



Kimley-Horn  
and Associates, Inc.

December 6, 2010

The Honorable Bill McElhaney  
County Judge  
Wise County  
P.O Box 393  
Decatur, TX 76234

■  
Suite 950  
801 Cherry Street, Unit 11  
Fort Worth, Texas  
76102

**Re: Weatherford College – Wise County Branch Campus  
Off-site Water and Sewer Utilities**

Dear Judge McElhaney:

Kimley-Horn and Associates, Inc. (KHA or “the Consultant”) is pleased to present Wise County (the “Client”) with this letter agreement for professional services for the above referenced project. The services described in the letter agreement shall adhere to the attached Standard Provisions. Our project understanding, scope of services, schedule, and fee are below.

#### **PROJECT UNDERSTANDING**

This proposal consists of providing professional engineering services associated with **Off-Site Water and Sewer Utilities** - Design, bidding and construction contract administration of water and sewer utilities including approximately:

- 4,600 linear feet of 10 or 12-inch water line,
- 7,400 linear feet of 4 or 6-inch sanitary sewer force main
- 6,600 linear feet of 6 or 8-inch sanitary sewer gravity main
- 0.1 million gallon per day sanitary sewer lift station

These utility improvements will serve the proposed Weatherford College-Wise County Branch Campus development near F.M. 1655 and U.S. 380. The water line is proposed to connect to West Wise Special Utility District (WWSUD) at the intersection of P.R. 3205 and U.S. 380. The sanitary sewer line is proposed to connect to the City of Bridgeport’s sanitary sewer system near the intersection of U. S. 380 and C.R. 1304.

■  
TEL 817 335 6511  
FAX 817 335 5070



## SCOPE OF SERVICES

### ***Water and Sanitary Sewer Lines***

The utility lines project includes the following tasks: preparation of an alignment study, preliminary design, final design, bidding and construction contract administration.

### ***Water and Sanitary Sewer Lines – Agreements with Utility Providers***

The Consultant will assist with facilitation and coordination related to execution of utility agreements between the Client and WWSUD and the Client and Bridgeport. The services will include:

1. **Kick-Off Meeting** - The Consultant will attend a kick-off meeting with WWSUD and City of Bridgeport to develop criteria for establishment of utility agreements.
2. **Memorandum of Understanding** – The Consultant will prepare a Memorandum of Understanding between Client and WWSUD and between Client and Bridgeport outlining the Client’s intent and commitment for design and construction of the utility infrastructure. This memo will also identify and outline anticipated fees and costs associated with each utility, such as: plan review and construction inspection and acceptance.
3. **Facilitation of Development Agreement** – The Consultant will assist in preparation of development agreement between Client and WWSUD and between Client and Bridgeport. Assistance will include providing opinions of probable construction cost, design information, and schedule information. Consultant will coordinate with Client’s real estate attorney for preparation of agreement.

### ***Water and Sanitary Sewer Lines – Alignment Study***

The Alignment Study tasks will be performed along the U.S. 380 corridor. The Consultant will provide the following professional services under this task related to design of the utility lines.

4. **Kick-Off Meeting** - The Consultant will facilitate a kick-off meeting with WWSUD and City of Bridgeport to develop criteria for alignment selection and design parameters.
5. **Alignment Evaluation** – The Consultant will evaluate up to two (2) routes for each line. The Consultant will collect data on existing utilities, property owners, and infrastructure along the proposed water line routes. The Consultant will provide information on permitting requirements for TxDOT. Permitting will be provided as part of the Final Design Phase services. The Consultant will provide recommendations for temporary and permanent easements to be acquired (if any required).



6. Alignment Exhibits – The Consultant will prepare 8.5”x11” or 11”x17” alignment plan exhibits summarizing the evaluation of the proposed alignments for the sanitary sewer line and water line. The exhibits will include an aerial photograph showing the approximate sewer and water line alignments, property information obtained from the Wise County Appraisal District for each alignment. The exhibits will include recommended temporary construction and permanent easements.
7. Opinion of Probable Construction Cost – The Consultant will prepare preliminary opinions of probable construction cost for each alignment. The Consultant 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 provided herein are based on the information known to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**Meetings:**

- a. One (1) kick-off meeting with WWSUD.
- b. One (1) kick-off meeting with Bridgeport.

