	30,884.01	11,995.70
Total HOURLY			11,995.70

Total Invoice: \$22,648.70

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

Invoice No: 064105017-1119
Invoice Date: Nov 30, 2019
Invoice Amount: \$185,500.00

Project No: 064105017
Project Name: PERFECT GAME HUTTO
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

Federal Tax Id: 56-0885615

For Services Rendered through Nov 30, 2019

PHASE 1 AND OVERALL CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
OPINION OF PROBABLE CONSTRUCTION COST	35,000.00	10.00%	3,500.00	0.00	3,500.00
RIGHT-OF-WAY ABANDONMENT ASSISTANCE	8,000.00	20.00%	1,600.00	0.00	1,600.00
CHAMPIONS AVENUE CIVIL ENGINEERING PLANS	57,000.00	10.00%	5,700.00	0.00	5,700.00
MAIN STREET CIVIL ENGINEERING PLANS	128,000.00	10.00%	12,800.00	0.00	12,800.00
ONSITE STORM WATER DETENTION FACILITY	23,500.00	9.79%	2,300.00	0.00	2,300.00
TEMPORARY CHANNEL & DETENTION DRAINAGE	41,000.00	10.00%	4,100.00	0.00	4,100.00
Subtotal	292,500.00	10.26%	30,000.00	0.00	30,000.00
Total LUMP SUM					30,000.00

MASS GRADING AND DRAINAGE STUDY

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
TOPOGRAPHIC SURVEY	13,000.00	100.00%	13,000.00	0.00	13,000.00
MASS GRADING AND OVERALL UTILITY PLANS	34,500.00	100.00%	34,500.00	0.00	34,500.00
DOWNSTREAM ASSESSMENT	26,000.00	100.00%	26,000.00	0.00	26,000.00
MEETINGS, EXHIBITS, ON-CALL SERVICES	12,000.00	100.00%	12,000.00	0.00	12,000.00
Subtotal	85,500.00	100.00%	85,500.00	0.00	85,500.00
Total LUMP SUM					85,500.00

PERFECT GAME ON-SITE CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
ONSITE CIVIL ENGINEERING PG FIELDS (100 AC)	234,000.00	7.50%	17,550.00	0.00	17,550.00
MEETINGS, EXHIBITS, ON-CALL SERVICES	24,000.00	10.21%	2,450.00	0.00	2,450.00
Subtotal	258,000.00	7.75%	20,000.00	0.00	20,000.00
Total LUMP SUM					20,000.00

PERFECT GAME PLAYING FIELDS

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
PLAYING FIELD MASTERPLAN/ PERF GOALS	16,000.00	100.00%	16,000.00	0.00	16,000.00
SCHEMATIC DESIGN	29,000.00	100.00%	29,000.00	0.00	29,000.00
MEETINGS/TEAM COORDINATION	43,000.00	11.63%	5,000.00	0.00	5,000.00
Subtotal	88,000.00	56.82%	50,000.00	0.00	50,000.00
Total LUMP SUM					50,000.00

Total Invoice: 185,500.00

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

Invoice No: 064105017-1219
Invoice Date: Dec 31, 2019
Invoice Amount: \$390,000.00

Project No: 064105017
Project Name: PERFECT GAME HUTTO
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

Federal Tax Id: 56-0885615

For Services Rendered through Dec 31, 2019

PHASE 1 AND OVERALL CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
OPINION OF PROBABLE CONSTRUCTION COST	35,000.00	25.00%	8,750.00	3,500.00	5,250.00
RIGHT-OF-WAY ABANDONMENT ASSISTANCE	8,000.00	35.00%	2,800.00	1,600.00	1,200.00
CHAMPIONS AVENUE CIVIL ENGINEERING PLANS	57,000.00	25.00%	14,250.00	5,700.00	8,550.00
MAIN STREET CIVIL ENGINEERING PLANS	128,000.00	25.00%	32,000.00	12,800.00	19,200.00
ONSITE STORM WATER DETENTION FACILITY	23,500.00	30.00%	7,050.00	2,300.00	4,750.00
TEMPORARY CHANNEL & DETENTION DRAINAGE	41,000.00	30.00%	12,300.00	4,100.00	8,200.00
MEETINGS; EXHIBITS; ONCALL SERVICES.	36,000.00	7.92%	2,850.00	0.00	2,850.00
Subtotal	328,500.00	24.35%	80,000.00	30,000.00	50,000.00
Total LUMP SUM					50,000.00

PERFECT GAME ON-SITE CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
OPINION OF PROBABLE CONSTRUCTION COST	17,500.00	50.00%	8,750.00	0.00	8,750.00
ONSITE CIVIL ENGINEERING PG FIELDS (100 AC)	234,000.00	40.50%	94,770.00	17,550.00	77,220.00
MEETINGS, EXHIBITS, ON-CALL SERVICES	24,000.00	21.79%	5,230.00	2,450.00	2,780.00
Subtotal	258,000.00	38.76%	100,000.00	20,000.00	80,000.00
Total LUMP SUM					80,000.00

PERFECT GAME PLAYING FIELDS

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
PLAYING FIELD MASTERPLAN PERF GOALS	16,000.00	100.00%	16,000.00	16,000.00	0.00
SCHEMATIC DESIGN	29,000.00	100.00%	29,000.00	29,000.00	0.00
DESIGN DEVELOPMENT	134,000.00	100.00%	134,000.00	0.00	134,000.00
ISSUE FOR CONSTRUCTION DOCUMENTS	215,000.00	15.00%	32,250.00	0.00	32,250.00
MEETINGS/TEAM COORDINATION	43,000.00	36.40%	15,650.00	5,000.00	10,650.00
PLAYING FIELD FENCING	49,000.00	20.00%	9,800.00	0.00	9,800.00
PLAYING FIELD LIGHTING	148,000.00	20.00%	29,600.00	0.00	29,600.00
PLAYING FIELD STRUCTURES	62,500.00	20.00%	12,500.00	0.00	12,500.00
CHAMPIONSHIP FIELD SEATING	47,000.00	20.00%	9,400.00	0.00	9,400.00
SITE ELECTRICAL, AUDIO, VIDEO, LOW VOLTAGE	59,000.00	20.00%	11,800.00	0.00	11,800.00
Subtotal	802,500.00	28.27%	226,900.00	50,000.00	250,000.00
Total LUMP SUM					250,000.00

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

Invoice No: 064105017-1219
Invoice Date: Dec 31, 2019
Invoice Amount: \$390,000.00

Project No: 064105017
Project Name: PERFECT GAME HUTTO
Project Manager: KERBY, JONATHAN

Client Reference:

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Federal Tax Id: 56-0885615

For Services Rendered through Dec 31, 2019

US 79 ROADWAY IMPROVEMENTS

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
DATA COLLECTION	4,200.00	100.00%	4,200.00	0.00	4,200.00
TOPOGRAPHIC SURVEY AND SUE	30,300.00	19.14%	5,800.00	0.00	5,800.00
					0.00
Subtotal	30,300.00	19.14%	5,800.00	0.00	10,000.00
Total LUMP SUM					10,000.00

Total Invoice: 390,000.00

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

Invoice No: 064105017-0120
Invoice Date: Jan 31, 2019
Invoice Amount: \$200,000.00

Project No: 064105017
Project Name: PERFECT GAME HUTTO
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

Federal Tax Id: 56-0885615

For Services Rendered through Jan 31, 2020

PHASE 1 AND OVERALL CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
OPINION OF PROBABLE CONSTRUCTION COST	35,000.00	40.00%	14,000.00	8,750.00	5,250.00
RIGHT-OF-WAY ABANDONMENT ASSISTANCE	8,000.00	90.00%	7,200.00	2,800.00	4,400.00
PRELIMINARY PLAT UP TO 10 LOTS	19,500.00	10.00%	1,950.00	0.00	1,950.00
CHAMPIONS AVENUE CIVIL ENGINEERING PLANS	57,000.00	35.00%	19,950.00	14,250.00	5,700.00
MAIN STREET CIVIL ENGINEERING PLANS	128,000.00	35.00%	44,800.00	32,000.00	12,800.00
ROUNDABOUT DESIGN	62,000.00	10.00%	6,200.00	0.00	6,200.00
ONSITE STORM WATER DETENTION FACILITY	23,500.00	40.00%	9,400.00	7,050.00	2,350.00
TEMPORARY CHANNEL & DETENTION DRAINAGE	41,000.00	40.00%	16,400.00	12,300.00	4,100.00
LANDSCAPE ARCH SITE PLANNING ASSISTANCE	10,000.00	10.00%	1,000.00	0.00	1,000.00
FRANCHISE UTILITY COORDINATION	18,000.00	10.00%	1,800.00	0.00	1,800.00
MEETINGS; EXHIBITS; ONCALL SERVICES.	36,000.00	17.50%	6,300.00	2,850.00	3,450.00
SUBMITTALS & PERMITTING	10,000.00	10.00%	1,000.00	0.00	1,000.00
Subtotal	448,000.00	28.79%	129,000.00	80,000.00	50,000.00
Total LUMP SUM					50,000.00

PERFECT GAME ON-SITE CIVIL

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
OPINION OF PROBABLE CONSTRUCTION COST	17,500.00	60.00%	10,500.00	8,750.00	1,750.00
ONSITE CIVIL ENGINEERING PG FIELDS (100 AC)	234,000.00	50.84%	118,970.00	94,770.00	24,200.00
MEETINGS, EXHIBITS, ON-CALL SERVICES	24,000.00	33.46%	8,030.00	5,230.00	2,800.00
SUBMITTALS & PERMITTING	10,000.00	30.00%	3,000.00	0.00	3,000.00
Subtotal	258,000.00	49.22%	127,000.00	100,000.00	30,000.00
Total LUMP SUM					30,000.00

PERFECT GAME LANDSCAPE ARCHITECTURE

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
SCHEMATIC DESIGN	25,000.00	28.00%	7,000.00	0.00	7,000.00
MEETINGS, EXHIBITS, ON-CALL SERVICES	20,000.00	15.00%	3,000.00	0.00	3,000.00
Subtotal	20,000.00	15.00%	3,000.00	0.00	10,000.00
Total LUMP SUM					10,000.00

LEGACY PG DEVELOPMENT, LLC
ATTN: DAN LOWE
4717 CENTRAL STREET
KANSAS CITY, MO 64112

Invoice No: 064105017-0120
Invoice Date: Jan 31, 2019
Invoice Amount: \$200,000.00

Project No: 064105017
Project Name: PERFECT GAME HUTTO
Project Manager: KERBY, JONATHAN

Please send payments to:
KIMLEY-HORN AND ASSOCIATES, INC.
P.O. BOX 951640
DALLAS, TX 75395-1640

Client Reference:

Federal Tax Id: 56-0885615

For Services Rendered through Jan 31, 2020

PERFECT GAME PLAYING FIELDS

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
PLAYING FIELD MASTERPLAN/ PERF GOALS	16,000.00	100.00%	16,000.00	16,000.00	0.00
SCHEMATIC DESIGN	29,000.00	100.00%	29,000.00	29,000.00	0.00
DESIGN DEVELOPMENT	134,000.00	100.00%	134,000.00	134,000.00	0.00
ISSUE FOR CONSTRUCTION DOCUMENTS	215,000.00	35.00%	75,250.00	32,250.00	43,000.00
MEETINGS/TEAM COORDINATION	43,000.00	41.45%	17,825.00	15,650.00	2,175.00
PLAYING FIELD FENCING	49,000.00	35.00%	17,150.00	9,800.00	7,350.00
PLAYING FIELD LIGHTING	148,000.00	35.00%	51,800.00	29,600.00	22,200.00
PLAYING FIELD STRUCTURES	62,500.00	35.00%	21,875.00	12,500.00	9,375.00
CHAMPIONSHIP FIELD SEATING	47,000.00	35.00%	16,450.00	9,400.00	7,050.00
SITE ELECTRICAL, AUDIO, VIDEO, LOW VOLTAGE	59,000.00	35.00%	20,650.00	11,800.00	8,850.00
Subtotal	802,500.00	33.90%	272,075.00	300,000.00	100,000.00
Total LUMP SUM					100,000.00

US 79 ROADWAY IMPROVEMENTS

Description	Contract Value	% Complete	Amount Earned to Date	Previous Amount Billed	Current Amount Due
DATA COLLECTION	4,200.00	100.00%	4,200.00	4,200.00	0.00
TOPOGRAPHIC SURVEY AND SUE	30,300.00	37.10%	11,240.00	5,800.00	5,440.00
PRELIMINARY 30% SCHEMATIC DESIGN	45,600.00	10.00%	4,560.00	0.00	4,560.00
Subtotal	75,900.00	20.82%	15,800.00	5,800.00	10,000.00
Total LUMP SUM					10,000.00

Total Invoice: 200,000.00

ASSIGNMENT OF PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into this 11th day of June, 2019 by and among Kimley-Horn and Associates, Inc. ("Kimley-Horn"); Wolverine Interests, LLC ("Client"); and the City of Hutto, Texas ("Hutto").

WHEREAS, Kimley-Horn has contracted with Client to perform certain professional services pursuant to various agreements attached hereto (the "Agreements"); and

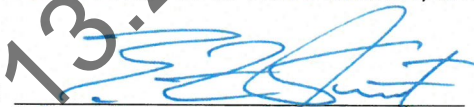
WHEREAS, Hutto desires to continue the project which is the subject of the Agreements and to direct Kimley-Horn to perform its services pursuant to the terms and conditions of the Agreements.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Client, with the consent of Kimley-Horn, hereby assigns to Hutto all of its rights, interests, and obligations in connection with the Agreements, and (a) Client hereby releases Kimley-Horn of all further obligations and liability of any kind in connection with the Agreements and (b) Kimley-Horn hereby releases Client of all further obligations and liability of any kind in connection with the Agreements.
2. Hutto agrees that it will perform all obligations of Client in the Agreements, included but not limited to payment of all Kimley-Horn's currently outstanding and future invoices.
3. Kimley-Horn agrees that it will be bound to Hutto to the same extent it is now bound to Client under the terms and conditions of the Agreements

IN WITNESS WHEREOF, Kimley-Horn, Client, and Hutto have caused this Assignment of Professional Services Agreements to be duly executed in their names by their duly authorized offices and their corporate seals to be affixed hereto, effective as of the date first written above.

KIMLEY-HORN AND ASSOCIATES, INC.

By: 

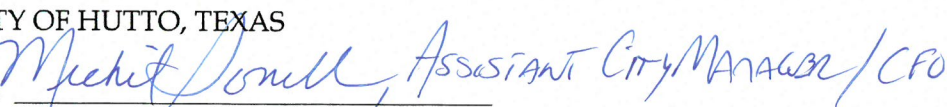
Eric Smith, Assistant Secretary

WOLVERINE INTERESTS, LLC

By: 

Jim Leslie, President

CITY OF HUTTO, TEXAS

By: 

Name and Title



Legacy Design Professional Agreement

THIS AGREEMENT is made as of the ____ day of November in the year 2019
(In words, indicate day, month and year)

BETWEEN the Design Professional's client identified as the Owner:

Legacy PG Development, LLC
4717 Central Street
Kansas City, MO 64112

and the Design Professional:

Kimley-Horn and Associates, Inc.
13455 Noel Drive, Ste 700
Dallas, TX 75240

And the City:

City of Hutto, TX
500 W Live Oak St
Hutto, TX 78634

The term "Design Professional" shall mean the professional firm, entity or individual named above. Depending on the scope of services, this may be an architect, civil engineer, landscape architect, graphic designer or other engineering consultant duly qualified (where) required by law to provide such services to Owner.

[NOTE: when the design professional listed above is not an architect, and the scope of services is other than for architectural services, it is understood that the word "Architect" (whenever used) shall mean "Design Professional" and the parties agree that the above design professional is not holding itself out as an architect, nor rendering architectural services]

For the following Project:

Professional services associated with the design and permitting of a Master Planned Mixed-Use project totaling approximately 294 acres in the City of Hutto, TX.

The Owner and Design Professional agree as follows.

ARTICLE 1 DESIGN PROFESSIONAL'S RESPONSIBILITIES

§ 1.1 The services performed by the Design Professional, Design Professional's employees and Design Professional's consultants shall be as enumerated in Articles 2, 3 and 12. Design Professional shall furnish at its expense all labor, materials, power, tools, equipment, and other items necessary to perform the Services, and shall obtain and pay for all permits, licenses, taxes, and other charges necessary to perform the Services. Design Professional shall not be obligated to perform those duties in sections of this Agreement that are not within the Scope of Services provided hereunder.

§ 1.2 The Design Professional's services shall be performed in a timely, competent, efficient and professional manner consistent with that level of skill, judgment and care ordinarily exercised by members of the professional currently practicing under similar conditions in the same geographic area. Within fourteen (14) days after the execution of this Agreement, the Design Professional shall submit directly to Owner, for the Owner's approval, a schedule for the performance of the Design Professional's services which may be adjusted as the Project proceeds. This schedule shall be submitted in Microsoft Project format and include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Professional or Owner. The approved schedule shall be addressed in each work letter and shall become a part of this Agreement even if preliminary.

§ 1.3 Representatives.

§ 1.3.1 The Design Professional shall designate a representative (the "Project Manager"), licensed in his or her profession and who is duly authorized to act on behalf of the Design Professional with respect to the Project. Aside from death, disability or termination of employment, such person shall not be replaced or changed without Owner's written consent. In the event of temporary absence of Design Professional's Project Manager (due to illness or vacation) Design Professional shall appoint a substitute Project Manager familiar with the Project and authorized to bind Design Professional. For purposes of this Project and Agreement, the Project Manager is Jonathan Kerby, whose contact information is as follows:

Address: 13455 Noel Rd, Ste 700
Dallas, TX 75240

Phone: 972-770-1370

e-mail: jonathan.kerby@kimley-horn.com

§ 1.3.2 The Design Professional shall also designate a licensed professional of record, properly licensed in the State in which the Project is located as an architect, landscape architect, professional engineer or other profession as is appropriate to the Scope of Design Professional's services. Such professional's seal and signature shall be placed on all documents in accordance with applicable state licensing law when prepared by the Design Professional. For purposes of this Project, the licensed professional of record shall be Jonathan Kerby, subject to change with written approval of Owner.

§ 1.4 The Services covered by this Agreement are subject to the time limitations contained in Section 11.5.1. This Agreement shall be in effect from the Effective Date through completion of Services or for the specified period of time set forth in the schedule identified in each work letter, unless sooner terminated by Owner as provided in Article 8 below, or except to the extent any obligations hereunder are reserved for or required to be performed after completion of the Services (i.e. indemnification obligations). This Agreement shall not be construed as Owner being committed to contract for a stated volume of work during the term hereof; Owner reserves the right to contract with other architects and design professionals to perform similar services for other areas of work. The parties recognize that to the extent Design Professional's services commenced prior to execution of this Agreement, such work or services performed prior to the date hereof shall be deemed governed by and subject to the terms and conditions of this Agreement.

§ 1.5 Subconsultants.

§ 1.5.1 The Design Professional shall identify on each work order letter the names and identify the specialties of any persons or firms who the Design Professional intends to subcontract with in order to fulfill the Design Professional's responsibilities. All such professionals shall be licensed in their respective profession in the State in which the Project

is located and shall not be changed without the Owner's written consent. Any subconsultants who have not been selected as of the date of this Agreement shall be identified in writing to Owner and subject to Owner's approval. The Owner will promptly reply to the Design Professional if it has any objection. The Design Professional shall not contract with any subconsultant over whom the Owner has reasonable objection. The Design Professional's Fee shall be adjusted if the Owner's objection causes a replacement whose fees are different than the proposed subconsultant.

§ 1.5.3 The Owner's approval of any proposed subconsultant shall not constitute acceptance of defective services nor relieve the Design Professional of its responsibilities hereunder.

§ 1.5.4 The Design Professional shall require its subconsultants to carry and maintain the limits and types of insurance required in **Exhibit C**.

§ 1.6 Design Professional represents that it is duly authorized to practice its profession and to render the Services in the state in which the Project is located and that all professional documents, reports, drawings or specifications shall be sealed by a licensed professional authorized to practice in the Project state.