**Deliverables:**

- a. Six (6) copies of Alignment Study report and exhibits.
- b. Six (6) copies of the preliminary OPCC.

**Services/Deliverables provided by the Client:**

- a. Attend Kick-off Meetings with WWSUD and Bridgeport.
- b. Provide comments on Alignment Study.
- c. Assist in selection of Alignment in cooperation with WWSUD and Bridgeport.

***Water and Sanitary Sewer Lines – Preliminary Design***

The Consultant will provide the following professional services once an alignment for each line has been approved by WWSUD and Bridgeport:

1. Survey - The Consultant will perform a design level survey. The survey will include the following:
  - a. Width of easement or R.O.W. not to exceed 50 feet.



- b. Locate visible topographic features such as marked and existing utilities and their appurtenances, 6-inch diameter trees and larger, iron pins (if found), edge of pavement, structures and fences.
        - c. Establish control points along the route.
2. Easements – Easements are not anticipated for this project. Should easements be required, any services related to preparation of easement documents or easement acquisition will be performed as additional services.
3. Geotechnical Analysis - The Consultant will perform a geotechnical analysis of the proposed sanitary sewer and water line alignment utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding embedment, backfill and excavation parameters. The geotechnical analysis will include the following:
  - a. Subsurface exploration including up to ten (10) sample bores at various locations and depths along the proposed route.
  - b. Laboratory tests for classification purposes and strength characteristics.
  - c. Engineering services that address soil and groundwater conditions for proposed horizontal boring locations.
  - d. Prepare a geotechnical report that presents the results of the field and laboratory data as well as analysis and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for information purposes.
4. Subsurface Utility Engineering for Design - The Consultant will identify locations for Subsurface Utility Engineering (SUE) services along the route of the proposed water and sanitary sewer lines. The following is a description of each level of service that will be performed for SUE:
  - a. Level D – Collect existing utility record information from utility purveyors, municipalities, counties, and other agency suppliers within the area of investigation. Typical utilities included are: primary electric, telephone, cable TV, fiber optic, gas, petroleum, water, sanitary sewer, and storm drain systems.
  - b. Level C – Field locate and obtain horizontal position of visible utility surface features for the utility systems described within Level D.

Should SUE Levels A and B be warranted as determined by the Consultant and the Client, these services will be performed as additional services.
5. Preparation of Preliminary Plans – The Consultant will prepare preliminary plans for the water and sewer alignments. Plans will consist of plan and



profile view with stationing and limited noting. These plans will be prepared on 11"x17" sheets at a scale of 1" = 40'. Ten (10) plan and profile sheets are anticipated to be prepared for the water line design. Thirty (30) plan and profile sheets are anticipated to be prepared for the sanitary sewer line design.

6. Opinion of Probable Construction Cost – The Consultant will update preliminary opinions of probable construction cost for the utility lines to reflect changes from the Alignment Study. The Consultant 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 provided herein are based on the information known to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**Meetings:**

- a. One (1) meeting with WWSUD to review Preliminary Design.
- b. One (1) meeting with Bridgeport to review Preliminary Design

**Deliverables:**

- a. Four (4) copies of the geotechnical report.
- b. Four (4) copies of preliminary plans.
- c. Four (4) copies of the preliminary OPCC.

**Services/Deliverables provided by the Client:**

- a. Review and comment on Preliminary Design submittal.
- b. Attend review meetings with WWSUD and Bridgeport.

***Water and Sanitary Sewer Lines – Final Design***

Once the preliminary design has been approved by WWSUD and Bridgeport, the Consultant will proceed with the Final Design. Consultant will provide the following professional services under this task:

1. Civil Plans – The Consultant will prepare engineering plans, specifications, and construction contract documents prepared in accordance with an approved route for project bidding and regulatory approval. Plans will consist of 22"x34" plan and profile sheets. The Consultant anticipates preparing approximately 17-19 plan sheets for the water line and 31-33 plan sheets for the sanitary sewer line. The Consultant will provide the following information on the plan sheets:
  - Civil Sheets



- Plan and Profile
  - Dimensional Control
  - Traffic Control
  - Erosion Control, including Storm Water Pollution Prevention Plan (SWPPP)
  - Details
  - General Notes
2. Contract Documents - Specifications will include technical specifications for materials and installation of the proposed facilities. The Contract Documents will be based upon the *Engineers Joint Contract Documents Committee (EJCDC)* documents. The *NCTCOG Standard Specifications for Public Works Construction* and the Client's requirements for Public Works Construction will govern all other specifications.
  3. Permits – The Consultant will assist in the preparation of, but the Client will administer, applications for Texas Department of Transportation Utility Permits for the water and sanitary sewer lines. The Client will be responsible for paying any permit application fees or other fees required.
  4. Opinion of Probable Construction Cost – The Consultant will prepare final opinions of probable construction cost for each the water and sanitary sewer line design. The Consultant 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 provided herein are based on the information known to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**Meetings:**

- a. One (1) meeting with WWSUD to review 95% Design.
- b. One (1) meeting with Bridgeport to review 95% Design

**Deliverables:**

- a. Six (6) copies of 95% complete plans, specifications, Contract Documents and final OPCC for review and comment.
- b. Six (6) copies of final plans, Contract Documents and OPCC.

**Services/Deliverables provided by the Client:**

- a. Attend review meetings with WWSUD and Bridgeport.
- b. Review and comment on the 95% submittal.



### ***Lift Station Design***

The Consultant will provide the following professional services under this task:

1. **Site Selection**  
Along with Client and the City of Bridgeport, Consultant will identify a potential site for construction of the proposed lift station.
2. **Survey**  
Once a proposed site is identified by the Client and agreed to by Bridgeport, Consultant will obtain a design level survey of the lift station site from the Client previously prepared as part of the on-site improvements associated with the Weatherford College – Wise County Branch Campus project.
3. **Geotechnical Analysis**  
The Consultant will perform a geotechnical analysis of the proposed lift station site utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding embedment and backfill parameters. The geotechnical analysis will include the following:
  - a. Subsurface exploration for one (1) sample bore at the proposed lift station site.
  - b. Laboratory tests for classification purposes and strength characteristics.
  - c. Engineering services that address soil and groundwater conditions.
4. **Geotechnical Report**  
Prepare a geotechnical report that presents the results of the field and laboratory data as well as analyses and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for information purposes.
5. **Easements**  
The Consultant will prepare a maximum of one (1) property exhibit to be used for preparation of easement documents. One (1) easement document will be prepared to dedicate the lift station and associated piping to Bridgeport.
6. **Civil Design**  
Prepare design calculation for sizing pumps, wet wells, pipes, valves, electrical gear, and electrical supply.

Prepare engineering plans, specifications, and construction contract documents for project bidding and regulatory approval. Plans will consist of 22”x 34” plan and profile sheets. Ten (10) plan sheets are anticipated for the Lift Station design. The Consultant will provide the following information on the plan sheets:



- Civil sheets
  - General Construction Notes
  - Dimensional Control and Paving Plan
  - Site plan
  - Grading and Drainage Plan
  - Piping Plan
  - Sections
  - Structural elements
  - Profiles
  - Details
- Electrical sheets
  - Site plan
  - Sections
  - Control and Instrumentation
  - Details

10. Specifications

Specifications will include technical specifications for materials and installation of the proposed facilities. The Contract Documents will be based upon the *Engineers Joint Contract Documents Committee* (EJCDC) documents as may be modified by Client. The *NCTCOG Standard Specifications for Public Works Construction* and the Client's requirements for Public Works Construction will govern all other specifications.