ARTICLE 2 SCOPE OF DESIGN PROFESSIONAL'S SERVICES

§ 2.1 DEFINITION

§ 2.1.1 Design Professional agrees to provide the professional services (referred to herein as "Services" or "Scope of Services") as described in **Exhibit B** attached hereto and incorporated herein by reference. Each Work Order Letter will become an Exhibit to this contract and appropriately assigned a number designated at "Exhibit B - #". The Scope of Services may from time to time be modified and/or expanded by incorporating Additional Services through the execution of **Exhibit G**, Authorization for Additional Services, attached hereto becoming an amendment to the "Exhibit B Work Order" letter of agreement. Both **Exhibit B** and **Exhibit G** shall be provided according to the project schedule (the "Preliminary Schedule"), which will be incorporated into each "Project Work Order Letter". Services shall include all other professional services provided for this Project by Design Professional by Work Order Letter of agreement or otherwise prior to the date of this Agreement, except that no other terms of any prior agreements, other than the scope of services shall be incorporated herein.

§ 2.1.2 In addition to the Services in **Exhibit A and B**, the Design Professional's Basic Services consist of those described in Sections 2.2 through 2.7 and any other services identified in Article 12 as part of Basic Services.

§ 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 The Design Professional shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 2.2.2 The Design Professional shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

§ 2.2.3 The Design Professional shall review with the Owner alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Design Professional shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 2.2.5 For small scale projects with a limited scope, formal submittals for the Schematic Design Phase will be waived.

§ 2.3 DESIGN DEVELOPMENT PHASE

§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Professional shall prepare, for approval by the Owner, Design Development Documents. Where the Design Professional is an architect, the Design Development Documents shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

§ 2.3.2 For small scale projects with a limited scope, formal submittals for the Design Development Phase will be waived.

§ 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design Professional shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

§ 2.4.2 The Design Professional shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

§ 2.4.3 The Design Professional shall assist the Owner by filing documents required for the approval of governmental authorities having jurisdiction over the Project. Owner shall be responsible for plan review fees paid to governmental authorities.

§ 2.4.3 Notwithstanding anything to the contrary in this Agreement, in the event the Design Professional fails to incorporate sufficient detail in the Construction Documents to enable the Contractor to determine the intended performance of the work or scope, the Design Professional will be responsible for revising the Construction Documents (at its own expense) to include such necessary detail, whether in connection with a Request for Information (RFI) submitted pursuant to **Exhibit H** or otherwise; and in the event the failure to supply such necessary detail causes an increase in the Contractor's contract time or contract sum, the Design Professional shall be responsible for such increased cost. No approval of the Construction Documents or any prior versions or phase thereof by Owner shall constitute a release or waiver of the foregoing obligations, nor an acceptance by Owner of any errors, omissions, or other lack of detail necessary for the Contractor to determine performance or cost of its work.

§ 2.5 BIDDING OR NEGOTIATION PHASE

§ 2.5.1 The Design Professional, following the Owner's approval of the Construction Documents, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

§ 2.5.2 The terms on **Exhibit H** shall be incorporated into any Project Manual or specification book prepared by Design Professional. No changes may be made by Design Professional to the Project Manual without Owner's written approval. Design Professional shall not include any contrary or conflicting provisions in the Project Manual.

§ 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.6.1 The Design Professional's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and, terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

§ 2.6.2 The Design Professional shall provide administration of the Contract for Construction (General and Supplementary Conditions) as set forth below and in **Exhibit H**, unless otherwise provided in this Agreement. Modifications made to the Contract for Construction (General and Supplementary Conditions) or **Exhibit H**, if or when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Design Professional.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Design Professional under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Design Professional, subject to approval of the Owner's lender (if required by loan documents).

§ 2.6.4 The Design Professional shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 The Design Professional, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Design Professional in Article 12,

(1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Professional shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.6 The Design Professional shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Design Professional shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional shall be responsible for the Design Professional's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.7 The Design Professional shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 The Owner shall be entitled to communicate directly with the Contractor, or may choose to do so through the Design Professional about matters arising out of or relating to the Contract Documents. Communications by and with the Owner and the Design Professional's consultants shall be through the Design Professional unless such communications are with regard to services outside of Design Professional's Scope of Services. Owner may hire such consultants to perform services that are not within Design Professional's Scope of Services.

§ 2.6.9 Basic Services shall include evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom (regardless of which phase of Design Professional's services).

§ 2.6.10 The Design Professional shall within seven (7) days from receipt promptly review the Contractor's proposed Schedule of Values, make written recommendations or revisions (if any), and submit the same to the Owner for final review and approval.

§ 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 Within seven (7) days after receipt of the Contractor's Application for Payment, the Design Professional shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. If, however, there are circumstances or questions that require either additional information or a site visit to verify representations made by the Contractor, the Design Professional shall so inform both the Contractor and Owner in writing. In that case, the Design Professional shall make its recommendation and certification no later than seven (7) days after it receives the necessary information to verify the amounts and progress reported by the Contractor. The approved (or rejected) Application for Payment shall be submitted by the Design Professional to the Owner, with a copy to the Contractor. The provisions for submittal, review and certification of payment to the Contractor shall be as set out in the Contractor for Construction (or General and Supplementary Conditions).

§ 2.6.9.2 The Design Professional's certification for payment shall constitute a representation to the Owner, based on the Design Professional's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Design Professional.

§ 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to

payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.10 The Design Professional shall have authority to reject Work that does not conform to the Contract Documents. The Design Professional shall advise Owner prior to such rejection and give Owner the option to accept such condition (subject to a deductive Change Order) in lieu of correction. Whenever the Design Professional considers it necessary or advisable, the Design Professional shall advise the Owner that the Design Professional recommends either inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional to reject Work nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 The Design Professional shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.12 The Design Professional shall not delegate any design functions to the Contractor in the Contract Documents without the Owner's express approval. If such design services are within Design Professional's scope, then Design Professional's fee shall be reduced accordingly. If approved by Owner, then whenever professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Design Professional shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Design Professional. The Design Professional shall review all Contractor designs on behalf of the Owner and shall verify that they were prepared by licensed professionals, sealed as required by law. The Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. It is understood that manufactured products and components such as piping, elevators, boilers, mechanical or electrical equipment and plumbing fixtures are not designed by the Design Professional but are selected from manufacturers' catalogs or materials and are traditionally merely selected, but not designed, by Design Professional; therefore, no prior Owner approval is required for that type of design delegation by Design Professional.

§ 2.6.13 The Design Professional shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Design Professional as provided in the Contract for Construction (or General and Supplementary Conditions) or in Exhibit H. Subject to Owner's prior written approval, Design Professional may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 2.6.14 The Design Professional shall conduct inspections to determine the date or dates of Substantial Completion and to determine the date of final completion. Design Professional shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.15 The Design Professional shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

The Design Professional's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Design Professional shall make no such decision without first advising Owner of a request by Contractor and opportunity for Owner to provide Owner's position on the issue in question. Design Professional's decisions shall be advisory only and non-binding on the Owner and Contractor. The Owner reserves the right to make all final decisions in matters of Contractor's performance.

§ 2.6.16 Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Design Professional shall render initial, non-binding decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents, including Design Professional matters relating to aesthetic effect.

§ 2.6.18 The Design Professional's decisions on claims, disputes or other matters in question between the Owner and Contractor, including those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to mediation and litigation as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2, 3.3 and 3.4 shall only be provided if authorized in advance, in writing by the Owner on a signed Authorization for Additional Services form, **Exhibit G**. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the Owner prior to commencing such services and seek Owner's written authorization. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Design Professional. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Design Professional shall have no obligation to provide those services.

§ 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Design Professional shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

§ 3.2.2 Project Representatives shall be selected, employed and directed by the Design Professional, and the Design Professional shall be compensated therefor as agreed by the Owner and Design Professional. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

§ 3.2.3 Through the presence at the site of such Project Representatives, the Design Professional shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Design Professional as described elsewhere in this Agreement.

§ 3.3 CONTINGENT ADDITIONAL SERVICES

§ 3.3.1 Making substantial revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with written approvals or written instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

- 3 due to changes required as a result of the Owner's failure to render decisions in a timely manner. However, Design Professional shall give Owner prior notice of decisions that might impact on costs or schedule and which require a prompt decision in order to avoid additional costs.

§ 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

§ 3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives when such changes are initiated by the Owner or Contractor and not caused by Design Professional error or omission.

§ 3.3.4 For purposes of Section 3.3, it is anticipated that some changes in the design will occur as is anticipated in any project, and that minor revisions are included as Basic Services. Substantial revisions or significant changes in the Project are those that are abnormal, unanticipated, and involve multiple sheets of drawings and subconsultants. Design Professional shall make no claim for minor design changes requested by Owner during the design process.

§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work unless caused in whole or in part by the negligence of the Design Professional or its subconsultants.

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Design Professional is party thereto or except when the Design Professional's services, design or documents are at issue. Design Professional shall cooperate with any valid subpoena issued for documents or testimony and Owner shall have no obligation to pay other than as required by law for a party subjected to a subpoena.

§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

§ 3.4 OPTIONAL ADDITIONAL SERVICES

§ 3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

§ 3.4.2 Providing financial feasibility or other special studies.

§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 3.4.5 Providing services relative to future facilities, systems and equipment.

§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.4.9 Providing services for re-zoning, unless included in Exhibit B, Project Work Letter.

§ 3.4.10 Providing "detailed" estimates of Construction Cost.

§ 3.4.11 Providing "detailed" quantity surveys or inventories of material, equipment and labor. Nothing in this Section shall relieve Design Professional from performing basic reviews and assessments of work-in-place as part of Design Professional's certification of Contractor's Application for Payment.

§ 3.4.12 Providing analyses of owning and operating costs.

§ 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 3.4.14 Providing services for planning tenant or rental spaces, unless included in **Exhibit B**, Project Work Letter.

§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

§ 3.4.16 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation, unless included in **Exhibit B**, Project Work Letter.

§ 3.4.17 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work other than as stated in Section 2.7 for the one-year warranty inspection.

§ 3.4.18 Providing services of consultants for other than as set out in **Exhibit B**, Project Work Letter.

§ 3.4.19 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted practice by someone in Design Professional's profession.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall provide all criteria and full information as to Owner's requirements for the Services in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Design Professional, within 15 days after receipt of a written request, information necessary and relevant for the Design Professional to evaluate, give notice of or enforce lien rights.

§ 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The Owner's Director of Architecture and Engineering is authorized to act on the Owner's behalf with respect to the Project. During the Construction Phase, the Owner shall identify an Owner's Representative who is also authorized to act on Owner's behalf. The Owner or such designated representative(s) shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.

§ 4.4 If Owner provides Design Professional with a preliminary site plan, depicting proposed layout of improvements to the Property, Design Professional shall thoroughly review the site plan for compliance with applicable codes and make recommendations to Owner. Thereafter, Design Professional shall prepare the final site plan on its title block, sealed by Design Professional employed by the Design Professional and licensed in the project state. Design Professional shall be professionally responsible for the content of the final, sealed site plan.

§ 4.5 The Owner warrants that it is the legal owner of the Property on which Services are to be performed by Design Professional. The relationship of Owner and Design Professional is that of property owner and independent contractor

and no employer-employee relationship is hereby created. Neither Owner nor Design Professional shall enjoy any of the benefits nor be subject to any of the burdens that would arise, result or proceed or project from an employer-employee relationship, but instead all the rights and duties of each party shall be limited to those provided in this Agreement for independent contractual services. Design Professional shall be solely responsible for the payment of all social security and unemployment taxes, wage withholding and any other requirements with respect to its employees.

§ 4.6 The Owner shall furnish the services of consultants other than those designated in Design Professional's Scope of Services, **Exhibit B**, when such services are requested by the Design Professional and are reasonably required by the scope of the Project.

§ 4.7 Except as stated below, the Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents. Design Professional shall advise Owner whether special inspections are required by applicable code, including the type and frequency of such inspections. Design Professional shall assist Owner in obtaining proposals from inspection professionals to perform special inspections. At Owner's option, Owner will either contract directly with the special inspection firm or will include such services as Additional Services to Design Professional's Scope of Services. In either case, Design Professional shall advise Owner on the timing of necessary special inspections and will coordinate such inspections with the special inspection firm and with the Contractor.

§ 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 4.9 Unless otherwise stated, the services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 The Owner will provide reasonable access to the Property as necessary for Design Professional to perform the Services.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 5.1.3 Construction Cost does not include the compensation of the Design Professional and the Design Professional's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

§ 5.1.4 The Project Budget will be identified in each project work letter for all components and improvements to be designed by the Design Professional.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, represent the Design Professional's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive

bidding, market or negotiating conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Design Professional.

§ 5.2.2 The fixed limit of Construction Cost is stated in Section 5.1.4, above and is a condition of this Agreement. The Design Professional shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction except to the extent such increase is caused by Design Professional's negligent act, error or omission.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Design Professional submits the final, sealed Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Design Professional and the Design Professional's consultants are Instruments of Service. Design Professional acknowledges that the design of the Project is critical to the business plan of Owner and plays an important role in its competitive advantage. As such, Design Professional acknowledges that any design developed by it and/or in conjunction with Owner's architectural staff is Confidential Information and shall be subject to the terms of Section 12.1 of this Agreement. Design Professional represents that designs prepared by it for this Project shall be original and not a reproduction of a prior project, unless authorized in writing by Owner.

§ 6.2 Upon completion of services and payment of all monies due to Design Professional, Owner shall be deemed the owner of all plans, specifications, renderings, models, sketches and other documents (the "Design Documents") prepared by Design Professional or its subconsultants under this Agreement, including the copyrights and patents therein, and including any Architectural Works in any medium of expression. All drawings and specifications prepared by Design Professional or its subconsultants shall bear a written notice of copyright which lists: 1) "Copyright"; 2) Owner's name; 3) the year in which such document was prepared. Design Professional shall include this same provision in all of its subcontracts.

§ 6.3 Design Professional and its subconsultants shall be permitted to use any standard details or specification sections which were not specially prepared for Owner or for this Project in the normal course of their business without any further permission of Owner.

§ 6.4 In the event that Owner re-uses any of the Design Documents for another project, in whole or in part, without Design Professional's direct professional involvement, Owner agrees that it: 1) will remove Design Professional's name and seals; 2) will hire other professionals to revise or adapt such Design Documents as necessary; and 3) will indemnify and defend Design Professional from any suit, damage or loss resulting solely from such re-use of the Design Documents.

§ 6.5 As Additional Services, the Design Professional shall, upon request, assist the Owner in registering its copyrights in the documents and any Architectural Works.

ARTICLE 7 DISPUTE RESOLUTION

§ 7.0 PRELIMINARY PROCEDURES

§ 7.0.1 The parties agree to attempt to resolve all disputes amicably prior to any formal dispute resolution. The Design Professional's designated representative shall meet with the Owner's designated representative and attempt resolution within thirty days (30) after either party first makes written claim to the other. If such designated representatives cannot negotiate an acceptable settlement, then the claim shall be referred to the President of the Design Professional and the Managing Member of the Owner, who shall meet within fourteen (14) days after notice that the representatives have been unsuccessful. These preliminary procedures are a condition precedent to mediation or litigation.

§ 7.0.2 During resolution of any dispute, the Design Professional agrees to continue performance of the Services and shall proceed in accordance with the directives of the Owner pending resolution. Failure to so proceed shall constitute a material breach of this Agreement, regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the work, unless agreed to in writing by Owner.

§ 7.0.3 No disputes under this Agreement are subject to arbitration.

§ 7.1 MEDIATION

§ 7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved informally shall be subject to mediation as a condition precedent to any formal law suit. If such matter relates to or is the subject of a lien arising out of the Design Professional's services, the Design Professional may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

§ 7.1.2 The Owner and Design Professional shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, by a mediator jointly selected by the parties. If the parties are not able to reach agreement on an acceptable mediator, then either party may request appointment of a mediator in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a lawsuit but, in such event, mediation shall proceed in advance of any legal or equitable proceedings except for an injunction or other emergency relief, which action shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 7.1.3 The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in in which the project is located unless another location is mutually agreed upon. Mediation may involve other third parties whose presence is deemed necessary to resolution of the dispute. In the event of multi-party mediation, the mediator's fee shall be shared equally among all parties participating. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof as any other type of contract.

§ 7.2 LITIGATION

§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be litigated in the courts in which the project is located, or as mutually agreed between Design Professional and Owner. Prior to any such litigation, the parties shall endeavor to resolve disputes by mediation in accordance with Section 7.1.

§ 7.2.2 If any party hereto shall bring any suit or other action against another for relief, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the prevailing party's reasonable costs and expenses, including reasonable attorneys' fees and court costs. A "prevailing party" is one that recovers more than 85% of what was sought, or successfully defends over 85% of an affirmative claim against it.

§ 7.2.3 Design Professional agrees that Design Professional shall look solely to the interest of Owner in the Property identified on the first page of this Agreement as the Project, above, for the collection of any judgment (or other judicial process) requiring the payment of money by Owner upon a default or breach by Owner with respect to any of the terms and provisions of this Agreement and that no other assets of Owner shall be subject to levy, execution or other judicial process for the satisfaction of Design Professional's claim.

§ 7.3 INDEMNIFICATION

§ 7.3.1 To the fullest extent permitted by law, Design Professional shall indemnify and hold harmless Owner and its employees and representatives from and against all costs, damages, fines, losses and expenses, including, but not limited to, reasonable attorneys' fees, court costs, investigation costs and all other reasonable costs and expenses arising out of, in connection with, or resulting from Design Professional's performance of the Services under this Agreement, but only to the extent caused by the negligence or breach of contract by Design Professional, its employees, sub-Design Professionals or others for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce insurance requirements or other rights or obligations of indemnity which otherwise exist as to Design Professional. Design Professional's obligations under this Section 7.3 shall survive the expiration or termination of this Agreement.

§ 7.3.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design Professional and its employees and representatives from and against all costs, damages, fines, losses and expenses, including, but not limited to, reasonable attorneys' fees, court costs, investigation costs and all other reasonable costs and expenses arising out of, in connection with, or resulting from Owner's performance of the Services under this Agreement, but only to the extent caused by the negligence or breach of contract by Owner, its employees, or others for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce insurance requirements or other rights or obligations of indemnity which otherwise exist as to Design Professional. Design Professional's obligations under this Section 7.3 shall survive the expiration or termination of this Agreement.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments to the Design Professional in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design Professional's option, cause for suspension of performance of services under this Agreement. If the Design Professional elects to suspend services, prior to suspension of services, the Design Professional shall give seven days' written notice to the Owner. In the event of a suspension of services, the Design Professional shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Design Professional shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design Professional's services. The Design Professional's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Design Professional shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Design Professional shall be compensated for expenses incurred in the interruption and resumption of the Design Professional's services. The Design Professional's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Project is suspended or the Design Professional's services are suspended for more than 90 consecutive days, the Design Professional may terminate this Agreement by giving not less than seven days' written notice.

§ 8.4 This Agreement may be terminated for cause by either party upon not less than seven (7) days' written notice (the "Default Notice") should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Default Notice shall specify the nature of the default and requiring that the default be cured within such seven (7) period.

§ 8.5 This Agreement may be terminated by the Owner upon not less than five (5) days' written notice to the Design Professional for the Owner's convenience and without cause.

§ 8.6 In the event of termination not the fault of the Design Professional, Design Professional shall be paid for the Services rendered to the date of termination, but no payment shall be made for lost or anticipated profits or other direct, incidental or consequential damages. Following termination under Subsections 8.5, and except as provided in Section 7.3, Indemnity, both parties are relieved of all future obligations under this Agreement for matters arising or accruing after the date of termination.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the State where the Property is located, without regard to choice of law provisions.

§ 9.2 Unless otherwise defined herein, to the extent applicable, capitalized terms in this Agreement shall have the same meaning as those in the Contract for Construction (or General and Supplementary Conditions) or in **Exhibit H**. In the event of a conflict between any provision of this Agreement and anything in the Exhibits attached hereto or in any of Design Professional's documents, contracts, proposals, estimates or specifications, the terms and conditions of this Agreement shall prevail.

§ 9.3 This Agreement is acknowledged by the parties as the complete text of their mutual covenants and understanding, superseding all prior understandings which may differ from this Agreement. No change, waiver, or modification of the terms of this Agreement shall be binding unless in writing and signed by Owner and Design Professional.