11. Electrical Design

Perform electrical engineering services for the proposed lift station. The electrical design will include the following:

- a. General electrical design.
- b. Instrumentation and control schemes.
- c. Design and specification of SCADA equipment and interface with existing SCADA system.
- d. Site lighting.

12. Review Submittals

Submit to the Client and Bridgeport 95% complete plans, specifications, contract documents, and Opinion of Probable Construction Cost (OPCC) for review and comments.

Make revisions based on the Client's review of the 95% submittal.



Submit to the Client complete final plans, specifications, contract documents, and OPCC.

13. Texas Commission on Environmental Quality (TCEQ) Submittal  
KHA will prepare and submit a letter to the Executive Director of the TCEQ notifying the Commission of the proposed lift station project and make available one (1) set of construction plans for the TCEQ's review upon the Executive Director's request.

**Meetings:**

1. One (1) kick-off meeting with Client and Bridgeport (to be combined with sanitary sewer line kick-off meeting)
2. One (1) meeting with Client and Bridgeport to present 95% complete plans, specifications, contract documents and an OPCC.

**Deliverables:**

1. Four (4) originals of easement documents.
2. Four (4) copies of geotechnical report.
3. Four (4) copies of 95% complete plans, specifications, contract documents and an OPCC for review and comments to Client.
4. Six (6) copies of final plans, contract documents, and an OPCC.

**Services/Deliverables provided by the Client:**

1. Provide right-of-entry to the proposed lift station site for survey and geotechnical analysis.
2. Attend review meeting with Bridgeport.
3. Execution and filing of easement documents.
4. Review and comment on the 95% submittal.

***Bidding***

It is anticipated that this project will contain one (1) set of Construction Documents. The Consultant will perform the following professional services for the bidding phase of the project:

1. Final Contract Documents – The Consultant will print and issue a maximum of twenty (20) sets of plans and specifications for distribution to contractors and plan houses. A non-refundable deposit will be required of prospective bidders upon receiving plans and specifications. Additional sets of bidding



documents will be printed, only upon the Client's authorization, as Additional Services.

2. Notice to Bidders – The Consultant will prepare a notice to bidders. The Client will be responsible for submitting the Notice to newspapers for advertisement. Advertising will be billed directly to the Client by the newspaper. The newspaper of record is the Wise County Messenger.
3. Addenda – The Consultant will answer contractor questions during the bid process. The Consultant will issue addenda as required.
4. Bid Opening – The Consultant will attend the bid opening, prepare a tabulation of bids, and prepare a letter summarizing the bids to the Client for award of contract.
5. Execution – The Consultant will prepare six (6) sets of the Contract Documents for execution by the contractor, receive and review such documents for completeness, and forward to the Client for review and execution. The Consultant will provide one set to the grant administrator.

#### ***Construction Contract Administration***

Consultant will provide professional construction phase services to the Client during the construction phase of each project.

The estimated construction period for the basis of establishing the Consultant's Fee for each phase is as follows:

- Water Line – four (4) months
- Sewer Line and Lift Station – six (6) months

The construction phase services are as follows:

1. Pre-Construction Conference – The Consultant will conduct a Pre-Construction Conference prior to commencement of Work at the Site. The Consultant will invite the grant administrator to the conference.
2. Visits to Site and Observation of Construction - The Consultant will provide on-site construction observation services during the construction phase of the subject project. Observations will vary depending on the type of work being performed by the contractors, the location, and the contractors' schedules.

The Consultant will make visits to the Site two (2) times per month for the periods listed above. 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 determine if 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.

3. Site Visit Purpose - The purpose of Consultant's visits to the site will be to enable Consultant to better carry out the duties and responsibilities assigned in this Agreement to Consultant during the construction phase by Client, and, in addition, by the exercise of Consultant's efforts, to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Consultant will 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 will Consultant 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.
4. Recommendations with Respect to Defective Work - The Consultant 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 or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Notwithstanding the foregoing, the Client reserves the right to disapprove or reject Contractor's work without a recommendation from the Consultant.
5. Clarifications and Interpretations - The Consultant will issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by Client.
6. Change Orders - The Consultant will recommend Change Orders to Client, as appropriate. Consultant will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
7. Shop Drawings and Samples - The Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals 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.

8. Substitutes and "or-equal." - The Consultant will 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. Consultant will notify Client of any such substitutions.
9. Inspections and Tests - The Consultant will require, at the Contractor's cost, such special inspections or tests of Contractor's work as Consultant deems appropriate, and receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant will be entitled to rely on the results of such tests and the facts being certified.
10. Disagreements between Client and Contractor - As necessary, The Consultant will, with reasonable promptness, render initial written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant will be fair and not show partiality to Client or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity. The initial decisions of the Consultant shall be required as a condition precedent to mediation or litigation of any claim arising prior to the date final payment is due to the Contractor, unless thirty (30) days have passed after a claim has been referred to the Consultant with no decision having been rendered.
11. Applications for Payment - Based on Consultant's observations and on review of applications for payment and accompanying supporting documentation, the Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to Client, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's work has progressed to the point indicated, such work-in-progress is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled insofar as it is Consultant's responsibility to so determine. In the case of unit price work, Consultant's recommendations of payment will include final determinations



of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. All applications of payment and accompanying supporting documentation will be submitted by Consultant to the Wise County Engineer for review prior to consultant recommending any payment to the Client and/or the Wise County Auditor.

By recommending any payment, Consultant will not thereby be deemed to have represented that observations made by Consultant to check Contractor's work as it is performed and furnished 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 Consultant in this Agreement. Neither Consultant's review of Contractor's work for the purposes of recommending payments nor Consultant's recommendation of any payment including final payment will impose on Consultant responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, equipment choice and usage, sequences, or procedures of construction of safety precautions or programs incident thereto, nor Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Consultant 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.

12. Substantial Completion - Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Client and Contractor, the Consultant will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.
13. Final Notice of Acceptability of the Work - The Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant will 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 and based on the extent of the services provided by Consultant under this Agreement and based upon information provided to Consultant upon which it is entitled to rely.
14. Limitation of Responsibilities – The Consultant will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the



Work. Consultant will not have the authority or responsibility to stop the work of any Contractor.

15. Record Drawings – The Consultant will prepare record drawings based on contractor mark-ups of construction plans. The Consultant will provide one (1) bond and one (1) PDF set of record drawings to the Client.

**Deliverables:**

1. One (1) set of 11x17 record drawings.
2. One (1) CD of record drawings.

**ADDITIONAL SERVICES**

Any services not specifically provided for in the above scope, as well as any changes in the scope requested by the Client, will be considered additional services. Additional services include, but are not limited to, the following:

- Professional Services Related to Easement Acquisition for the utility lines.
- Preparation of Title Policies and Assisting in Condemnation Services during property acquisition.
- Attendance at Public Meetings.
- Preparation of platting documents and/or real property survey for site acquisition.
- Additional sets of bidding documents.
- Professional services associated with re-bidding the project.
- Construction Staking.
- Making significant modifications to the plans and specifications after the preliminary submittals have been approved by the Client.
- Any additional changes to the Contract Documents necessary to break the project into phases.
- Providing project representative services, on-site inspection, during the construction phase of the project.
- Establish new survey monuments for any of the proposed sites.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project route.
- Assisting Client or Contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, will be furnished by Consultant on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Accompanying the Client's personnel when meeting with the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency or other regulatory agencies during the course of the Project.



Consultant will assist the Client’s personnel on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for the Client’s compliance efforts.

- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Franchise Utility Coordination and/or Design.
- Subsurface Utility Engineering (SUE) Levels A or B.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Client.
- Any services not listed in the Scope of Services.

**SCHEDULE**

Consultant will begin services upon receipt of Notice to Proceed.