§ 9.4 To the extent damages are covered by property insurance during construction, the Owner and Design Professional waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Design Professional, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 9.5 The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and permitted assigns of each of the parties. Neither the Owner nor the Design Professional shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project or to any purchaser of the Property. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Design Professional shall execute all consents reasonably required to facilitate such assignment. Other than those subconsultants identified in **Exhibit E**, attached, Design Professional shall not further assign, delegate or transfer its respective duties or interests in this Agreement without the prior written consent of Owner. No assignment shall relieve Design Professional of its obligations under this Agreement.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Professional. Services provided by Design Professional prior to obtaining Owner's written Authorization for Additional Services are at the risk and cost of the Design Professional. Any change in the terms and conditions of this Agreement including, but not limited to, a change in scope, fee, expenses or schedule shall not be effective unless such change is in writing and signed by Owner. For a change in scope consisting of Additional Services, Design Professional shall use the form attached to this Agreement as **Exhibit G**, titled "Authorization for Additional Services". No additional compensation shall be due to Design Professional without such written and signed authorization. **Exhibit B** shall include an Hourly Rate Schedule for Design Professional and its subconsultants, which rates shall be used for Additional Services unless the parties agree on a lump sum. When the Hourly Rate Schedule is utilized, the Design Professional shall provide Owner with a Guaranteed Maximum (not-to-exceed) Price, subject to Owner's approval.

§ 9.7 If one or more provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall not be affected and shall be construed as if the invalid or unenforceable provision had never been contained in this Agreement. None of the provisions of this Agreement shall be construed for or against either party by reason of authorship or alleged authorship or for any other reason.

§ 9.8 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design Professional.

§ 9.9 Unless otherwise provided in this Agreement, the Design Professional and Design Professional's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 9.10 After Final Completion, the Design Professional shall have the right to include photographic or artistic representations of the design of the Project among the Design Professional's promotional and professional materials. The Project shall be identified in such materials as a LEGACY Development project. Copies of such promotional materials shall be furnished to Owner upon request. The Design Professional shall be given reasonable access to the completed Project to make such representations. However, the Design Professional's materials shall not include the Owner's Confidential Information, as described in Section 12.1, below. If the Project is not built, Design Professional may not include any representation of it in Design Professional's marketing or other public materials without Owner's written consent. The Owner shall provide professional credit for the Design Professional in the Owner's promotional materials for the Project provided Design Professional completes its services without any termination or litigation.

§ 9.11 If the Owner requests the Design Professional to execute non-standard certificates, the proposed language of such certificates shall be submitted to the Design Professional for review at least 14 days prior to the requested dates of execution. The Design Professional shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 9.12 **Insurance Coverage.** Prior to performing any of the Services, Design Professional shall obtain and keep in force, at its sole expense, insurance in the amounts and types as specified in Exhibit C, attached hereto and incorporated herein by reference, and shall provide to Owner within ten (10) business days of execution of this Agreement a copy of the certificate, binder, declarations page or other satisfactory evidence for such insurance.

§ 9.13 **Notices.** All notices, consents, approvals, requests, demands, and other communications (collectively, "Notice(s)") which may or are required to be sent, delivered, given or obtained pursuant to the terms of this Agreement shall be in writing and shall be given either by hand delivery, by prepaid United States certified mail, or by a reputable overnight delivery service that guarantees next day delivery and provides a receipt. All Notices shall be addressed to the parties at their respective addresses set forth on the first page of this Agreement, as same may be changed from time to time. Either party may, by Notice in the manner provided above, change its address for all subsequent Notices. All Notices given by certified mail shall be deemed given two (2) business days after they are so mailed. All Notices given by overnight delivery or hand delivery shall be deemed given on delivery. A party's failure or refusal to accept service of a Notice will constitute delivery of the Notice.

ARTICLE 10 PAYMENTS TO THE DESIGN PROFESSIONAL

§ 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Professional and Design Professional's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 authorized out-of-town travel and subsistence, and electronic communications. No travel is chargeable to Owner by Design Professional without prior written approval by Owner and an estimate of the maximum cost to be incurred as Reimbursable Expenses. Local travel is a justifiable expense and is part of reimbursable expenses for performing the work;
- .2 fees paid to governmental agencies to secure approval of authorities having jurisdiction over the Project;
- .3 reproductions, postage, handling and delivery of Instruments of Service;
- .4 renderings, models and mock-ups requested by the Owner;
- .5 reimbursable expenses as designated in Article 12;

.6 other similar direct Project-related expenditures approved by Owner.

§ 10.2.2 The cost of printing of the bid sets of Contract Documents shall not be included in the Design Professional's contract and paid for by the Owner. Design Professional shall coordinate with Owner to furnish documents in reproducible format to Owner's selected printing vendor.

§ 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 Design Professional shall pay its subconsultants in a timely manner, within seven (7) days from receipt of payment from Owner, unless required to do so sooner by applicable law.

§ 10.3.2 Payments for Basic Services shall be made as stated in Section 11.5.2 and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2, unless some other frequency and method is agreed to elsewhere.

§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Design Professional, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.

§ 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Design Professional's Additional Services and for Reimbursable Expenses shall be made within forty-five (45) days of receipt by Owner of the Design Professional's statement of services rendered or expenses incurred. This invoice shall be part of Design Professional's monthly billing for Basic Services, but shall be separately itemized and designated as Additional Services and Reimbursable Expenses.

§ 10.5 PAYMENTS WITHHELD

No deductions shall be made from the Design Professional's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Design Professional may be liable. Owner has the right to withhold from amounts then or thereafter due the Design Professional, such sums are claimed as damages to Owner on this or any other Project, where such damages are caused, or alleged to be caused, by Design Professional. Design Professional may post a bond, letter of credit or escrow account in such sum as will adequately protect Owner on terms acceptable to Owner in lieu of having fees withheld by Owner.

§ 10.6 DESIGN PROFESSIONAL'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Design Professional as follows:

§ 11.1 Owner shall pay Design Professional for the Services and Reimbursable Expenses (as defined below) as set forth in Exhibit B attached hereto and incorporated herein by reference.

§ 11.2 BASIC COMPENSATION

§ 11.2.1 For Basic Services, as described in Exhibit B..

§ 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed in accordance with the Payment Terms in Exhibit B, attached.

§ 11.3.2 For all other Additional Services of the Design Professional, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, payment shall be in accordance with the Payment Terms in Exhibit B, attached.

§ 11.3.3 For Additional Services of Consultants, a multiple of one (1.0) times the amounts billed to the Design Professional for such services.

§ 11.4 REIMBURSABLE EXPENSES

§ 11.4.1 "Reimbursable Expenses" shall mean the actual documented expenses incurred by Design Professional or Design Professional's subconsultants directly or indirectly in connection with the Project. Without the prior written approval of Owner, Design Professional's Reimbursable Expenses shall not exceed the sum of three percent (3.0%) of the Design Professional's Compensation for Basic Services, in the aggregate, in accordance with the Payment Terms in Exhibit B, attached.

§ 11.4.2 For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point one (1.1) times the expenses incurred by the Design Professional, the Design Professional's employees and consultants directly related to the Project.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 Payments are due and payable forty-five (45) days from the date of the Design Professional's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below
(Insert rate of interest agreed upon.)

ten percent (10%) per annum from said forty-fifth day, regardless of any higher rate allowed by law.

§ 11.5.2 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Design Professional.

§ 11.5.3 The acceptance of final payment by Design Professional shall constitute a full release, discharge and waiver of all rights and claims that Design Professional may have against Owner or its Property under applicable common and statutory law. Upon receipt of final payment, Design Professional shall, upon the request of Owner, execute and deliver to Owner the Waiver and Release of Lien attached hereto as Exhibit D and incorporated herein by reference.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

§ 12.1 Confidentiality.

§ 12.1.1 Design Professional acknowledges that (a) while providing the Services to Owner, Design Professional may be afforded access to Confidential Information (as defined below); (b) public disclosure of such Confidential Information could have an adverse effect on Owner and its business; and (c) the provisions of this Section 12.1 are reasonable and necessary to prevent the improper use or disclosure of Confidential Information. The term "Confidential Information" shall mean any and all trade secrets concerning the business and affairs of Owner and its affiliates, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, tenant names, current and anticipated customer requirements, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures, and designs (and related formulae, compositions, processes, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, information concerning the business and affairs of Owner and its affiliates (which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training and techniques and materials), however documented. Design Professional hereby agrees to hold in confidence the Confidential Information and will not use or disclose it to any person except with the specific prior written consent of Owner or except as otherwise expressly permitted by the terms of this Agreement.

§ 12.1.2 Design Professional shall not show the name of any tenant for any space or building on any drawings, plans, elevations, renderings or other documents without the express written approval of the Owner.

§ 12.2 Mechanic's Liens.

§ 12.2.1 If a mechanic's lien has been filed against the Property ("Lien") by Design Professional or a subconsultant to

the Design Professional (i) for which Design Professional has already received payment from Owner and (ii) which Lien has not been released or bonded over by Design Professional within ten (10) days following written notice from Owner of such Lien, Design Professional hereby authorizes and consents to an automatic reduction to the Contract Price ("Deduct Amount") by 150% of the Lien amount. Following such automatic Deduct Amount, that Owner shall, at its option and sole discretion, have the right to: (i) place all or a portion of the Deduct Amount in escrow with a title company and subsequently pay the Lien to the Lien claimant, including all accrued interest and penalties; or (ii) immediately pay the Lien amount, including all accrued interest to the Lien claimant. Design Professional shall be liable for Owner's attorney's fees incurred as a result of such Lien, which fees may be paid out of the Deduct Amount.

§ 12.2.2 Design Professional shall have the right to contest and defend the Owner, Owner's lender and others reasonably requested by Owner, at Design Professional's sole expense, from and against any such Lien which Design Professional contests in good faith. If Design Professional identifies qualified legal counsel to provide such defense and specifies the good faith reason to dispute the Lien, then Owner agrees to hold the Deduct Amount in escrow and not to exercise Owner's right to pay the Lien pending resolution of such Lien claim and dispute. The Deduct Amount is for Owner's sole protection and is not for the benefit of Design Professional. Owner may apply the Deduct Amount in whole or in part to offset Owner's legal costs and to protect itself and its lender against the risk of having to pay twice for Work for which Design Professional has been paid and for improper claims asserted by Lien claimants. Design Professional agrees and acknowledges that the Deduct Amount, including any amount above the Lien amount paid, including all interest and penalties, shall be retained by Owner until the satisfactory resolution of such Lien without risk to Owner or Owner's property.

§ 12.3 Codes. Design Professional shall design the Project to be in compliance with applicable laws, codes and ordinances, including, but not limited to, the Americans with Disabilities Act (ADA) and any similar state and local accessibility laws, where applicable.

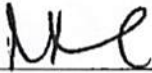
§ 12.4 Exhibits. The following Exhibits are attached hereto and are incorporated herein by this reference.

- Exhibit A. Scope of Services
- Exhibit B. Project Work Letter (attached per project)
- Exhibit C. Insurance Requirements
- Exhibit D. Waiver and Release of Liens
- Exhibit E. Not Used
- Exhibit F. Not Used
- Exhibit G. Authorization for Additional Services
- Exhibit H. RFI and Related Terms
- Exhibit I. Not Used
- Exhibit J.. Not Used

This Agreement entered into as of the day and year first written above.

OWNER

Legacy PG Development, LLC., and its assigns



(Signature)



(Printed name and title)

DESIGN PROFESSIONAL

Kimly-Horn and Associates, Inc.



(Signature)



(Printed name and title)

CITY

City of Hutto, TX



(Signature)



(Printed name and title)

Odis Jones, City Manager

Exhibit A

Scope of Services

Engineering Services. Engineering Services will be provided as referenced in the following design service proposal.

Construction Administration. Design Professional shall administer the Contract for Construction in accordance with the A201 General Conditions of the Contract for Construction, 2017 edition, as modified by Owner, which is incorporated herein by this reference.

Supplementary Conditions. The terms on Exhibit H are to be incorporated into any Project Manual or specification book prepared by Design Professional. No changes may be made by Design Professional to those terms without Owner's written approval. Design Professional shall not include any contrary or conflicting provisions in the Project Manual.

Item 13.2 Attachments (12/3/20 CC Mtg)

November 19, 2019

Mr. Dan Lowe
Managing Partner
Legacy PG Development, LLC
4717 Central Street
Kansas City, Missouri 64112

Mr. Odis Jones
CEO/City Manager
City of Hutto, Texas
500 W Live Oak Street
Hutto, Texas 78634

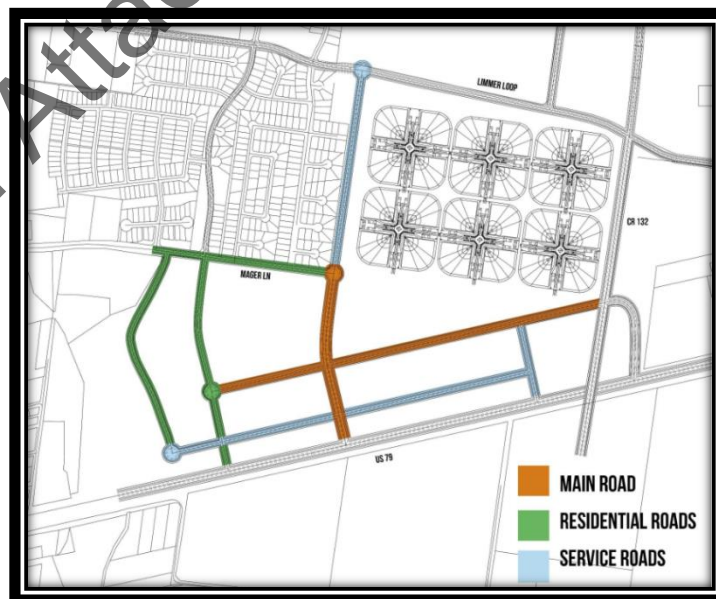
**Re: Agreement for Professional Services
+/- 294-acre Multi-Use Project
NWC US-79 & CR 132
City of Hutto, Texas**

Dear Mr. Lowe and Mr. Jones:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "KH" or "Consultant"), is pleased to submit this letter agreement (the "Agreement") to Legacy PG Development, LLC and the City of Hutto, Texas ("Client") for professional services related to the proposed +/- 294-acre multi-use development in the City of Hutto, Texas. Our project understanding, scope of services, and fee are presented below.

PROJECT UNDERSTANDING

Client, on behalf of the City of Hutto, Texas, is developing the subject site and has requested Kimley-Horn provide this Professional Services Agreement associated with the design and permitting of the tracts totaling approximately 294-acres. It is Kimley-Horn's understanding that rezoning will be required. The rezoning of the site is being done in conjunction with the City of Hutto and Kimley-Horn, under a separate agreement.



SCOPE OF SERVICES

The tasks outlined below are broken out into separate series for the professional services to be provided by Kimley-Horn for the various components of the project. The scope of services described for Lump Sum (LS) tasks will be completed for the lump sum fee indicated. The scope of services described for Hourly (HR) tasks have a projected budget amount indicated. Actual invoiced amount for Hourly tasks will be based on the effort required to complete the task. Hourly effort will be invoiced per our attached hourly rate schedule in affect at the time the services are provided.

100 SERIES: OVERALL SITE SCOPE

The below tasks are for the overall 294-acre site. Phase 1 tasks follow in the Phase 1 section of this agreement.

Task 101 Engineer's Opinion of Probable Construction Costs (OPCC) \$ 35,000 (LS)

Kimley-Horn will prepare an OPCC of the civil on-site improvements, the future civil infrastructure improvements, and the anticipated off-site improvements. The deliverable for this task will be one spreadsheet in PDF format. Kimley-Horn will work with the Client to determine landscape, hardscape, lighting, signage, wayfinding and enhanced area(s) allowances. This task assumes a maximum of four iterations to the OPCC.

Task 102 Right-of-Way (ROW) Abandonment Assistance \$ 8,000 (LS)

Kimley-Horn will prepare one ROW Abandonment Exhibit each for the portions of CR-132 and Mager Lane to be abandoned as part of this project. This task includes preparing the submittal document to the City and addressing two rounds of reasonable review comments. Additionally, this task includes coordinating with the various utility companies that the City of Hutto reported may have facilities located in the ROW. We will request they abandon their facilities, remove their facilities, and abandon any underlying easement remaining in the ROW, and/or submit their release to the City for the abandonment. Any necessary or required relocations of existing facilities located in the ROW are not covered under this task.

Task 103 Preliminary Plat – Up to 20 lots \$ 19,500 (LS)

Kimley-Horn will prepare a Preliminary-Final Plat for subject property in general accordance with current published City criteria. Kimley-Horn will submit the Plat to the City Planning Department for review and comment. The effort for this task includes preparation of the Plat and the application package, addressing one (1) round of ordinary and reasonable simultaneous review comments from the City and Client, attendance at one (1) Planning and Zoning Commission meeting to be considered for approval. Response to additional rounds of plan review comments and resubmission of the plans will be considered beyond the scope of this task and will be billed per the Approvals task below.

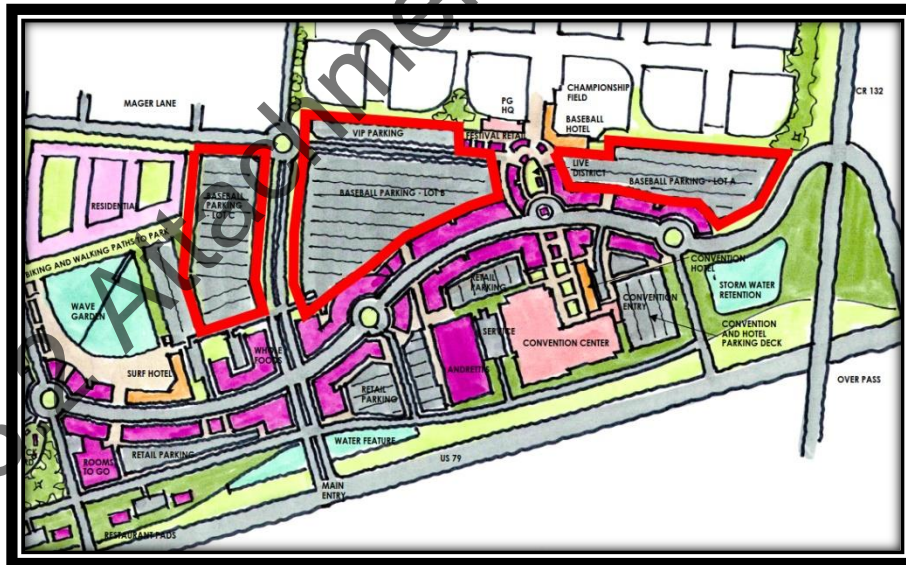
Application, tax certificates and recording fees are not included in this scope of services and shall be paid by the Client.

Task 104 Final Plat – Up to 15 lots \$ 24,500 (Lump Sum, Taxable)

Kimley-Horn will prepare a (1) Final Plat for the approximate 194-acre Phase 1 property in general accordance with current published City criteria. Kimley-Horn will submit the Plat to the City Planning Department for review and comment, if required. The effort for this task includes preparation of the Plat and the application package, addressing one (1) round of ordinary and reasonable simultaneous review comments from the City and Client, attendance at one (1) Planning and Zoning Commission meeting to be considered for approval. Response to additional rounds of plan review comments and resubmission of the plans will be considered beyond the scope of this task and will be billed per the Approvals task below. Application, tax certificates and recording fees are not included in this scope of services and shall be paid by the Client.

This task also includes survey field crew time to set final boundary corners one time only. This task does not include preparation of any off-site easements but can be provided as an Additional Service. As required by Texas law, the effort included in this task is subject to state sales tax.

Task 105 On-Site Civil Engineering – Parking Lots \$ 96,500 (LS)



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

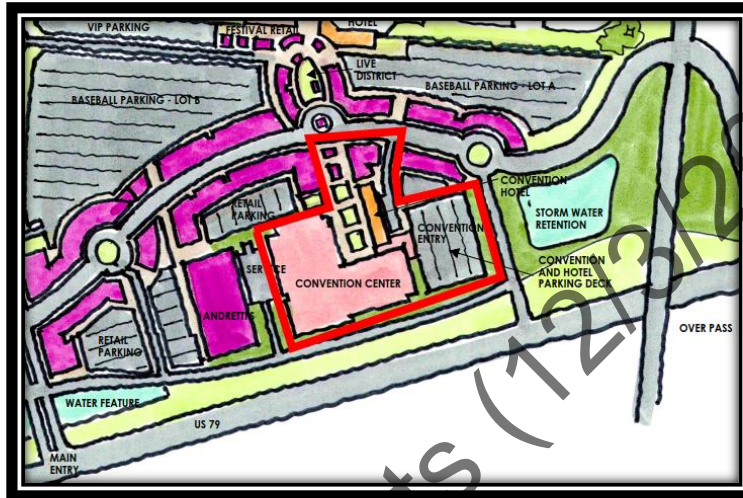
- A. Cover Sheet – Showing sheet index, project location map, contact information, and plan submittal and review log.

- B. General Notes – Showing general notes related to proposed construction based on jurisdictional standards.
- C. Dimension Control Plan - Showing the parking locations with the property boundary with dimensional ties for building pads, parking, and adjacent roadway(s).
- D. 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 and ADA routes
- E. Grading Plan - Showing proposed finished 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 limited scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client.
- F. Water and Wastewater Plan: Showing on-site water and wastewater plan layouts and wastewater profiles.
- G. Drainage Area Map with Calculations - 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 Landscape Architect.
- H. Storm Drainage Plan – Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan view. If provided in a timely manner, KH will coordinate design and location of area drains with the Landscape Architect and design a pipe system to collect the area drains; if not provided in a timely manner KH will stub out a pipe for the Landscape Architect to connect the drainage system they design.
- I. Franchise Utility Plan – Showing the general layout of franchise utilities on-site. Reference Franchise Utility Coordination task.
- J. 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.
- K. Constructions 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.

This task includes preparation of plans and revisions based on two rounds of simultaneous City and Client comments. Effort to respond to additional review comments is included in the Submittals and Permitting task described below.

Task 106 On-Site Civil Engineering – Convention Center

\$ 77,000 (LS)



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

- A. Cover Sheet – Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes – Showing general notes related to proposed construction based on jurisdictional standards.
- C. Dimension Control Plan - Showing the Convention center building and parking deck locations (provided by architect) with the property boundary with dimensional ties for building pads, parking, and adjacent roadway(s).
- D. 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 and the ADA route.
- E. Grading Plan - Showing proposed finished pad 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 limited scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client.

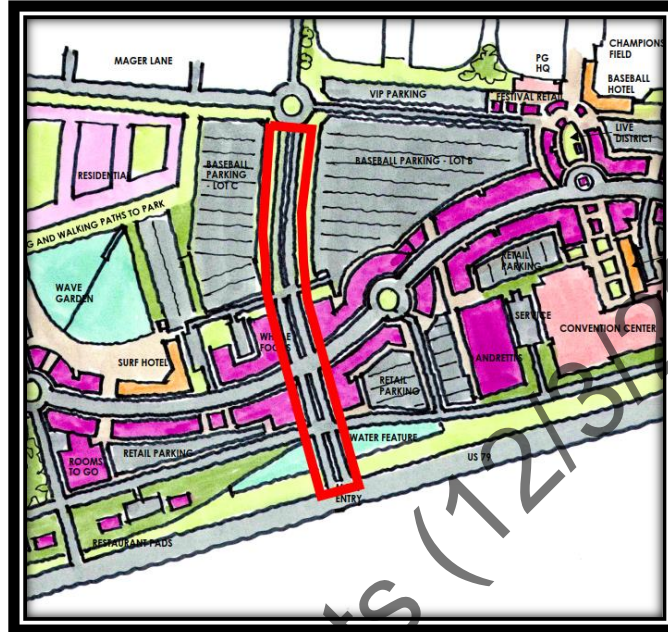
- F. Water and Wastewater Plan: Showing on-site water and wastewater plan layouts and wastewater profiles.
- G. Drainage Area Map with Calculations - Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site to be used as the basis for drainage system 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 Landscape Architect.
- H. 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 drain to collect roof downspouts, for which the pipe size will be determined by the MEP engineer. If provided in a timely manner, KH will coordinate design and location of area drains with the Landscape Architect and design a pipe system to collect the area drains; if not provided in a timely manner KH will stub out a pipe for the Landscape Architect to connect the drainage system they design.
- I. Franchise Utility Plan – Showing the general layout of franchise utilities on-site. Reference Franchise Utility Coordination task.
- J. 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.
- K. Constructions 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.

This task includes preparation of plans and revisions based on two rounds of simultaneous City and Client comments. Effort to respond to additional review comments is included in the Submittals and Permitting task described below.

Task 107

Champions Avenue Civil Engineering Plans (+/- 1,700 LF)

\$ 57,000 (LS)



Kimley-Horn will prepare civil engineering plans for Champions Avenue in general accordance with current published City design requirements. It is anticipated the plans will include the following items:

- Cover Sheet;
- General Notes;
- Dimension Control Plan;
- Water, Sanitary Sewer, Storm Drainage plans
- Paving Plan and Profiles;
- Erosion Control Plan;
- Traffic Control Plan
- Miscellaneous Details.

This task assumes the following:

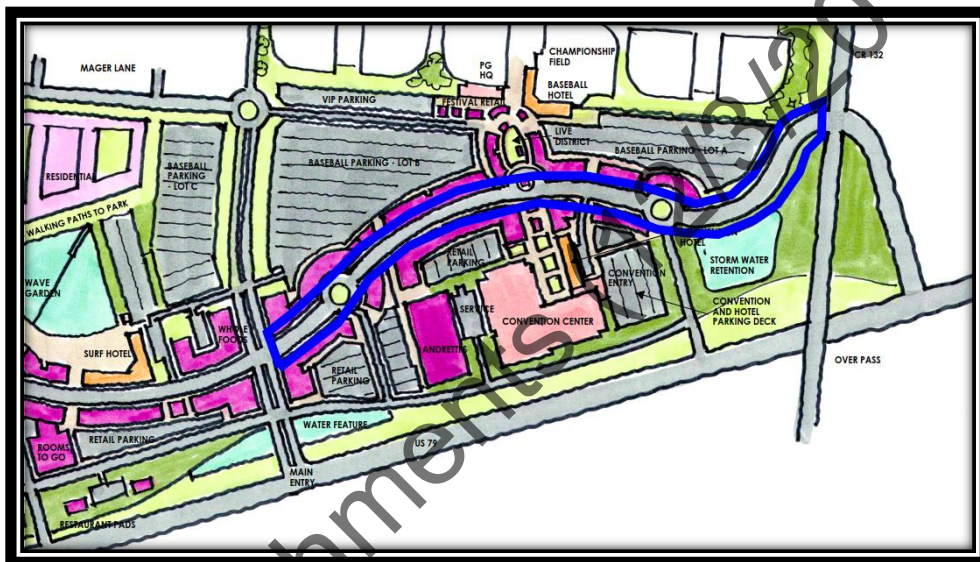
- All site lighting and all site signage will be provided by others;
- This task includes limited franchise utility coordination. We will indicate on our plans those franchise utility locations that are provided to us by others. This task excludes franchise utility design. It is assumed any franchise utility design will be provided by others;
- Any changes by others to the Site Plan after commencement of this task which requires rework to the Civil Construction Documents will be considered an additional service.
- Our scope of work ends at the back of curb as there is not a current plan on the how the future sidewalk and buildings will tie to Champions Avenue.

- The Avenue to SH 79 will be shown to the curb returns as part of the SH 79 plans and will not require a separate permit or submittal to TXDOT.

This task includes preparation of plans and revisions based on two rounds of simultaneous City and Client comments. Effort to respond to additional review comments is included in the Submittals and Permitting task described below.

Task 108 Main Street Civil Engineering Plans (+/- 3500 LF)

\$ 128,000 (LS)



Kimley-Horn will prepare civil engineering plans for Main Street in general accordance with current published City design requirements. It is anticipated the plans will include the following items:

- Cover Sheet;
- General Notes;
- Dimension Control Plan;
- Water, Sanitary Sewer, Storm Drainage plans
- Paving Plan and Profiles;
- Erosion Control Plan;
- Traffic Control Plan
- Miscellaneous Details.

This task assumes the following:

- All site lighting and all site signage will be provided by others;
- This task includes limited franchise utility coordination. We will indicate on our plans those franchise utility locations that are provided to us by others. This task excludes franchise utility design. It is assumed any franchise utility design will be provided by others;

- Any changes by others to the Site Plan after commencement of this task which requires rework to the Civil Construction Documents will be considered an additional service.
- Our scope of work ends at the back of curb as there is not a current plan on the how the future sidewalk and buildings will tie to Main Street
-
- The Street connection to CR-132 will be shown to the curb return on the plans prepare by HNTB or Main Street. KHA' s plans will begin at that location and to the west.

This task includes preparation of plans and revisions based on two rounds of simultaneous City and Client comments. Effort to respond to additional review comments is included in the Submittals and Permitting task described below.

Task 109 Roundabout Design

\$ 62,000 (LS)

Kimley-Horn understands the scope of services will include preparing construction documents for a roundabout as part of the development. This task is either for a Roundabout at the intersection of Mager Lane and Champions Avenue, or up to three traffic circles along Champions Avenue and/or Main Street. If the Client decides to have the Roundabout at Champions and Mager, and traffic circles along Champions and/or Mager, an addendum to this agreement will be required.

The scope of services is as follows:

- 1.1. Kimley-Horn will prepare Construction Drawings
 - Cover sheet
 - Index sheet
 - General Notes sheet
 - Project Control sheet
 - Existing and proposed typical sections
 - Roundabout plan and profile sheets including sidewalks and ramps
 - Roundabout grading plan sheet
 - Pavement marking and signage plan sheet
 - City and TxDOT standard detail sheets, as needed.
 - Jointing plans sheets
 - Erosion Control plan sheets

The following tasks are excluded:

- Renderings or visualizations;
- AutoTurn layout and truck route exhibits;
- Any services not listed above.

Task 110 TXDOT Driveway Permits

\$ 10,000 (HR)

New access points to TXDOT controlled roadways require a driveway permit (drive between CR-132 and Champions Avenue as part of Phase 1) to be submitted and processed in conjunction with the on-

site civil construction plan review. The level of detail and specific forms will vary depending on the type of driveway and the area office. Kimley-Horn will prepare and submit one application for the driveway permit along US 79. Kimley-Horn will submit the application to the Client for review, and then submit it to TXDOT. The design of right turn lanes and left turn lanes from SH 79 into the site is included in the SH 79 scope of work. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 111 On-Site Storm Water Detention Facility Plan \$ 23,500 (LS)

Kimley-Horn will perform design calculations to size one on-site at grade stormwater detention facility within the Legacy Development area. 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. Direction to the contractor regarding the lining material for a detention pond facility will be obtained by the Client as part of their geotechnical recommendations for the project and are not part of this limited scope.

Task 112 Temporary Channel and Detention Drainage Design \$ 41,000 (LS)

Kimley-Horn will prepare plans for a temporary channel and detention pond drainage improvements on the future development parcel(s) to the west of Champions Avenue consisting of the following:

General Notes: Showing general notes related to proposed construction based on City standards.

Drainage Plan: Showing drainage line size, structures, horizontal layout with dimensional ties to existing surveyed improvements, easements, and boundaries.

Drainage Profile: Showing drainage line vertical alignment for lines 18 inches in diameter and larger.

Construction Details: Showing details for the drainage improvements by reference to applicable City standard details.

The size of the drainage main will be determined by the local jurisdiction. There is a potential for additional plans depending on project specifics. These plans will be part of the on-site civil plan set and not a separate plan set. These plans will be submitted for review with the on-site civil plans.

Task 113 Landscape Architecture Site Planning Assistance \$ 10,000 (HR)

Kimley-Horn will assist the Client and architect with site planning and project programming for the Phase 1 tract. Kimley-Horn will also begin to assess the needs for final design. We have projected 40 hours of effort for this task. Once the site planning and programming have been established, Kimley-Horn will follow up with an addendum to this agreement for full Landscape Architecture design services. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 114 Franchise Utility Coordination \$ 18,000 (HR)

Kimley-Horn will provide assistance to the Client to arrange franchise 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. This task is also for the effort for the abandonment and possible relocation of utilities along the segments of Mager Lane and CR-132 which will be abandoned by this project. 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. Transformer and switchgear locations will be coordinated with the electric company. We have projected 80 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 115 Meetings; Exhibits; On-Call Services \$ 36,000 (HR)

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. This task will also capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description. Due to the unknown nature of this task, it will be billed at an hourly rate. We have projected 150 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 116 Submittals and Permitting \$ 10,000 (HR)

This task is to capture effort expended by Kimley-Horn for project submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the city for plan approval is unknown we have provided a projected budget for these services, but actual cost will depend on actual effort required. We have projected 40 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 117 Separate Instrument Easement (As Needed, Each) \$ 1,200 (LS, Each)

Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for one proposed easement. Easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to Kimley-Horn. The Client will file the document.

Task 118 Response to RFI / Submittals – Civil \$ 24,000 (HR)

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.

Review and Response to Shop Drawings: Kimley-Horn 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.

Due to the unquantifiable nature of this task, it will be billed at an hourly rate. We have projected 100 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

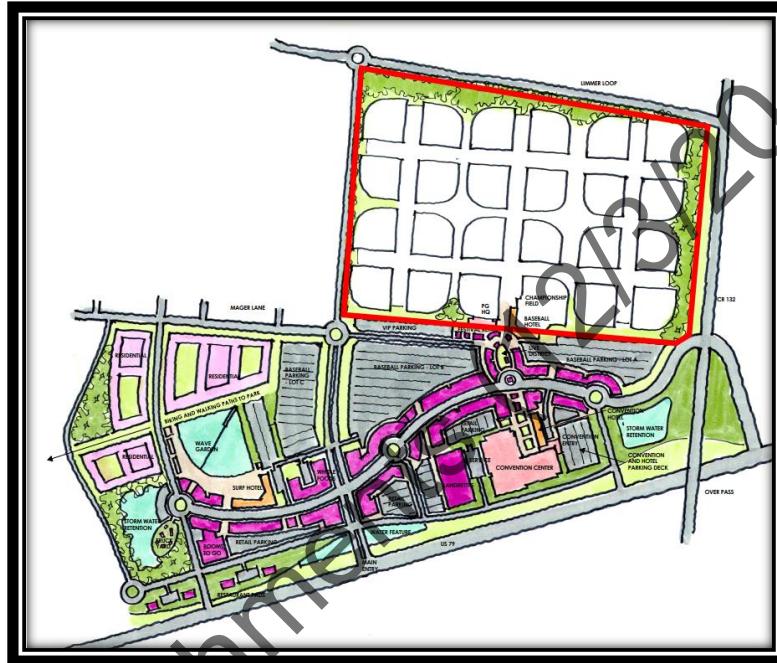
Task 119 Record Drawings, If Required \$ 7,000 (LS)

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.

We will prepare an updated scope and fee for Tasks which have a defined scope as the project evolves.

200 SERIES: PERFECT GAME PARK ON-SITE CIVIL ENGINEERING

The below tasks are associated with the design and permitting of the 24-baseball field park for Perfect Game as shown in the below diagram.



Task 201 Engineer's Opinion of Probable Construction Costs (OPCC) \$ 17,500 (LS)

Kimley-Horn will prepare an OPCC based on the preliminary mass grading, utility, and drainage plans prepared for the overall developer, Legacy. This OPCC will include the civil on-site improvements within the Perfect Game facility. The deliverable for this task will be one spreadsheet in PDF format. Kimley-Horn will work with the Client to determine landscape, hardscape, lighting, signage, wayfinding and enhanced area(s) allowances.

Task 202 Final Plat \$ 14,500 (Lump Sum, Taxable)

Kimley-Horn will prepare a (1) Final Plat for the Perfect Game site in general accordance with current published City criteria. The Final Plat will be based on the Preliminary Plat prepared by Legacy as part of the overall 294-acre development. Kimley-Horn will submit the Plat to the City Planning Department for review and comment, if required. The effort for this task includes preparation of the Plat and the application package, addressing one (1) round of ordinary and reasonable simultaneous review comments from the City and Client, attendance at one (1) Planning and Zoning Commission meeting to be considered for approval. Response to additional rounds of plan review comments and

resubmission of the plans will be considered beyond the scope of this task and will be billed per the Approvals task below. Application, tax certificates and recording fees are not included in this scope of services and shall be paid by the Client.

This task also includes survey field crew time to set final boundary corners one time only. This task does not include preparation of any off-site easements but can be provided as an Additional Service. As required by Texas law, the effort included in this task is subject to state sales tax.

Task 203 On-Site Civil Engineering – Perfect Game Fields (100 acres) \$ 234,000 (LS)

Kimley-Horn will prepare on-site civil engineering plans for 24 fields consisting of the following:

- A. Cover Sheet – Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes – Showing general notes related to proposed construction based on jurisdictional standards.
- C. Dimension Control Plan - Showing the field locations, paving, restrooms, maintenance building, and other buildings within the Perfect Game field area (provided by architect) and property boundary with dimensional ties.
- D. Paving and Striping Plan - Showing proposed paving type for paving areas, fire lanes and drives based upon recommendations in the Geotechnical report provided by the Client. This plan will show handicap parking signage and ADA routes.
- E. Grading Plan - Showing proposed finished floor elevations and, as applicable, spot elevations and one-foot contours for public sidewalks, drives, and paving 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 limited scope of this agreement and will be provided by KH or others as an addendum to this agreement.
- F. Water and Wastewater Plan - Showing on-site water and wastewater plan layouts and wastewater profiles.
- G. Drainage Area Map with Calculations - 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 Landscape Architect.
- H. 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 drain to collect roof downspouts, for which the pipe size will be determined by the MEP engineer. If provided in a

- timely manner, KH will coordinate design and location of area drains with the Landscape Architect and design a pipe system to collect the area drains; if not provided in a timely manner KH will stub out a pipe for the Landscape Architect to connect the drainage system they design.
- I. Franchise Utility Plan – Showing the general layout of franchise utilities on-site as provided to us by the MEP and/or franchise utility provider. Reference Franchise Utility Coordination task.
 - J. 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.
 - K. Constructions 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.

This task includes preparation of plans and revisions based on two rounds of simultaneous City and Client comments. Effort to respond to additional review comments is included in the Submittals and Permitting task described below.

Task 204 Franchise Utility Coordination \$ 10,000 (HR)

Kimley-Horn will provide assistance to the Client to arrange franchise 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. Transformer and switchgear locations will be coordinated with the electric company. We have projected 50 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 205 Meetings; Exhibits; On-Call Services \$ 24,000 (HR)

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. This task will also capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description. Due to the unknown nature of this task, it will be billed at an hourly rate. We have projected 120 hours of effort for this task.

Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 206 Submittals and Permitting \$ 10,000 (HR)

This task is to capture effort expended by Kimley-Horn for project submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the city for plan approval is unknown we have provided a projected budget for these services, but actual cost will depend on actual effort required. We have projected 50 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 207 Separate Instrument Easement (As Needed, Each) \$1,200 (LS, Each)

Kimley-Horn will prepare a metes and bounds description and sketch showing the location and dimensions for one proposed easement. Easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to Kimley-Horn. The Client will file the document.

Task 208 Response to RFI / Submittals – Civil \$ 12,000 (HR)

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.

Review and Response to Shop Drawings: Kimley-Horn 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.

Due to the unquantifiable nature of this task, it will be billed at an hourly rate. We have projected 60 hours of effort for this task. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 209 Record Drawings, If Required \$ 5,000 (LS)

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.

We will prepare an updated scope and fee for Tasks which have a defined scope as the project evolves.

300 SERIES: PERFECT GAME PARK PLAYING FIELD DESIGN

The below tasks are associated with the design and permitting of the 24-baseball field park for Perfect Game as shown in the 200 Series diagram.

Task 301 Playing Field Masterplan / Performance Goals \$16,000 (LS)

KH's Playing Field Designer will meet with the Client, City, and design team to discuss their vision for the project. Based on the direction from this meeting, KH will collaborate with Architect, KH Civil Engineer and KH Landscape Architect to determine the baseball fields general layout including the following:

- Playing field outfield wall dimensions and geometry
- Turf performance characteristics of ball bounce, infill splash, speed and playability
- Warning track performance, material, width and geometry
- Infield performance, material and geometry
- Bullpen performance, material and dimensions

This task will define related scope areas for the baseball field portion of the project and define a limit of work, while serving as the Basis for Design for the project. Additional tasks listed below will follow this Basis of Design and general direction from the client for project budgets. KH has assumed a budget target of +/- \$28 million for the Baseball Fields (limited to the areas inside the field of play, with the bullpens, bases and portable mounds). Items such as bleachers, dugouts, backstops, field fencing, scoreboards and field lighting are not included in this scope of work. Based on the above, Kimley-Horn will prepare the Concept Master Plan to be used as the basis of the subsequent design tasks. Significant changes from the Concept Master Plan as the design develops may require Additional Services for redesign efforts and will be coordinated with the Client.

Task 302 Schematic Design \$29,000 (LS)

Based upon the Concept Master Plan and input received from the Client, KH will prepare Schematic Design Plans for the playing field elements described above. The Schematic Design 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 a project design workshop, covered in Task 305, with the Client and design team to review these plans. Based on input received during this meeting, KH will prepare the Final Schematic Design Plans that will become the basis for future design and construction document efforts. KH will provide playing field layouts including bullpens, general grading and sub-drainage layouts and general sections for the playing field types.

DELIVERABLES: One (1) 30x42 Schematic Design Submittal

Task 303 Design Development

\$134,000 (LS)

Based upon the approved Schematic Design and timely input received from the Client, KH will prepare Design Development plans. The Design Development (60%) plans will show layout and details for preliminary pricing (not 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. These drawings will consist of field and bullpen layout, sub-drainage layout, material depths and selections, and basic grading information for pricing in CAD format. These plans will become the basis for further design efforts. Kimley-Horn will prepare one (1) submittal and will incorporate input received on these plans in the Issue for Construction Documents (Task 304)

The following information will be provided as part of the Design Development Plans preparation:

60% (DD) Plans Deliverables:

- Playing Fields Cover Sheet
- Playing Field Layout and Material Plans
- Playing Field Surface Grading Plans
- Playing Field Sub-Drainage System Plans
- Playing Field Details
- Preliminary playing field pipe sizing calculations
- 60% Progress Written Specifications
- 60% Progress Engineer's Opinion of Probable Construction Cost

DELIVERABLES: One (1) 30x42 Design Development Submittal

Task 304 Issue for Construction Documents

\$215,000 (LS)

KH will finalize documents for construction, providing final playing field plans, grading plans, sub-drainage plans / calculations, and material specifications. KH will incorporate input received from the Issue for Design Development Documents (Task 303) into these plans, with final consultant coordination items, Client requested value engineering directives, and City comments. Document revisions after the Issue for Construction submittal will be considered additional services. The following information will be provided as part of the Issue for Construction Documents:

Cover Sheet: Showing individual playing field locations, sheet index, project location map, contact information, and plan submittal log.

Playing Field Layout and Material Plans: Final design, layout, and dimensional control showing playing field and bullpen elements. The refined plans shall follow the most current industry design standards for baseball and synthetic turf.

Grading Plans: Showing spot elevations at key grading points and contours at appropriate intervals within the playing field areas, detailing of the warning track, infield, bullpens as well as conditions at the backstop and fence. These plans will be developed in coordination with the civil engineer and landscape architect for tie-in and perimeter grades.

Sub-drainage Plans: Plans will show the sub-drainage system layout, perimeter and lateral pipe material, location, size, slope and spacing, as well as drain basin size, inverts and rim elevations. These plans will be developed in coordination with the civil engineer for playing field drainage system tie-in locations/sizes/inverts, tailwater conditions for the on-site drainage system, maximum storm stages, and other associated requirements.

Playing Field Drainage Report: Report will establish sub-basin square footage and post storm time of concentration (T/C) in determining the limits of the surface and sub-surface contributing to the sub-drainage collection system. Each field will include a single point of discharge, sized appropriately to connect to the storm-water detention / collection system. Hydrology calculations will be provided and will be modeled using the 24 hour / 25, 50 and 100-year historical rainfall intensity storm events as required by code. The KH's project civil engineer shall be responsible for obtaining local permits.

Specifications: Kimley-Horn will provide specifications and material selections on the drawing set.

The Client will provide design for storm water, water, and sanitary sewer connections for the proposed improvements through KH's civil engineer. The Issue for Construction documents will first be submitted to the City of Hutto for review, comment, and approval prior to finalization.

DELIVERABLES: One (1) 30x42 Issue for Construction Documents

Task 305 Meetings / Team Coordination \$43,000 (HR)

Kimley-Horn will attend meetings and participate in conference calls as requested by the Client during the design portion of the project. As the effort required to attend meetings is dependent on requests from the Client, it is difficult to project the effort required. Kimley-Horn will provide the services in this task on an hourly basis. The initial preliminary budget indicated in the fee is for Tasks 301 - Tasks 304 and Tasks 308-309 and assumes that some project meetings can be attended via electronic communication or video. The Client acknowledges that additional scope and related fees may be required. Kimley-Horn will notify the Client if additional fees will be required. The initial task consists of up to 170-hours of effort. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 306 Bidding / Clarifications \$10,000 (HR)

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 during the bidding process. Any authorization of variations from the Contract Documents will be made by Client.

The extent of the effort required for this task is unknown and fees for this task will be billed on an hourly basis. The budget for this task includes up to forty (40) hours of KH effort. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 307 Construction Phase Services**\$93,000 (HR)**

The extent of the effort required for this task is unknown and fees for this task will be billed hourly. The budget for this task is based on up to three hundred eighty (380) (16 hours per field) hours of KH time in reviews, documentation, or site visits during construction.

Pre-Construction Conference: KH will attend a Pre-Construction Conference prior to commencement of Work at the Site as requested by the Client.

Visits to Site and Observation of Construction: KH will provide on-site construction observation services during the construction phase. Consultant will make visits at intervals as scheduled based on construction timing in order to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the Work.

The purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant 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.

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

Recommendations with Respect to Defective Work: KH will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents. KH shall not, during such visits or as a result of such observations supervise, direct, control, influence, or have responsibility over Contractor's work.

Clarifications and Interpretations / RFIs: KH will respond to reasonable and appropriate Contractor requests for information (RFIs) and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

Review and Response to Shop Drawings: KH will review and take 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. Such review and approval or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

Initial Baseline and Quality Control Testing: KH will coordinate with the Client and the Owner's Testing Agent to determine an appropriate Quality Control program as it relates to the stone base for the playing fields. KH will review and take appropriate action with respect to material testing data received from the Owner's Testing Agent.

As-builts: KH will review and take appropriate action with respect to as-built surveys required during construction. Surveys for sub-grade, sub-drainage, stone blanket, and the synthetic turf carpet are required to be provided by the Contractor for KH review.

Substantial Completion Walkthrough and Punch List: KH will conduct a substantial completion site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and prepare the final punch list so that Consultant may recommend, in writing, that the Contractor has substantially completed the playing fields scope of work.

Final Notice of Acceptability of the Work: KH will conduct a final site visit to determine if all punch list items have been appropriately remedied so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.

Record Drawings: Based upon contractor provided field notes, construction records, and as-built drawings, Kimley-Horn will prepare the required project record drawings for submittal to the Client.

Limitation of Responsibilities: Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of its subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor. Kimley-Horn is not responsible for any duties assigned to the design professional in any construction contract that are not expressly provided for in this Agreement. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 308 Playing Field Fencing \$49,000 (LS)

Kimley-Horn will provide the design for the playing field fencing and gates, including the bullpens. Other fencing outside the field of play will be By Others.

- Design will consist of the fencing and gate layout, heights, gauge, swing, and other associated fencing construction details and specifications.
- General layout plans per field type will be provided along with specific details and specifications.
- Fencing location and details will be included in the Issue for Construction documents.

Task 309 Playing Field Lighting

\$148,000 (LS)

Kimley-Horn will provide an electrical design for the proposed playing field lighting system. KH will contract Musco to complete photometrics for the proposed lighting that consist of the twenty-four (24) baseball fields and ancillary project areas. The intent of this work is to provide an adequate lighting system for the playing fields only. It is assumed the design fee for the photometric analysis completed by Musco will be included in the purchasing cost of the lighting system. It is anticipated the fields will be lit to national recreation standards outlined by the IES. It is not anticipated the championship fields will be lit to broadcast lighting standard.

Kimley-Horn will provide electrical design services for the proposed sports lighting system based on the electrical system requirements identified by Musco. These requirements consist of the following key elements:

- Electrical design will be in accordance with the latest version of the National Electric Code adopted/accepted by the jurisdiction at the time this task order is executed.
- The electrical system will be designed to provide power (no service or lights are currently present on-site) from a new electrical load center(s) that will be located on-site in close proximity to control and monitoring cabinet(s) as well as the proposed fixture locations.
- Lighting circuit conductors will be placed in conduit with a junction box placed at the base of each pole.
- It is understood this design includes the plan photometrics (designed by Musco), lighting controls, electrical plan with conduit and conductor sizes, as well as full specifications.
- Construction phase services are specifically excluded and would be considered additional services.

The Playing Field Lighting design will be included in the Issue for Construction documents.

Task 310 Playing Field Structures

\$62,500 (LS)

KH's Playing Field Designer will meet with the Client to discuss their preferences on the playing field structures outlined below. Based on the direction from this meeting, KH will select, specify and locate each of these appropriate baseball structures. Structural engineering for footings and foundations will be designed and documented for each element. Sportsfield Specialties, or an approved equal, will be utilized for specifying these items.

1. Backstops with cable tension netting system and Integrated wall pads (maximum of 24).
2. Foul poles for full size baseball fields (maximum of 48).
3. Dugouts for full size baseball fields, including benches, cubbies, storage units and floor cover as necessary (maximum of 48).
4. Dugouts for youth fields, including benches (maximum of 64).
5. Batting cages with cable tension netting systems (maximum of 24).
6. Outfield Batter's Eyes with mesh (maximum of 24).
7. Scoreboards as selected by the Client (maximum of 24). Electrical and Video feeds provided under Task 313.

8. Fan safety netting with cable tension system (maximum of 48)
9. Fixed seating on concrete risers at fields (except championship field). Selection of seat, document location, spacing and detail the connection to the concrete riser. (maximum of 2 rows / field @ 23 fields)
10. Bleachers @ youth fields will be located and anchored to concrete pad. (maximum of 64)
11. Drink rails will be designed and detailed. (maximum of 23)
12. Hand rails will be designed and detailed for treads and riser at playing fields.

Task 311 Championship Field Seating \$47,000 (LS)

KH's Playing Field Designer will specify, layout, detail and document the on-grade seating bowl and seats to provide 1000-1500 fixed spectator seats. Steps and handrails will be designed and documented, as required by local code. KH's Playing Field Designer will be responsible for the work within the seating bowl up to the drink rail behind the final row of seating. All other work in the concourse beyond the drink rail shall be by the Architect. KH will coordinate with Architect.

Task 312 Site Electrical, Audio, Video and Low-Voltage Systems \$59,000 (LS)

KH's Designer will provide electrical and communication design services for the site items as assumed and described below:

- Electrical design will be in accordance with the latest version of the National Electric Code adopted/accepted by the jurisdiction at the time this agreement is executed.
- Prepare schematic communication design one-line figures for review with client for preliminary connectivity concept to ballfields for intercom, scoreboards/advertisement boards, cameras, and wi-fi hotspots. Preliminary design is anticipated to consist of a fiber optic path from the control center to each cluster of 4-fields.
- Coordinate communication technology preferences with client and evaluate equipment mounting options, and operational needs at each cluster and the control center that impact communication cabling requirements.
- Develop 90% Draft communication and electrical plans for the proposed network connectivity to the clusters of 4-fields. Develop mounting details for cameras, intercom speakers, and network switch cabinets, and scorer's box pedestals.
- Develop project performance specifications for the associated field devices and communications.
- Incorporate review comments from client into Final plans and specifications.
- Develop 90% draft photometric and electrical design in the pedestrian areas between the fields. This design will be completed in the absence of the field lighting.

Assumptions: It is anticipated that cameras, intercoms, and any wi-fi hotspots will utilize other projected vertical assets such as Sports Lighting poles. Thus, separate structural designs for stand-alone poles and foundations is not currently planned. If required, those structures will be designed as an additional service. It is assumed that wi-fi hotspots will be used for the point of sale (POS) equipment at the concession stands and hardline POS infrastructure will not be required.

It is understood that the control center interior will be designed by the Architect/MEP team. Kimley-Horn will identify the location to terminate the proposed communication cabling/equipment and coordinate electrical needs for associated equipment with the Architect/MEP. It is also understood that the Video Wall components and Digital Video Management software will be handled by the Architect/ME.

400 SERIES: PERFECT GAME PARK LANDSCAPE ARCHITECTURE

The below tasks are associated with the design and permitting of the landscape architecture associated with the 24-baseball field park for Perfect Game as shown in the 200 Series diagram.

The project will include improvements to the common area open spaces between the fields, including site pedestrian hardscape and pedestrian pathways, open space amenities, trees and buffer plantings, irrigation, accent lighting, site furnishings, and additional site amenities, associated within the limits in the Subject Site. The project scope assumes an overall site construction budget of \$3 million for the scope areas shown.

Task 401 Schematic Design \$25,000 (LS)

Kimley-Horn will attend one meeting with the Client and design team to discuss their vision for the project. Based on the direction from this meeting, KH will collaborate with KH Field consultant and KH Civil Engineer for the Schematic Design and present it to the Client. The plan will illustrate the general scope, scale, theme, and relationship of various design components. The plan will illustrate design elements for the following areas:

- Common area open space
- Hardscape and associated pedestrian pathways between fields
- Amenities (including site furnishings and playgrounds)
- Entrance plaza hardscape at primary entrance plaza
- Enhanced landscape plantings, open space, internal parks, and perimeter buffers
- Associated pedestrian gathering areas including trail heads, plazas, and courtyards

This task will define overall design concepts for the site and establish an overall design framework. Drawings will be conceptual in nature and will include general materials callouts for each of the areas listed above.

DELIVERABLE: One (1) 30x42 Schematic Plan Submittal

Task 402 Design Development

\$38,000 (LS)

Based upon the Schematic Design and input received from the Client, Kimley-Horn will prepare Design Development plans. The Design Development plans will show layout and details for City code review and preliminary pricing, but will not include details 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. This task includes one preliminary cost projection.

These drawings will include basic layout, basic material selection and basic planting strategy, for pricing in CAD format on architect's titleblock. These plans will become the basis for further design efforts.

DELIVERABLES: One (1) 30x42 Design Development Submittal

Task 403 Construction Documents

\$67,500 (LS)

Based on the approved design and Client provided budget from the Design Development Plans, Kimley-Horn will prepare Construction Documents based on pricing data and Client led direction. Kimley-Horn will prepare Landscape and Hardscape Construction Documents consisting of:

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

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

Hardscape Plans and Layout Plans: Final design, layout, and dimensional control showing site hardscape materials and specifications.

Fine Grading: Showing spot elevations within landscape and hardscape areas. Landscape and hardscape areas consist of: sidewalks, courtyards, and planting beds. 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. Proposed landscape drains will be shown with rim elevations and reference civil storm sewer plans or MEP sanitary plans for piping connections.

Planting Plans: Showing final planting plans with plant species, sizes, and location for trees, shrubs, 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.

Specifications: Kimley-Horn will provide specifications and material selections within the drawing set.

The Client will provide design for storm sewer, water, and sanitary sewer connections for the proposed improvements through the KH civil engineer and MEP consultant. Design of signage, retaining walls, fountains, or other special features is not included in this scope.

DELIVERABLE: This task includes one (1) submittal for City Permit and Issue for Construction. Any client directed revisions after this submittal will be considered an additional service. Modifications to the plans resulting from significant site layout changes or additional review comments directed by the City, the Client, or their representatives shall be considered an additional service and will be billed on an hourly basis under an amendment to this contract according to our current rate schedule.

Task 404 Meetings / Team Coordination \$20,000 (HR)

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. The extent of the effort required for this task is unknown and fees for this task will be billed hourly. This budget for this task includes up to one-hundred (100) hours of Kimley-Horn meeting and presentation attendance. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 405 Schematic Lighting \$12,200 (LS)

Kimley-Horn will prepare Schematic Lighting Plans related only to the proposed on-site landscape and hardscape areas. Kimley-Horn will coordinate with the Client and the KH field consultant, Electrical Engineer, and KH Lighting Design Consultant to size and locate lights and show them on the plan. The plan may contain pedestrian light poles, lit bollards, tree uplighting, and landscape accent lights. The Client will provide electrical design and photometrics associated with the project's lighting through other members of their consultant team.

Task 406 Irrigation \$22,500 (LS)

Irrigation plans will be prepared upon Client approval of the landscape and hardscape construction documents. The irrigation plans will show head layout, pipe sizing, controller/valve locations, and standards details. The Client will specify preferred irrigation equipment brand (Toro, Hunter, Weathermatic, or Rainbird) prior to initiation of the irrigation design. This task is being provided by a subconsultant.

Task 407 Bidding \$7,500 (HR)

This task includes reviewing material and labor costs and responding to general contractor and subcontractor RFI's. Participation in contractor selection and/or interviews are outside of this agreement but can be provided as an additional service upon request. The budget for this task includes up to thirty (30) hours of Kimley-Horn bidding assistance. Any additional effort will be billed on an hourly basis per our standard hourly rates. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 408
Construction Phase Services
\$12,500 (HR)

Kimley-Horn will provide limited construction phase services for the landscape architecture portion of the project, as directed by the Client. The scope of services listed below will be provided as part of the construction phase services. The budgeted fees for this task are based upon approximately 60 hours of effort. Any additional effort beyond the specified amount will be billed to the Client hourly, according to the current Kimley-Horn rates, as authorized by the Client or its representatives. Site Visits and Construction meetings will be included in Task 409. Kimley-Horn will provide the following construction phase services:

Request for Information (RFI): KH will respond to Contractor requests for information and issue clarifications and interpretations of the Contract Documents to Client within this fee. Any authorization of variations from the Contract Documents will be made by Client. Additional RFI requests will be considered additional services. KH will respond to up to thirty (30) requests for information.

Submittals and Shop Drawing Review: KH will review material submittals and material cut sheets Shop Drawings, Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. This task includes up to thirty (30) submittals and/or shop drawing reviews.

Change Orders: Kimley-Horn may recommend Change Orders to Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

Disagreements between Client and Contractor: Kimley-Horn will, if requested by Client, render written decision on claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Kimley-Horn shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Applications for Payment: Based on its observations and on review of applications for payment and accompanying supporting documentation, Kimley-Horn will determine the amounts that Kimley-Horn recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Kimley-Horn's representation to Client, based on such observations and review, that, to the best of Kimley-Horn's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Kimley-Horn's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.

By recommending any payment, Kimley-Horn shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities

specifically assigned to Kimley-Horn in this Agreement. It will also not impose responsibility on Kimley-Horn to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

Limitation of Responsibilities: Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of its subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor. Kimley-Horn is not responsible for any duties assigned to the design professional in any construction contract that are not expressly provided for in this Agreement.

This task includes up to sixty (60) hours of Kimley-Horn effort. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

Task 409 Site Visits / Meetings \$16,800 (HR)

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

This task includes up to four (4) field visits and site observation by Kimley-Horn staff, and two (2) punch walk visits. Tree Tagging and Nursery visits are not included in this task. Additional site visits / hours, tree tagging, and nursery visits will be considered an additional service. The budget for this task includes up to eighty-five (85) of Kimley-Horn meeting and presentation attendance. Any additional effort will be billed on an hourly basis per our standard hourly rates. Kimley-Horn will notify the Client when the hourly budget will be exhausted and will not exceed the budget without Client approval.

500 SERIES: US-79 WIDENING AND INTERSECTION IMPROVEMENTS

The project generally consists of the preliminary 30% design schematic, environmental documentation, and Plans, Specification, and Estimate (PS&E) for improvements of an intersection and a traffic signal at US 79/Perfect Game development main drive (Champions Avenue) , adding a raised median, and the widening of US 79 to accommodate the following as shown in Hutto Master Plan sketch dated October 8, 2019: dual left-turn lanes along eastbound US 79, two left turn lanes along eastbound US 79, and two right turn lanes along westbound US 79 at proposed drive locations. Any update of the site plan resulting in design changes to Consultant's schematic/plans will be considered as additional services. Consultant understands this project will be developed utilizing TXDOT standards and specifications.

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by The Consultant during the project, including but not limited to the following:

- Copies of previously prepared site plan, TIA, and any updates to site plan in PDF format
- Any available as-built plans for O/H and underground utilities within the project area
- As-built and record drawings of US 79
- Provide pavement section to be used for widening
- Current or standard industry costs used by the City for unit pricing as well as cost estimates

Task 501 Project Management \$13,800 (LS)

- 1.1. Plan and conduct one Project Kickoff Meeting with Client to confirm project scope, personnel, lines of communication, and schedule.
- 1.2. Prepare and e-mail bi-weekly progress reports to the project team.
- 1.3. Project Administration
 - 1.3.1 Prepare project correspondence
 - 1.3.2 Prepare invoicing documents
 - 1.3.3 Maintain and update project schedule
 - 1.3.4 General Coordination with Client
- 1.4. Attend up to five project status meetings with Client

Task 502 Data Collection \$4,200 (LS)

This task will include performing work associated with collecting existing plans, standards, and specifications.

- 1.1. Consultant will assemble design standard details and specifications (in electronic format) from TXDOT.
- 1.2. Consultant will gather existing record drawings and file information of the project intersection from TXDOT, including the construction roadway plans, right-of-way information, and utility maps.
- 1.3. Consultant will perform a field reconnaissance of the intersection to determine existing pavement widths, lane configurations, traffic control devices, and above ground utility locations. Consultant will also identify potential traffic signal pole locations, power source, and controller cabinet location.
- 1.4. Consultant will prepare a base map of existing geometrics, apparent or known utilities, and traffic control devices from record drawings and the topographic survey provided by the client.

Task 503 Topographic Survey and Subsurface Utility Engineering (SUE) \$30,300 (LS)

- 1.1. Property corners and monuments along US Highway 79 will be located to resolve the boundary of both sides of the right-of-way from the beginning of the Perfect Game property to the CR 132 intersection, and to the existing rail road along the south side. The rail road right-of-way will not be entered.
- 1.2. Topographic survey of US Highway 79 right-of-way and pavement sections (at approx. 100' maximum intervals) with topographic details and features between sections, beginning from the West end of the bridge through the CR 132 intersection. Striping will not be located on Highway 79. Existing substantial features and improvements within the right-of-way will be located including the observed locations of existing utilities.
- 1.3. The US Highway 79 bridge will be scanned to show the location of bridge abutments, headwalls, riprap, columns and the topography beneath the bridge.
- 1.4. Utility Designating Services (Level "B") – Electromagnetic Investigation
 - 1.4.1 Consultant, through a subconsultant, will perform approximately 17,500 ft of electromagnetic investigation (utility designation) for the approximate horizontal location of various utilities throughout the project site. Consultant\subconsultant personnel will not be entering any confined spaces.

Deliverables:

- Digital Terrain Models (DTM) and the Triangular Irregular Network (TIN) files.
- Maps, plans, or sketches prepared by the Surveyor showing the results of field surveys.
- Digital files or media containing field survey data (ASCII Data files).
- A Base Map (Working Sketch) as described above in DGN format.
- Field survey notes, as electronic and hard copies.
- Existing Electronic DGN file including the Quality Level B investigation

Task 504 Preliminary 30% Schematic Design \$45,600 (LS)

This task will include the preliminary design for the intersection, traffic signal, turn lanes, quantities, and engineer's opinion of probable construction cost (OPCC).

- 1.1. Consultant will furnish the Client a conceptual 30% design schematic layout of the proposed improvements. The schematic is limited to existing topography, existing utilities, horizontal alignment, roadway typical section, existing and proposed right-of-way, existing and proposed pavement edge, proposed lane striping and signal layout.
- 1.2. Consultant will prepare and submit a preliminary engineer's OPCC
- 1.3. Consultant will attend one 30% Schematic design review meeting with the Client and TXDOT, prepare comment responses for comments received during design review submittal.

Deliverables:

- Two hard copies and one electronic copy of the 30% Design Schematic roll plot

- One hard copy and one electronic copy of Opinions of Probable Construction Cost for 30% Preliminary Design Schematic

Task 505 Roadway Engineering \$126,400 (LS)

Consultant will develop PS&E documents based on the improvements identified in the preliminary schematic. Consultant assumes PS&E submittal schedule of 60%, 95% and 100% (Final).

- 1.4. Consultant will incorporate Client and TxDOT review comments from the (30%) submittal and produce the preliminary (60%) plans, specifications, quantities, contract documents, and engineer's OPCC. Consultant will submit these to the Client and TxDOT for review. 60% plans will include; title sheet, index, general notes, quantities summary, typical section, project layout, traffic control plan, roadway plan and profile, intersection layout, drainage area maps, drainage and ditch calculations, driveway detail sheets, erosion control layouts, signal plans, signing and marking plan, and applicable standards and cross sections.
- 1.5. Consultant will attend one 60% design review meeting with the Client and TxDOT, prepare comment responses for comments received during design review submittal.
- 1.6. Consultant will incorporate Client and TxDOT review comments from the 60% submittal and produce 95% plans, specifications, quantities, contract documents, and OPCC
- 1.7. Consultant will attend one 95% design review meeting with the Client and TxDOT, prepare comment responses for comments received during design review submittal.
- 1.8. Consultant will incorporate Client and TxDOT review comments from the 95% submittal and produce final sealed plans, specifications, quantities, contract documents, and OPCC. Consultant will submit final plans to Client and TxDOT for acceptance.
- 1.9. Consultant will perform Quality Control/Quality Assurance on each deliverable.

Deliverables:

- Two hard copies and one electronic copy of the 60%, 95% and 100% plans
- Two hard copies and one electronic copy of Opinions of Probable Construction Cost for 60%, 95% and 100%
- Two hard copies and one electronic copy of 60%, 95% and 100% cross sections
- One (1) reproducible set of final bid documents and specifications

Task 506 Traffic Engineering \$35,500 (LS)

Consultant will develop plans to install a new traffic signal at one intersection for the Legacy\ Perfect Game Development at the SH-79 and Champions Avenue Intersection.

- 1.1. Kimley-Horn will prepare the signal plans at a scale of 1" =40' and will include the following sheets:
 - Existing Conditions sheet to show locations of existing traffic control devices, underground, and overhead utilities at each intersection.
 - Signal Layout sheet to show the locations of proposed signal poles, pedestrian poles, signal heads, communication equipment, electrical conduits, ground boxes, signal

cabinet, new electrical service, existing utilities, right of way, and proposed roadway improvements. If pedestrian facilities are required, Kimley-Horn will locate pedestrian poles with Audible Pedestrian Signal (APS) units, and design pedestrian access ramps in conformance with ADA requirements. Due to lateral and vertical clearance required from an overhead electric line (per the State law), Kimley-Horn will coordinate with the TxDOT and the City before finalizing locations of signal poles, where applicable.

- Signal Elevation sheet to show placement of signal heads and vertical clearance required.
- Conduit Chart and Electrical Wiring sheet to show the type and number of electrical wires in each conduit run and between poles / signal heads on each span wire. A new electrical service will be designed to support total electrical load due to the new traffic signal and safety lighting at the intersection. The electrical service will include two separate circuits for traffic signal and illumination. Kimley-Horn will conduct a field meeting with the local electric service provider to determine location of new electrical service.
- Phasing & Detection sheet to show the proposed phasing at each intersection. Phasing and signal-heads for left-turn movements will be designed in conformance with 2011 Texas Manual on Uniform Traffic Control Devices (TMUTCD). Video detection details for each movement will also be shown.
- Quantities sheet will be provided for the intersection.

Task 507 TxDOT Advanced Funding Agreement Coordination \$10,300 (LS)

Consultant understands this project will involve an Advanced Funding Agreement (AFA) between City of Hutto and TxDOT. Consultant will coordinate with TxDOT and Client the documents for AFA.

- 1.1. Consultant will prepare AFA request form, DCIS request Form, ready to let schedule, and project location map.
- 1.2. Consultant will attend up to three meetings with Client and TxDOT, not including meetings specified in other tasks.
- 1.3. Consultant will prepare project correspondence and general AFA coordination with City and TxDOT

Task 508 Environmental Services \$15,000 (LS)

Modifications to TxDOT right-of-way as part of the proposed project are anticipated to trigger compliance with the National Environmental Policy Act (NEPA), as implemented and reviewed by TxDOT. The anticipated level of NEPA documentation and analysis is a Categorical Exclusion (CE). Categorically excluded projects cannot cause any significant impacts to any natural, cultural, recreational, historic, or other resources and no unusual circumstances may occur that would preclude the project from being categorically excluded. Engineer will perform and document a CE as presented below.

- 1.1. Kimley-Horn will complete TxDOT Scope Development Tool (SDT) to identify required actions that need to be entered into a Project Scope Form. Outcome of SDT form will

determine which specific studies, reports, and coordination will be required. TxDOT Environmental subject matter experts and TxDOT District staff reserve the right to make project level decisions regarding required actions and/or findings generated by the SDT. Obtain executed Project Scope form TxDOT with notation of required studies, reports, and coordination.

1.2. Site Visit

Kimley-Horn will perform a reconnaissance of the site to collect appropriate data pertaining to items to be further assessed as detailed in the executed Project Scope Form.

1.3. Studies, Reports, and Coordination

As determined by the results of the Scoping Assessment, Kimley-Horn will prepare the appropriate documentation for submittal to the TxDOT Environmental Reviewer to aid in obtaining environmental clearance. Engineer will coordinate with other agencies and TxDOT Environmental Reviewer as appropriate per the executed Project Scope Form. Studies will be performed in accordance with TxDOT guidelines and will follow TxDOT toolkits. Based on limited project information and in the absence of an executed Project Scope Form, Kimley-Horn anticipates performing the following at a minimum:

- Complete Biological Evaluation Form
- Complete Tier I Site Assessment Form

Studies excluded, and not anticipated to be required for the proposed project include:

- Historic and/or archeology studies and coordination
- Hazardous Materials Initial Site Assessment (ISA)
- Noise modeling
- Air quality modeling/monitoring
- Presence/absence surveys for threatened and endangered species
- Migratory bird nest surveys
- Karst studies/surveys
- Aquatic resources delineation
- U.S. Army Corps of Engineers Permitting
- Pedestrian cultural resources survey

Deliverables:

- Scope Development Tool
- Complete Biological Evaluation Form
- Complete Tier I Site Assessment Form

Task 509 Public Involvement

\$8,500 (LS)

- 1.1. Consultant will provide support and attendance for one public meeting.

- 1.2. Consultant will develop advertisement, comment forms, exhibit boards, sign in sheets, speaker cards, and handouts for the public meeting.
- 1.3. Consultant will respond to public meeting comments and prepare a public meeting summary report.

Deliverables:

- Public Meeting exhibits and handouts
- Public Meeting summary report

Task 510 Bidding Phase Services \$15,200 (LS)

- 1.1. Assist the Client in preparation of bid schedule, project specifications, and project manual
- 1.2. Engineer's Project manager will attend pre-bid meeting with the City. Assist the City in developing meeting agenda
- 1.3. Receive, record and provide responses to prospective bidder's and suppliers questions. Issue addenda as appropriate to clarify, correct, or change the bidding documents
- 1.4. Assist the City in opening of bids, review and evaluate all bids including bid amount and prepare recommendation letter for award of the contract for construction
- 1.5. Include addenda items in the construction plans and issue "conformed" set of plans for construction

Task 511 Construction Phase Services \$18,100 (LS)

- 1.1. Engineer's Project Manager will attend pre-construction meeting with the City
- 1.2. Engineer will provide responses to Contractor's request for information (RFI)
- 1.3. Engineer will maintain a log and review contractor change order requests; and provide recommendation to the City
- 1.4. Engineer will review and maintain a log of shop drawing submittals
- 1.5. Attend up to 4 site meetings as requested, including final walk through.

ADDITIONAL SERVICES

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

1. Construction inspection, construction staking, and material testing
2. Prepare a Section 404 USACE regional or individual permit and/or mitigation planning.
3. Presence/absence surveys for endangered species or formal Section 7 Coordination under the Endangered Species Act.
4. Significant modifications to the site plan or agreed-upon requirements.
5. Fountain / Water Feature Design

6. 3D Modeling
7. Mechanical, Electrical (other than Playing Field lighting for the Perfect Game Fields), and Plumbing Design
8. Electrical engineering and design, including photometrics, circuitry, wiring, and lighting specifications other than the Playing Field lighting for the Perfect Game Fields.
9. Lighting design for emergency egress and/or broadcast level lighting.
10. Landscape lighting photometrics.
11. Site Signage, Safety and Wayfinding Signage, and/or Graphics
12. Structural Engineering (including but not limited to: retaining walls, freestanding walls, architectural pavilions, arbors and light pole foundations)
13. Architectural Structures
14. Drawing revisions requested after Construction Documents are complete
15. Design of the off-site sanitary sewer interceptor line assumed to be needed to support Phase 1 of the Perfect Game development
16. Any other item not specifically listed in this agreement.

INFORMATION PROVIDED BY THE CLIENT

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The client shall provide information requested by Kimley-Horn during the project, including but not limited to the following:

1. Final architectural footprint for the proposed Convention Center building and Parking Deck and any other structures proposed for Phase 1 of the site. (hard copy & min AutoCAD 2000 format);
2. Client approved site plan
3. Final structural foundation plan for proposed buildings and any other structures proposed for Phase 1(hard copy & min. AutoCAD 2000 format);
4. Mechanical, electrical, and plumbing plans for the buildings and site work; (Including water meter sizes, domestic water and fire sprinkler service sizes, utility entry locations, sanitary sewer service size, location and depth, transformer pad locations, a/c pad locations, and roof drain size, location and depth);
5. Permission to enter the subject property;
6. Site Signage Plans;
7. Geotechnical report including paving design recommendation and foundation\field\detention preparation recommendations;
8. Executed copy of this Agreement;
9. Any current Title Commitments on the subject property.

(The remainder of this page intentionally left blank)

FEE AND EXPENSES

Kimley-Horn will perform the hourly Tasks on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to the attached rate schedule, which is subject to annual adjustment. Kimley-Horn will perform the Lump Sum Tasks for the total lump sum labor fee indicated. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Please be advised that Kimley-Horn is not a Contingent Partner in this project. As such, Kimley-Horn will be paid in full for all Professional Services rendered. As stated in the attached Standard Provisions, payment of invoices will be due within 30 days of receipt. Kimley-Horn reserves the right to suspend services if payment has not been received within 30 days of receipt of the invoice.

Kimley-Horn will perform the services described in this scope of services on a lump sum (LS) basis or an hourly (HR) rate basis per the attached rate schedule.

100 SERIES: OVERALL SITE SCOPE

Task 101	Engineer's Opinion of Probable Construction Costs (OPCC)	\$35,000	(LS)
Task 102	Right-of-Way (ROW) Abandonment Assistance	\$8,000	(LS)
Task 103	Preliminary Plat – Up to 10 Lots	\$19,500	(LS)
Task 104	Final Plat	\$24,500	(LS+tax)
Task 105	On-Site Civil Engineering – Parking Lots	\$96,500	(LS)
Task 106	On-Site Civil Engineering – Convention Center	\$77,000	(LS)
Task 107	Champions Avenue Civil Engineering Plans	\$57,000	(LS)
Task 108	Main Street Civil Engineering Plans	\$128,000	(LS)
Task 109	Roundabout Design	\$62,000	(LS)
Task 110	TxDOT Driveway Permits	\$10,000	(HR)
Task 111	On-Site Storm Water Detention Facility, If Required	\$23,500	(LS)
Task 112	Temporary Channel and Detention Drainage Design, If Required	\$41,000	(LS)
Task 113	Landscape Architecture Site Planning Assistance	\$10,000	(HR)
Task 114	Franchise Utility Coordination	\$18,000	(HR)
Task 115	Meetings; Exhibits; On-Call Services	\$36,000	(HR)
Task 116	Submittals and Permitting	\$10,000	(HR)
Task 117	Separate Instrument Easement (As Needed, Each)	\$1,200	(LS, EA)
Task 118	Response to RFI / Submittals – Civil	\$24,000	(HR)
Task 119	Record Drawings, If Required	\$7,000	(LS)

SUBTOTAL 100 SERIES \$688,200

200 SERIES: PERFECT GAME PARK ON-SITE CIVIL ENGINEERING

Task 201	Engineer's Opinion of Probable Construction Costs (OPCC)	\$17,500	(LS)
Task 202	Final Plat	\$14,500	(LS+tax)
Task 203	On-Site Civil Engineering – Perfect Game Fields (100 acres)	\$234,000	(LS)
Task 204	Franchise Utility Coordination	\$10,000	(HR)
Task 205	Meetings; Exhibits; On-Call Services	\$24,000	(HR)
Task 206	Submittals and Permitting	\$10,000	(HR)
Task 207	Separate Instrument Easement (As Needed, Each)	\$1,200	(LS, EA)
Task 208	Response to RFI / Submittals – Civil	\$12,000	(HR)
Task 209	Record Drawings, If Required	\$5,000	(LS)
SUBTOTAL 200 SERIES		\$328,200	

300 SERIES: PERFECT GAME PARK PLAYING FIELD DESIGN

Task 301	Playing Field Masterplan / Performance Goals	\$16,000	(LS)
Task 302	Schematic Design	\$29,000	(LS)
Task 303	Design Development	\$134,000	(LS)
Task 304	Issue for Construction Documents	\$215,000	(LS)
Task 305	Meetings / Team Coordination	\$43,000	(HR)
Task 306	Bidding / Clarifications	\$10,000	(HR)
Task 307	Construction Phase Services	\$93,000	(HR)
Task 308	Playing Field Fencing	\$49,000	(LS)
Task 309	Playing Field Lighting	\$148,000	(LS)
Task 310	Playing Field Structures	\$62,500	(LS)
Task 311	Championship Field Seating	\$47,000	(LS)
Task 312	Site Electrical, Audio, Video and Low-Voltage Systems	\$59,000	(LS)
SUBTOTAL 300 SERIES		\$905,500	

400 SERIES: PERFECT GAME PARK LANDSCAPE ARCHITECTURE

Task 401	Schematic Design	\$25,000	(LS)
Task 402	Design Development	\$38,000	(LS)
Task 403	Construction Documents	\$67,500	(LS)
Task 404	Meetings / Team Coordination	\$20,000	(HR)
Task 405	Schematic Lighting	\$12,200	(LS)
Task 406	Irrigation	\$22,500	(LS)
Task 407	Bidding	\$7,500	(HR)
Task 408	Construction Phase Services	\$12,500	(HR)
Task 409	Site Visits / Meetings	\$16,800	(HR)
SUBTOTAL 400 SERIES		\$222,000	

500 SERIES: US-79 WIDENING AND INTERSECTION IMPROVEMENTS

Task 501	Project Management	\$13,800 (LS)
Task 502	Data Collection	\$4,200 (LS)
Task 503	Topographic Survey and Subsurface Utility Engineering (SUE)	\$30,300 (LS)
Task 504	Preliminary 30% Schematic Design	\$45,600 (LS)
Task 505	Roadway Engineering	\$126,400 (LS)
Task 506	Traffic Engineering	\$35,500 (LS)
Task 507	TxDOT Advanced Funding Agreement Coordination	\$10,300 (LS)
Task 508	Environmental Services	\$15,000 (LS)
Task 509	Public Involvement	\$8,500 (LS)
Task 510	Bidding Phase Services	\$15,200 (LS)
Task 511	Construction Phase Services	\$18,100 (LS)
SUBTOTAL 500 SERIES		\$322,900

Total Projected Fee
(Excludes Taxes and Expenses)

\$ 2,466,800

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to Legacy PG Development, LLC and the City of Hutto, Texas.

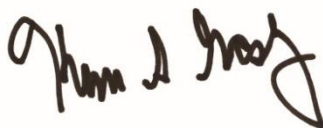
Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please provide the following information:

Please email all invoices to _____.

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

We appreciate the opportunity to provide these services to you. Please contact me at (972) 770-1370 or jonathan.kerby@kimley-horn.com should you have any questions.

Sincerely,



Attachment: Standard Rate Schedule
Standard Provisions

Agreed to on this _____ day of _____, 2019.

LEGACY PG DEVELOPMENT, LLC

(Signature)

(Print or Type Name)

(Title)

CITY OF HUTTO, TEXAS

(Signature)

(Print or Type Name)

(Title)

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Analyst	\$135 - \$225
Professional	\$195 - \$255
Senior Professional I	\$210 - \$320
Senior Professional II	\$300 - \$340
Senior Technical Support	\$135 - \$210
Support Staff	\$85 - \$125
Technical Support	\$75 - \$125

Effective through June 30, 2020

Subject to annual adjustment thereafter

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 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.

Exhibit B

Payment Terms

Invoice Schedule.

Initial payment to be made within five days of bonds closing, estimated to be in December 2019.

Up to \$1,000,000 will be paid over the next six months, per Design Professional's typical draw schedule.
The balance of the contract payments due will be paid out upon the second bond issue, to occur no later than eight months from the original bond closing that occurs in December, per Design Professional's typical draw schedule.

Item 13.2 Attachments (12/3/20 CC Mtg)

Exhibit C

Insurance Requirements

Design Professional agrees to maintain the following insurance, at its expense, and keep in force with an insurance company authorized to do business in the State in which the Project is located and which has an A.M. Best Company, (a "Rated Company") or equivalent, financial rating of A-VII or better:

Professional Liability Insurance. Professional liability insurance arising out of errors and omissions or negligent acts committed by Design Professional in the performance of this agreement with limits not less than \$2,000,000.00 per claim and \$4,000,000.00 annual aggregate. Design Professional shall maintain this policy for a minimum of two years after completion of work or shall arrange for a two-year extended reporting period if the policy is canceled or non-renewed.

Commercial General Liability Insurance. Commercial general liability insurance (CG 0001 or its equivalent), written on an occurrence basis, including personal injury, bodily injury, broad form property damage, products and completed operations liability, contractual liability, and a severability of interests clause, in limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

Commercial Automobile Liability Insurance. Design Professional agrees to maintain, at its expense, a commercial auto liability policy with a combined single limit of at least \$1,000,000 including owned, hired and non-owned vehicles.

Valuable Papers Insurance. Design Professional agrees to maintain Valuable Papers and Records Insurance in an amount sufficient to restore plans, drawings, field notes or other similar data related to work covered by this Agreement, including any such data created or maintained in electronic media.

Worker's Compensation. Design Professional agrees to maintain Worker's Compensation with statutory limits required by law and Employer's Liability Insurance limits shall be not less than:

- Bodily Injury by Accident: \$1,000,000 Each Accident
- Bodily Injury by Disease: \$1,000,000 Policy Limit
- Bodily Injury by Accident: \$1,000,000 Each Employee

Design Professional shall furnish Owner with certificates of insurance evidencing the foregoing coverages and the certificates shall contain a notation that (i) the insurer will give at least thirty (30) days written notice prior to any lapse in or cancellation of, (ii) the insurance companies will have no right of recovery or subrogation against the Owner and its insurers, (iii) the general liability insurance policy is provided on a per project aggregate basis, and (iv) such coverage shall be primary and non-contributory. In addition, except for worker's compensation and professional liability insurance, the policies shall name Owner, Owner's property manager and Owner's lender as additional insureds. Executed certificates of said policies shall be delivered to Owner within ten (10) days after execution of the Agreement for Professional Services. Notwithstanding anything to the contrary, Design Professional may satisfy any of its insurance requirements by means of a blanket, excess liability and/or umbrella policy(ies). Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at the Design Professional's sole risk.

If Design Professional subcontracts any portion of the Services, Design Professional shall, before permitting any of subcontractor to perform any Services, require each subcontractor to carry insurance with terms and limits similar to that specified above, except Professional Liability and Commercial General Liability minimum limits of \$1,000,000 Per Occurrence/\$2,000,000.00 Aggregate is required. Design Professional shall provide to the Owner certificates of insurance evidencing that each subcontractor carries insurance as required above, or evidencing that such subcontractors are named insureds under the Design Professional's insurance coverages. As with the Design Professional's insurance coverage, the Owner, Owner's property manager and Owner's lender, shall be named as an additional insured on any subcontractor's insurance required hereof.

Exhibit D

WAIVER AND RELEASE OF LIENS

PROJECT: (Name and address):

OWNER: (Name and address):

Contract or Reference No. _____

WHEREAS THE UNDERSIGNED: ☐ Contractor, ☐ Subcontractor, ☐ Supplier, ☐ Architect or Engineer, or
☐ _____ Has provided labor, services, materials or equipment, for the above project, under an agreement with:

In its capacity as: ☐ Owner or Owner's agent, ☐ Contractor, ☐ Subcontractor, ☐ Architect or Engineer.

SECTION A (check box and initial only one of the following):

(Initial)

☐ ☐ **PARTIAL WAIVER AND RELEASE:** IN CONSIDERATION OF PARTIAL PAYMENT for labor, services, materials or equipment provided in the amount of _____ Dollars (\$))
covering the following Partial Payment Request(s) or Invoices(s): (attach additional pages if necessary)

DATE:

PAYMENT REQUEST or INVOICE NUMBER:

AMOUNT:

Together with any previous payment(s) already received, but excluding any retainage or any labor, services, materials or equipment provided after the date of: _____, 20_____

(Initial)

☐ ☐ **FINAL WAIVER AND RELEASE:** IN CONSIDERATION OF FINAL PAYMENT for labor, services, materials or equipment provided in the amount of: _____ Dollars (\$))

THE UNDERSIGNED DOES HEREBY WAIVE AND RELEASE all bond claims, liens, or claims or right o lien, statutory or otherwise, against the property, project, Owner and any sureties, for labor, services, materials or equipment, as provided by the Undersigned, but only to the extent of payment received, as indicated above and a limited below:

SECTION B (check and initial only one of the following):

(Initial)

☐ ☐ **CONDITIONAL RELEASE:** THIS WAIVER AND RELEASE IS CONTINGENT UPON RECEIPT OF PAYMENT and final bank clearance of said emittance in the above amount. The remittance identified as payment and endorsed by the Undersigned marked "paid" or otherwise cancelled by the bank against which said remittance was drawn, shall constitute conclusive proof that said invoice or pay request was paid and that payment therefore was received by the Undersigned, and thereupon, this waiver and release shall become effective automatically without the requirement of any further, act, acknowledgement or receipt on the part of the Undersigned

ADDITIONALLY, THE UNDERSIGNED ACKNOWLEDGES RECEIPT of the total amount of \$ _____
in previous payment and does hereby grant unconditional release of all above described claims for that amount.

OR

(Initial)

☐ ☐ **UNCONDITIONAL RELEASE:** THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF PAYMENT in the above amount

for labor, services, materials or equipment as described herein, and does hereby grant this release unconditionally.

State of: _____)
)SS

County of: _____)

Subscribed and sworn to before me this _____
day of _____, 20_____

THE PERSON SIGNING below does hereby certify that he or she is fully authorized and empowered to execute this instrument and to bind the Undersigned hereto, and does in fact so execute this instrument.

COMPANY: _____
ADDRESS: _____
NAME: _____
TITLE: _____

NOTARY PUBLIC: _____

My Commission Expires: _____

Legacy PG Development, LLC
4717 Central
Kansas City, MO 64112
816-777-3500



Proposal No. _____

Company: _____

From: _____

To: Design Manager
Fax: 816/777-3501

Project: _____

cc: _____

Authorization for Additional Services

Design Professional has been requested to perform Services beyond the Scope of Services in the Agreement between Owner and Design Professional for this Project. Upon written authorization by Owner, these Additional Services will be charged in accordance with the terms of that Agreement unless otherwise indicated herein; except as otherwise provided herein, all conditions, terms, provisions, covenants and representations of that Agreement shall continue in full force and effect.

Description of Services or Expense:

Fee Adjustment (not to exceed without additional authority): \$ _____

DESIGN PROFESSIONAL

Proposed and Agreed
on behalf of Design Professional:

Signature

Title

Date

OWNER

Services requested on behalf of
Owner by:

Printed Name

Authorized on behalf of Owner by:

Authorized Signature

Date

By signing this document, Design Professional agrees that this proposal and amendment includes all costs whatsoever associated with this change in Services and that there shall be no additional claims related to this change.

This Authorization is not effective until
signed by Owner's authorized representative.

Exhibit H

RFI and Related Terms

1.1 REQUESTS FOR INFORMATION (RFI)

A. GENERAL RULES. "Construction Request for Information" Form: The Contractor shall request clarification of information contained in the construction drawings or the project manual from the Design Professional via use of the "Construction Request for Information" form.

1. The Contractor shall submit a completed and legible Request for Information form only after a thorough review of all applicable Drawings and Project Manual Sections, and only if the Contractor is still not able to resolve the problem or clarification based on the information contained therein.
2. Unnecessary RFIs adversely impact the Design Professional's ability to respond in a timely manner to valid RFIs. Should the Design Professional determine that submitted RFIs are unnecessary, in that the information being requested by the Contractor on a continuing basis is clearly depicted either in the construction drawings or in the Project Manual, then the cost for the Design Professional's and its consultants' time required to respond to unnecessary RFIs shall be backcharged to the Contractor in accordance with the AIA A201 General Conditions.
3. The Design Professional will review and respond to Construction Request(s) for Information prepared by the Contractor's Project Manager or Project Superintendent only. Subcontractor requests for information will not be received by Owner nor by Design Professional and shall be addressed only when prepared by the Contractor's Project Manager or Project Superintendent only.
4. The Design Professional's response to a Contractor's Request for Information shall not be considered an authorization to proceed with extra work. The Contractor shall not proceed with "additional" or "extra work" without written authorization from the Owner, in accordance with the procedures set out in this **Section** for Contractor-Initiated Proposals, part 1.2.B, below.

B. PROCEDURES. In the event that the Contractor feels that it is in need of additional clarification or interpretation of the Contract Documents, it shall follow these procedures:

- a. Contractor shall submit to Design Professional in writing, in a timely manner so as not to delay the Work, a Request for Information clearly stating the issue and making specific reference to the drawing, page, detail, section, plan, specification section or field condition on which Contractor needs either clarification or interpretation.
- b. Contractor shall allow not less than ten (10) calendar days for Design Professional to make a written response.

- c. It is expected that Contractor will have made a full and coordinated review of the Contract Documents during bidding or negotiation, and will coordinate all questions of its subcontractors and suppliers prior to entering into the construction contract. Therefore, the use of the RFI process should be limited to conditions and circumstances that could not reasonably have been foreseen by Contractor during the bidding and negotiation process.
- d. Design Professional shall respond in writing to Contractor in a timely manner, so as not to delay the progress of the Work. However, where multiple RFI's are submitted in a short time period, Contractor must realize that this will cause a delay in getting a timely response from the Design Professional and its consultants. Therefore, Contractor shall not be entitled to any time extension nor cost increase based on a delay in Design Professional responding to more than five (5) RFIs that were submitted over any overlapping period of ten (10) working days.
- e. If Contractor believes, based on Design Professional's written response to an RFI, that it is entitled to a change in either the Contract Time or Contract Price, it shall follow the procedures set out in this Section for Contractor-Initiated Proposals, part 1.2.B, below.

1.2 PROPOSAL REQUESTS

A. OWNER-INITIATED PROPOSAL REQUESTS: The Design Professional or Owner's Representative will issue a written and detailed Request for Proposal (RFP) to Contractor, containing a description of proposed changes in the Work that may require adjustment to the Contract Sum or the Contract Time. If necessary, the description will include supplemental or revised Drawings and Specifications.

1. GENERAL RULES. The following general rules apply to Owner-initiated and/or Design Professional-initiated RFP's:

- a. **PROPOSAL REQUESTS ISSUED BY OWNER OR DESIGN PROFESSIONAL ARE FOR INFORMATION ONLY.** Do not consider them instructions either to stop work in progress or to execute the proposed change.
- b. **INCLUDE A LIST OF QUANTITIES** of products required or eliminated and unit costs, with total amount of purchases and credits to be made.
- c. **IF REQUESTED, FURNISH SURVEY DATA** to substantiate quantities. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
- d. **INCLUDE AN UPDATED CONTRACTOR'S CONSTRUCTION SCHEDULE** that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

2. PROCEDURES. The Owner reserves the right to make changes to the design or the schedule for the Project. In the event of such Owner-initiated change, the parties shall follow these procedures:

- a. Either the Design Professional or the Owner's Representative shall issue a written Request for Proposal ("RFP") to the Contractor. The RFP shall be sent to Contractor. Contractor shall acknowledge receipt of the RFP to Owner.
- b. Within ten (10) calendar days from receipt of the Owner's RFP, the Contractor shall prepare a PCO. Contractor shall assign a new PCO number to each successive PCO. If the PCO is a revision of a prior PCO, the number shall be the same, with a designation "R-1" for "Revised", e.g. PCO No. 37-R-1. Subsequent revisions to this PCO shall be designated R-2, R-3, etc. until final action is taken, by either acceptance or rejection of the PCO.
- c. NOTE: If Contractor fails to so respond within ten (10) calendar days, then the method and the adjustment determined by the Design Professional under paragraph 7.3.6 of the AIA A201 General Conditions shall be final and binding on the parties. Owner reserves the right to have such work performed by another contractor if Contractor fails to so respond. If so, Contractor shall be responsible for the difference in cost between the amount the Design Professional determines would have been reasonable had Contractor performed the work, and the actual cost Owner incurs to hire another contractor to perform the same (including any premium costs, mobilization, scaffold, equipment, demobilization, insurance, overhead and other costs that might have not been incurred had Contractor performed this changed work).
- d. The Contractor shall execute the PCO and shall deliver it to Owner's Representative and to the Design Professional.
- e. Owner and Design Professional shall review the PCO. Contractor is not authorized to take any action to implement the change set out in the PCO without written authorization from Owner's Representative.
- f. Owner and Design Professional shall respond to the PCO in writing, either accepting or rejecting the Proposal for Change Order. Either Owner or the Design Professional may request additional detail or information from Contractor, if necessary, prior to Owner's action on the PCO. Contractor shall timely respond to such request for additional information within five (5) working days from receipt of such request. If the PCO is acceptable to Owner and Design Professional, both shall acknowledge their acceptance by executing the PCO document.
- g. Owner may request Design Professional's input and recommendation as to the scope, price or time proposed by Contractor in the PCO, which shall be done in a timely manner.
- h. With or without Design Professional's input, Owner may accept the PCO in whole, or in part; and may request a revised Proposal based on new criteria. If rejected, the PCO process shall be terminated by Owner's written rejection. If accepted, in whole or in part, upon receipt of Owner's written acceptance and instructions,

Contractor is authorized to immediately implement the change (unless Owner's instructions indicate otherwise). A written Change Order will be prepared on a monthly basis to memorialize the acceptance of all PCOs approved during the previous month.

- i. Owner shall prepare a written Change Order on a monthly basis, when necessary, and shall transmit the same to the Contractor for signature. Contractor shall have the Change Order signed by an authorized officer or agent not less than five (5) working days from receipt and shall return the same to the Owner for signature. Owner shall provide Contractor and Design Professional with a fully executed copy of the final, signed Change Order. Alternatively, the Change Order may be presented to Contractor for signature by all parties at the Monthly Progress Meeting. Contractor shall have someone duly authorized to execute Change Orders in attendance at all Monthly Progress Meetings.
- j. Owner's Representative shall enter a Commitment into the Owner's Accounting System and shall forward to Contractor the appropriate accounting lines, if applicable, for Contractor's use and inclusion in the next month's Application for Payment to Owner.

B. CONTRACTOR-INITIATED PROPOSALS: If latent or unforeseen conditions require modifications to the Contract, Contractor may propose changes by submitting a request for a change.

1. GENERAL RULES:

- a. **INCLUDE A STATEMENT OUTLINING REASONS FOR THE CHANGE** and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Sum and the Contract Time.
- b. **INCLUDE A LIST OF QUANTITIES OF PRODUCTS** required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
- c. **INDICATE APPLICABLE TAXES**, delivery charges, equipment rental, and amounts of trade discounts.
- d. **INCLUDE AN UPDATED CONTRACTOR'S CONSTRUCTION SCHEDULE** that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.
- e. **COMPLY WITH SPECIFIED "PRODUCT REQUIREMENTS"** if the proposed change requires substitution of one product or system for product or system specified.

2. PROCEDURES. If the Contractor initiates a request for a change, the parties shall follow these procedures:

- a. Contractor shall forward to the Design Professional and Owner's Representative a written Proposal Request ("PR"), using either AIA Document G709, or other form approved in advance by the Design Professional for Work the Contractor has identified as either a scope change or other change that would warrant a modification to the Contract Price or the Contract Time.
- b. Contractor shall number its Proposal Requests in sequence, as PR-1, etc. **DO NOT CONFUSE CONTRACTOR-INITIATED PROPOSAL REQUESTS WITH OWNER-INITIATED REQUESTS FOR PROPOSALS ("RFP") NUMBERING SYSTEM. THESE SHALL BE NUMBERED AND ADMINISTERED SEPARATELY.**
- c. If Design Professional believes that Contractor's Proposal Request has merit, Design Professional shall promptly confer with the Owner to discuss such Proposal Request.
- d. Owner and Design Professional shall review the PR. Contractor is not authorized to take any action to implement the change set out in the PR without written authorization from Owner's Representative.
- e. Owner shall respond to the PR in writing, either accepting or rejecting the Proposal Request. Either Owner or the Design Professional may request additional detail or information from Contractor, if necessary, prior to Owner's action on the PR. Contractor shall timely respond to such request for additional information within five (5) working days from receipt of such request.
- f. Owner may request Design Professional's input and recommendation as to the scope, price or time proposed by Contractor in the PR, which shall be done in a timely manner.
- g. With or without Design Professional's input, Owner may accept the PR in whole, or in part; and may request a revised Proposal Request based on new criteria. If rejected, the PR process shall be terminated by Owner's written rejection. If accepted, in whole or in part, upon receipt of Owner's written acceptance and instructions, Contractor is authorized to immediately implement the change (unless Owner's instructions indicate otherwise). A written Change Order will be prepared on a monthly basis to memorialize the acceptance of all PRs and PCOs approved during the previous month.
- h. Owner shall prepare on a monthly basis, when necessary, a written Change Order and shall transmit the same to the Contractor for signature. Contractor shall have the Change Order signed by an authorized officer or agent not less than five (5) working days from receipt and shall return the same to the Owner for signature. Owner shall provide Contractor and Design Professional with a fully executed copy of the final, signed Change Order. Alternatively, the Change Order may be presented to Contractor for signature by both parties at the Monthly Progress Meeting. Contractor shall have someone duly authorized to execute Change Orders in attendance at all Monthly Progress Meetings. The signature of the Design Professional is NOT required for a valid and enforceable Change Order.

- i. Owner's Representative shall enter a Commitment into the Owner's Accounting System and shall forward to Contractor the appropriate accounting lines, if applicable, for Contractor's use and inclusion in the next month's Application for Payment to Owner.

Item 13.2 Attachments (12/3/20 CC Mtg)

Kimley»Horn

October 24, 2019

Mr. Dan Lowe
Managing Partner
Legacy Development
4717 Central Street
Kansas City, Missouri 64112

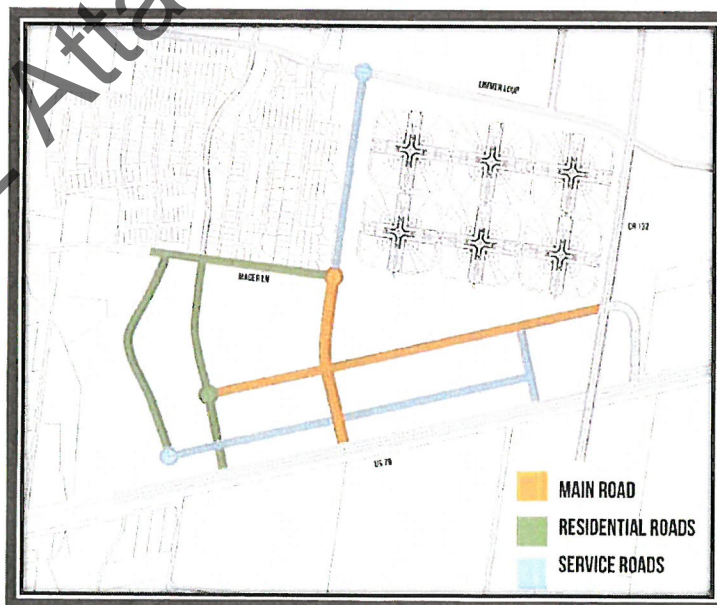
**Re: Agreement for Professional Services
+/- 294-acre Multi-Use Project
NWC US-79 & CR 132
City of Hutto, Texas**

Dear Mr. Lowe:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant"), is pleased to submit this letter agreement (the "Agreement") to Legacy Development ("Client") for professional services related to the proposed +/- 294-acre multi-use development in the City of Hutto, Texas. This agreement is for the non-ballfield portion of the overall site. The site civil engineering design for the ball fields is covered under a separate agreement. Our project understanding, scope of services, schedule, and fee are presented below. *Client may assign this agreement to a different entity at any time.*

PROJECT UNDERSTANDING

on behalf of the City of Hutto, TX,
Client is developing the subject site and has requested Kimley-Horn provide this Professional Services Agreement associated with the design and permitting of the tracts totaling approximately 294-acres. It is Kimley-Horn's understanding that rezoning will be required. The rezoning of the site is being done in conjunction with the City of Hutto and Kimley-Horn, under a separate agreement.



SCOPE OF SERVICES

The tasks outlined below are the professional services to be provided by Kimley-Horn for the non-ball field portion of the project, Phase 1. The scope of services described for Lump Sum (LS) tasks will be completed for the lump sum fee indicated. The scope of services described for Hourly (HR) tasks have a projected budget amount indicated. Actual invoiced amount for Hourly tasks will be based on the effort required to complete the task. Hourly effort will be invoiced per our attached hourly rate schedule in affect at the time the services are provided.

The below tasks are for the overall 294-acre site. Tasks related to Phase 1 are excluded from this agreement and will be done under a separate agreement.

Task 1 Topographic Survey

\$ 13,500 (LS)



Kimley-Horn will prepare a topographic survey for the additional area shown above to be used for site planning and civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document. The survey will consist of: Elevations around the adjacent perimeter of the site; Contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; Observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances; Dig Tess markings of subsurface utilities that are in place at the time our field work is being done; and two benchmarks established with the survey.

Task 2 Mass Grading and Overall Utility Plans**\$ 34,500 (LS)**

Kimley-Horn will prepare the following plans which will become the basis of design for Phase 1 of the project and future phases.

- a. Mass Grading Plan- We will prepare a mass grading plan for the overall 294-acre site taking into consideration the detention requirements, if any, and the geotechnical results for the site, including the baseball fields. The goal will be to try to balance the earthwork on the overall site such that export, or import is not required, other than as directed by the Geotechnical report for buildings, paving, and field preparation (select fill).
- b. Preliminary Water\Sanitary Sewer Plan – We will prepare a preliminary water and sanitary plan for the overall 294-acre site. This plan will indicate the major mains for both water and sanitary sewer which will be needed to serve the overall site.
- c. Preliminary Drainage Plan – We will prepare an overall master drainage plan for the overall site incorporating the results of the Downstream Assessment as it relates to the overall site.

Task 3 Downstream Assessment**\$ 26,000 (LS)**

Kimley-Horn will prepare a downstream assessment for the subject property to determine if the City will require detention for all or a portion of the 294-acre development. The assessment will be prepared in accordance with the City's storm water criteria. The limits of the assessment will extend from the northern property boundary to the crossing of Cottonwood Creek at SH 79.

Kimley-Horn will prepare one existing, one proposed, and one fully developed condition hydrologic analysis of the watershed using the Unit Hydrograph Method. The watershed boundaries will be established using record drawings and readily available LiDAR topography and on ground survey provided under a separate task. Land use information will be based on aerial photography, site observation, and the City's Future Land Use Plan.

If the results of the analysis show detention is required, KH will calculate the volume and allowable discharge rate from the pond(s). Detailed design of the grading and outfall of the pond will be prepared under a separate task.

Kimley-Horn will prepare a downstream assessment submittal to the City for the property. The submittal will include:

- Technical Memorandum
- Hydrologic Analysis
- Hydrologic Workmap for Existing, Proposed, and Fully Developed Conditions
- Digital Model

Kimley-Horn will respond to one round of City comments as part of this task. Kimley-Horn cannot guarantee City approval of the submittal.

Task 4 Meetings; Exhibits; On-Call Services**\$ 12,000 (HR)**

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. This task will also capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description. Due to the unknown nature of this task, it will be billed at an hourly rate. We have projected 50 hours of effort for this task.

ADDITIONAL SERVICES

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

1. Roadway Plans;
2. On-Site Civil Engineering;
3. Landscape Plans;
4. Landscape/Hardscape Plans;
5. Irrigation Plans;
6. Any other item not specifically listed in this agreement;

INFORMATION PROVIDED BY THE CLIENT

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The client shall provide information requested by Kimley-Horn during the project, including but not limited to the following:

1. Permission to enter the subject property;
2. Geotechnical report including paving design recommendation and foundation preparation recommendations;
3. Executed copy of this agreement;
4. Any current Title Commitments on the subject property.

FEE AND EXPENSES

Kimley-Horn will perform the hourly Tasks on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to the attached rate schedule, which is subject to annual adjustment. Kimley-Horn will perform the Lump Sum Tasks for the total lump sum labor fee indicated. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client. *It is anticipated that payments for the work herein will be made from and upon receipt of the first project bond issue, Dec 1, 2019*

Please be advised that Kimley-Horn is not a Contingent Partner in this project. As such, Kimley-Horn will be paid in full for all Professional Services rendered. As stated in the attached Standard Provisions, payment of invoices will be due within 30 days of receipt. Kimley-Horn reserves the right to suspend services if payment has not been received within 30 days of receipt of the invoice.

Kimley-Horn will perform the services described in this scope of services on a lump sum (LS) basis or an hourly (HR) rate basis per the attached rate schedule.

Task 1	Topographic Survey	\$13,000	(LS)
Task 2	Mass Grading and Overall Utility Plans	\$34,500	(LS)
Task 3	Downstream Assessment	\$26,000	(LS)
Task 4	Meetings; Exhibits; On-Call Services	\$12,000	(HR)

Total Projected Fee
(Excludes Expenses)

\$ 85,500

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CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to Legacy Development.

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

Please email all invoices to _____.

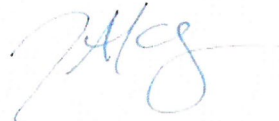
If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days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

We appreciate the opportunity to provide these services to you. Please contact me at (972) 770-1370 or jonathan.kerby@kimley-horn.com should you have any questions.

Sincerely,



Kevin S. Gaskey, P.E.
Senior Vice President



Jonathan Kerby, P.E.
Project Manager

Attachment: Standard Rate Schedule
Standard Provisions

Agreed to on this _____ day of _____, 2019.

LEGACY DEVELOPMENT, LLC

(Signature)

Dan Lowe
(Print or Type Name)

(Title)

MANAGER, LEGACY PG Development, LLC

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Analyst	\$135 - \$225
Professional	\$195 - \$255
Senior Professional I	\$210 - \$320
Senior Professional II	\$300 - \$340
Senior Technical Support	\$135 - \$210
Support Staff	\$85 - \$125
Technical Support	\$75 - \$125

Effective through June 30, 2020

Subject to annual adjustment thereafter

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 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.

Kimley»Horn

June 11, 2019

Mr. Jim Leslie
Wolverine Interests, LLC
16250 Knoll Trail Drive, Suite 210
Dallas, Texas 75248

Re: *Agreement for Professional Services
+/- 242-acre Multi-Use Project
SH US-79 & CR 132
City of Hutto, Texas*

Dear Jim:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant"), is pleased to submit this letter agreement (the "Agreement") to Wolverine Interests, LLC ("Client") for professional services related to the proposed +/- 242-acre multi-use development in the City of Hutto, Texas. Our project understanding, scope of services, schedule, and fee are presented below.

PROJECT UNDERSTANDING

Client is developing the subject site on behalf of the City of Hutto and has requested Kimley-Horn provide this Professional Services Agreement associated with the design and permitting of the tracts totaling approximately 242-acres. It is Kimley-Horn's understanding that rezoning will be required.



SCOPE OF SERVICES

The tasks outlined below are the professional services to be provided by Kimley-Horn. The scope of services described for Lump Sum (LS) tasks will be completed for the lump sum fee indicated. The scope of services described for Hourly (HR) tasks have a projected budget amount indicated. Actual invoiced amount for Hourly tasks will be based on the effort required to complete the task. Hourly effort will be invoiced per our attached hourly rate schedule in effect at the time the services are provided.

Task 1 Boundary, Improvements, and Topographic Survey \$67,000 (LS)

Kimley-Horn will prepare a boundary, improvements, and topographic survey for the Subject Tract area to be used for site planning and civil engineering design purposes. The survey is to be used in-house and will not be issued as a stand-alone survey document. The survey will consist of:

- Locating existing monumentation, property lines, platted lot lines, street right-of-ways, easements, and any encroachments or protrusions of visible improvements.
- All existing substantial features and improvements will be located. This includes buildings, parking areas, driveways, sidewalks, top of curb and gutter, islands, light poles, and drainage structures.
- Observed locations of existing utilities including electric and communications lines, water, wastewater, storm drains, gas, and franchise utility facility appurtenances as well as inverts, flow lines, and pipe sizes where accessible. Texas 811 markings of subsurface utilities that are in place at the time our field work will also be located. This part of the proposal does not include subsurface utility engineering such as pot-holing or excavating.
- Topographic information at a even grid will be provided with details of features and contour lines representing the surface of the existing ground at one-foot intervals. Bench marks will be set on site and tied to the North American Vertical Datum of 1988.

TBPLS Firm Number: San Antonio: 10193973

Task 2 Site Planning \$10,000 (LS) (HR)

Kimley-Horn will assist the Client and architect with site planning the ±242-acre tract. Due to the unquantifiable nature of this task, this task will be billed at an hourly rate. We have estimated 50 hours of effort for this task.

Task 3 Drainage Due Diligence Memo \$5,500 (LS)

Kimley Horn will perform a drainage analysis to review the existing drainage system on-site and downstream to the Zone of Influence of the site as defined by Kimley-Horn. Kimley-Horn will review record plans for the existing storm drain system adjacent and downstream of the site in an effort to understand existing drainage infrastructure capacity. Kimley-Horn will calculate the available capacity and allowable discharge from the proposed project in the City design storm events. The runoff for the proposed project will be analyzed and compared to the allowable discharge. Kimley-Horn will provide an opinion of whether detention will be required. The results of the analysis will be presented in a memo.

Kimley-Horn will evaluate the site for the presence of a dam in general accordance with Texas Administrative Code, Chapter 299, Subchapter B: Design and Evaluation of Dams and H&H Guidelines for Dams in Texas (TCEQ, 2007). Kimley-Horn will use LiDAR and on-ground topographic survey to

approximate the dam classification. On-ground topographic survey will be provided by the Client. The spillway associated with the dam will be required to pass the corresponding Probable Maximum Flood (PMF) design event, based on dam classification. Kimley-Horn will evaluate the existing spillway and provide an opinion of whether the spillway is adequate to pass the TCEQ's design event.

Kimley-Horn will summarize the results of this task in a technical memorandum for submittal to the client. The memorandum will include opinion of existing impoundments of water, whether they fall under dam criteria. If it is believed the on-site ponds are dams, the memorandum will detail the process and approximate timeframe to bring the dam(s) into compliance. The memorandum will also provide an option to remove the dam if the analysis reveals that removal is viable option, per TCEQ guidelines.

Under this task, Kimley-Horn will research published, City, County, State, or Federal drainage criteria as it relates to development of the subject property. Kimley-Horn will perform effort specifically listed below:

- Review published Plat map;
- Research, review, and document estimated review fees/times;
- Research FEMAs database for presence of existing floodplain or any pending FEMA floodplain for the area;
- Research, review and document all applicable drainage criteria for the site to develop;

Kimley-Horn will include this information in the aforementioned due diligence memorandum noting our findings. Sources of information for the memo will include the following: information supplied by the Client and review of publicly available documents. Client may use this memo as part of its due diligence, but this memo should not be used as the sole basis for the Client's decision making.

Kimley-Horn will endeavor to research site development issues and constraints to the extent practical given the scope, budget, and schedule agreed to with Client. Our assessment is based, in large part, on information provided to us by the Client and that which is publicly available and therefore is only as accurate and complete as the information provided to us. New issues may arise during development because of changes in governmental rules and policy, changed circumstances, or unforeseen/unknown site conditions.

We have estimated 30 hours of effort for this task.

Task 4 Zoning/PUD Assistance

\$ 20,000 (HR)

Kimley-Horn will provide assistance to the Client and other members of the design team in support the Client's rezoning request. Kimley-Horn will serve in a support role and will not be the lead consultant in this effort. It is our understanding that the zoning written document and supporting documentation will be prepared and submitted by others. Kimley-Horn will participate in strategy calls and meetings and will review draft deliverables prior to submission. Kimley-Horn will attend one meeting with review staff and one meeting at which the submission is considered for approval. Due to the unquantifiable nature of this task, it will be billed at an hourly rate. We have estimated 100 hours of effort for this task.

Task 5 Franchise Utility Coordination

\$ 4,000 (LS)

Kimley-Horn will provide assistance to the Client to arrange franchise 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. Transformer and switchgear locations will be coordinated with the electric company. We have estimated 20 hours of effort for this task.

Task 6 Meetings; Exhibits

\$ 10,000 (HR)

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client and budgeted for in this agreement. This task will also capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description. Due to the unknown nature of this task, it will be billed at an hourly rate. We have estimated 50 hours of effort for this task.

Task 7 Engineer's Opinion of Probable Construction Costs (OPCC)

\$ 5,000 (LS)

Kimley-Horn will prepare an OPCC of the Phase 1 civil on-site improvements. The deliverable for this task will be one spreadsheet in PDF format. Kimley-Horn 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 costs are based on the information known to Kimley-Horn at the time and represent only Kimley-Horn's judgment as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.

TRAFFIC IMPACT ANALYSIS

The study area for the project location was defined in coordination with the City of Hutto and TXDOT Austin District. In addition to the proposed site driveway intersections (up to 5), the following offsite intersections will require analysis:

Signalized Intersections

1. US 79 & South FM 1660
2. US 79 & North FM 1660
3. FM 1660 & Limmer Loop
4. FM 1660 & Carl Stern

Unsignalized Intersections

1. US 79 & CR 132
2. Front Street & FM 1660

3. Front Street & Jim Cage Ln
4. FM 1660 & Mager Lane
5. Mager Lane & Carol Drive
6. Carol Drive & Limmer Loop
7. Limmer Loop & CR 132
8. US 79 & CR 136

The analysis will be prepared with the development divided into up to three phases of development.

Task 8 Trip Generation, Distribution, and Assignment \$ 2,500 (LS)

- A. Trip Generation – Trip generation estimates for phased build out development will be prepared based on the trip generation rates found in the *ITE Trip Generation Manual, 10th Edition* for phased development (up to three phases). Where standard rates are not available, anticipated attendance characteristics provided by the Client may be used to supplement ITE information.
- B. Site Traffic Distribution and Assignment – Site traffic distribution and assignment will be established based upon existing and future traffic patterns and area roadway systems.

Task 9 Data Collection \$ 5,000 (LS)

Kimley-Horn will collect the following data:

- A. Traffic Count Data – Kimley-Horn will collect AM and PM turning movement at the study intersections identified above.
- B. Initial Field Observation – Prior to our evaluation, Kimley-Horn will conduct field observations within the study area to document the following elements:
 1. Roadway widths;
 2. Existing speed limits; and
 3. Current traffic control devices and operations.

Task 10 Capacity Analysis \$ 11,000 (LS)

- A. Intersection Capacity Analysis – Kimley-Horn will perform AM and PM peak hour intersection capacity analysis for the previously identified intersections.
- B. Driveway Evaluation – Kimley-Horn will evaluate the proposed placement and spacing of driveways using current TXDOT design criteria.
- C. Turn Lane Assessment – Kimley-Horn will evaluate the turn lane requirements applicable to the development using TXDOT design criteria and the site traffic assignment estimated as part of Task 6.B.
- D. Mitigation Development – If it is determined that roadway and site access improvements are necessary from a capacity and/or operational standpoint, Kimley-Horn will identify the types of improvements required to support the proposed development. Kimley-Horn will identify the need for additional lanes, storage length requirements, and ingress/egress improvements within the study area, but not design any improvements.
- E. Impact Fee/Rough Proportionality Determination – For any mitigation identified in Task 8.B and

any border street or substandard street requirements from the City of Hutto, Kimley-Horn will prepare a planning level opinion of probable cost and determine whether any of the improvements may be eligible for impact fee offsets or limited by rough proportionality requirements.

Task 11 Document Study Results**\$ 5,000 (LS)**

An electronic (PDF) draft TIA that documents the study methodology, traffic volumes, analysis results, and recommendations for improvements (if necessary) will be prepared and submitted to the Client and the City for review and comment. Kimley-Horn will then incorporate one set of review comments and submit two (2) copies of the final TIA to the Client.

Task 12 Meetings**\$ 4,000 (LS)**

Kimley-Horn will prepare for and attend up to a total of three (3) meetings with the Client or City/TxDOT to discuss and review the study progress and results. It is anticipated that one of these will be the TIA Scoping Meeting with the City to receive concurrence on the scope of the study.

Task 13 Addt'l Meetings, TXDOT Coordination & Addt'l Comment Response**\$7,500 (LS)**

Kimley-Horn will prepare for and attend meetings with the Client, City or TXDOT to discuss and review the study progress and results as requested. Attendance at meetings beyond the three (3) identified in Task 10 and response to any additional comments from review agencies outside the one round of comment identified in Task 9 will be billed hourly.

ADDITIONAL SERVICES

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

1. Downstream Assessment;
2. On-Site Civil Engineering Plans;
3. Off-Site Civil Engineering Plans;
4. Turn Lane Design;
5. Landscape Plans;
6. Irrigation Plans;
7. Any other item not specifically listed in this agreement;

INFORMATION PROVIDED BY THE CLIENT

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The client shall provide information requested by Kimley-Horn during the project, including but not limited to the following:

1. Final architectural footprint for the proposed building and any other structures proposed for the site (hard copy & min AutoCAD 2000 format);
2. Client approved architectural site plan
3. Final structural foundation plan for proposed building and any other structures proposed for the site (hard copy & min. AutoCAD 2000 format);
4. Mechanical, electrical, and plumbing plans for the building and site work, (Including water meter sizes, domestic water and fire sprinkler service sizes, utility entry locations, sanitary sewer service size, location and depth, transformer pad locations, a/c pad locations, and roof drain size, location and depth);
5. Permission to enter the subject property;
6. Site Signage Plans;
7. Geotechnical report including paving design recommendation and foundation preparation recommendations;
8. Executed copy of this agreement;
9. Any current Title Commitments on the subject property.

FEE AND EXPENSES

Kimley-Horn will perform the hourly Tasks on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to the attached rate schedule, which is subject to annual adjustment. Kimley-Horn will perform the Lump Sum Tasks for the total lump sum labor fee indicated. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. An amount (6.0% of our labor fee) will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing. All permitting, application, and similar project fees will be paid directly by the Client.

Please be advised that Kimley-Horn is not a Contingent Partner in this project. As such, Kimley-Horn will be paid in full for all Professional Services rendered. As stated in the attached Standard Provisions, payment of invoices will be due within 30 days of receipt. Kimley-Horn reserves the right to suspend services if payment has not been received within 30 days of receipt of the invoice.

Kimley-Horn will perform the services described in this scope of services on a lump sum (LS) basis or an hourly (HR) rate basis per the attached rate schedule.

Task 1	Boundary, Improvements, and Topographic Survey	\$67,000	(LS)
Task 2	Site Planning	\$10,000	(LS) (HR)
Task 3	Drainage Due Diligence Memo	\$5,500	(LS)
Task 4	Zoning/PUD Assistance	\$20,000	(HR)
Task 5	Franchise Utility Coordination	\$4,000	(LS)
Task 6	Meetings; Exhibits	\$10,000	(HR)
Task 7	Engineer's Opinion of Probable Construction Costs (OPCC)	\$5,000	(LS)
Task 8	Trip Generation, Distribution, and Assignment	\$2,500	(LS)
Task 9	Data Collection	\$5,000	(LS)
Task 10	Capacity Analysis	\$11,000	(LS)
Task 11	Document Study Results	\$5,000	(LS)
Task 12	Meetings	\$4,000	(LS)
Task 13	Add'l Mtgs, TXDOT Coord & Add'l Comment Response	\$7,500	(LS)

Total Projected Fee **\$ 156,500**

(Excludes Expenses)

**Projected Fee assumes one Separate Instrument Easement*

Projected Internal Expenses and Taxes **\$ 9,400**
(Excludes External Expenses)

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to Wolverine Interests, LLC.

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

Please email all invoices to jleslie@wolverineinterests.com

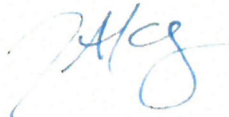
If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days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

We appreciate the opportunity to provide these services to you. Please contact me at (972) 770-1370 or jonathan.kerby@kimley-horn.com should you have any questions.

Sincerely,



Kevin S. Gaskey, P.E. (TX)
Principal



Jonathan Kerby, P.E.
Project Manager

Attachment: Standard Rate Schedule
Standard Provisions

Agreed to on this 17th day of June, 2019.

Wolverine Interests, LLC

(Signature)

(Print or Type Name)

(Title)

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD RATE SCHEDULE

(Hourly Rate)

Senior Professional II	\$290 - \$325
Senior Professional I	\$205 - \$305
Professional	\$190 - \$245
Senior Technical Support	\$130 - \$205
Technical Support	\$75 - \$120
Analyst	\$130 - \$215
Support Staff	\$ 80 - \$ 120

Effective July 2018 and subject to revision

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 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.

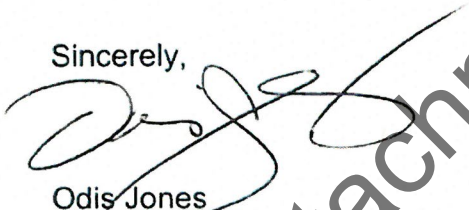


MEMO

To: Hutto City Secretary
From: Odis Jones
Date: July 26, 2019
Subject: Delegation of Duty

Pursuant to Section 4.01(G) of the City Charter, during my absence Assistant City Manager Byron Frankland shall serve in capacity of acting Hutto City Manager, and in his and my absence, Michel Sorrell Assistant City Manager shall serve as acting City Manager of Hutto.

Sincerely,



Odis Jones
City Manager

cc: Byron Frankland
Michel Sorrell
Mayor Doug Gaul