**FEE AND BILLING**

Consultant will perform the tasks described in the Agreements with Utility Providers, Alignment Study, Preliminary Design, Final Design, Lift Station Design and Bidding phases of the Scope of Services for the lump sum fees shown in the table below. The lump sum fee includes labor costs and direct expenses identified in this contract, as well as items such as in-house duplicating, blueprinting, facsimile, local mileage, telephone, postage, and computer expense.

Consultant will perform the tasks described in Construction Contract Administration and Additional Services on a reimbursable basis at the hourly rates in effect at the time of the service plus 3% to cover certain direct expenses for the project which would include in-house duplicating, facsimile, postage, local mileage, telephone, and word processing. Other direct expenses will be invoiced at cost plus 10%. Technical use of computers for design, analysis, and graphics, etc., will be billed at \$25.00 per hour. Consultant will not perform any Additional Services without prior approval.

Consultant recommends that the Client budget the following for these services:

<u>Task Name</u>	<u>Budget Amount</u>
<u>Water and Sanitary Sewer Lines</u>	
Agreements with Utility Providers.....	\$11,300 (Lump Sum)
Alignment Study .....	\$9,100 (Lump Sum)
Preliminary Design(w/ Survey, Geotech) .....	\$106,800 (Lump Sum)
Final Design .....	\$67,500 (Lump Sum)
Lift Station Design .....	\$34,800 (Lump Sum)
Bidding .....	\$11,800 (Lump Sum)
Construction Contract Administration .....	\$48,700 (Reimbursable)
<b>Total Estimated .....</b>	<b>\$290,000</b>
(Lump Sum and Reimbursable)	



The Engineer's estimate of the amount that will become payable associated with the reimbursable tasks is only an estimate for planning purposes, and is not binding on the parties, and is not the minimum or maximum amount payable to the Engineer under this Agreement.

**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 Wise County.

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

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

Sincerely,

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

Glenn Gary, P.E.  
Principal

Jenifer Tatum, P.E.  
Associate

Attachments – Standard Rate Schedule  
Standard Provisions

Agreed to this 07th day of December, 2010.

**WISE COUNTY**

By:

Bill McElHANEY  
(Print or Type Name)

Title: Wise County Judge  
(Member or Manager, as authorized)

Amanda Knox, Witness  
(Print or Type Name)



**Kimley-Horn and Associates, Inc.**

**Standard Rate Schedule**

(Hourly Rate)

Senior Professional I	\$175 - \$215
Senior Professional II	\$135 - \$175
Professional	\$75 - \$120
Designer	\$115 - \$130
Technical Support	\$60 - \$105
Clerical/Administrative Support	\$55 - \$80

Effective October 1, 2010

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

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.10 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$25.00 per hour.

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

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require or the Consultant may reasonably request in furtherance of the project development.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incident to the responsibilities of the Client.

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

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per annum beginning on the 25<sup>th</sup> day. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.
- (b) 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.
- (c) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without

liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant. 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. Only printed copies of documents conveyed by the Consultant may be relied upon. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant directly attributable to termination for which the Consultant is not otherwise compensated. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **Indemnification.**

(a) **Errors, Omissions, Negligent Acts.** The Consultant shall save harmless Client and its officers and employees from all claims and liability due to activities of itself, its agents, or employees, performed under this contract and which are caused by or result from error, omission or negligent act of the Consultant or of any person employed by the Consultant.

(b) **Attorney Fees.** The Consultant shall also save harmless Client from any and all expense, including, but not limited to, attorney fees which may be incurred by Client in litigation or otherwise resisting said claim or liabilities which may be imposed on Client as a result of such activities by the Consultant, its agents, or employees."

(11) **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.

(12) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach may, by written agreement, be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation.

(13) **Hazardous Substances and Conditions.**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, 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 professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services

of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

**(14) Construction Phase Services.**

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

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

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

**(15) 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.

**(16) 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.

**(17) Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement