

GOODWYN, MILLS & CAWOOD, INC.

Professional Services Agreement

PART 1. GENERAL

THIS AGREEMENT, including attachments as hereinafter noted, made and entered into and between Goodwyn, Mills & Cawood, Inc. and the Client identified herein, provides for the Professional Services described under Part 3 of this Agreement.

Client: City of Foley, AL

Address: PO Box 1750

City/State/Zip Code: Foley, AL 36535

Contact Person: Chad Christian, PE

Phone: 251-970-1104 **Email:** cchristian@cityoffoley.org

Short Title: Extension of South Jupiter Street, or the "Project"

PART 2. GENERAL DESCRIPTION OF PROJECT SITE:

The extension of South Juniper Street from the intersection of County Road 20 to County Road 20 South.

PART 3. DESCRIPTION OF PROFESSIONAL SERVICES to be provided by Goodwyn, Mills & Cawood, Inc. are identified below:

See Attachment A

PART 4. THE COMPENSATION TO BE PAID Goodwyn, Mills & Cawood, Inc. for providing the requested Services shall be as follows:

See Attachment A and B

IN WITNESS WHEREOF, this Agreement, which is subject to the General Terms and Conditions (Part 5.) is accepted on the later date written below.

City of Foley

SIGNED:

TYPED NAME:

John E. Koniar

TITLE:

Mayor

DATE:

GOODWYN, MILLS & CAWOOD, INC.:

SIGNED:

TYPED NAME:

Scott A. Hutchinson, P.E.

TITLE:

Vice-President

DATE:

May 23, 2019

PART 5. TERMS AND CONDITIONS

- 5.1 DATE OF COMMENCEMENT AND DURATION:** The Date of Commencement of this Agreement shall be the date last appearing on the signature page. This Agreement shall remain in effect for 12 months from the acceptance date of this agreement, or until terminated as provided herein, or extended by mutual agreement in writing.
- 5.2 IF GOODWYN, MILLS & CAWOOD, INC.'s SERVICES UNDER THIS AGREEMENT ARE DELAYED** for reasons beyond GOODWYN, MILLS & CAWOOD, INC.'s control, the completion date specified in this Agreement shall be modified accordingly and the fees shall be renegotiated for any unfinished services as of the effective date of such change.
- 5.3 COMPENSATION DEFINITIONS:** Reimbursable costs include: fees of Professional Subcontractors (whose expertise is required to complete the project) and out-of-pocket expenses, the cost of which shall be charged at actual costs plus an administrative charge of ten percent (10%) and shall be itemized and included in the invoice.
- 5.4 INVOICE PROCEDURES AND PAYMENT:** Goodwyn, Mills & Cawood, Inc. shall submit invoices to the Client for Services accomplished during each calendar month. For Services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby Goodwyn, Mills & Cawood, Inc. will estimate the percentage of the total Services (provided on a Lump Sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for Services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Professional Subcontractors and reimbursable costs. Goodwyn, Mills & Cawood, Inc. shall submit such invoices as soon as possible after the end of the month in which the Services were accomplished and shall be due and payable by the Client upon receipt.
- The Client, as owner or authorized agent for the owner, hereby agrees that payment will be made for said Services within thirty (30) days from the date of the invoice; and, in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at twelve percent (12%) per annum after they have been outstanding for over sixty (60) days. If an invoice remains unpaid ninety days (90) after the date of the invoice, Goodwyn, Mills & Cawood, Inc. may, upon giving seven (7) days written notice of its intent to do so, suspend all Services on the Client's project. This suspension shall remain in effect until all unpaid invoices are paid in full. If an invoice remains unpaid one hundred and twenty days (120) after the date of the invoice, Goodwyn, Mills & Cawood, Inc. may, upon giving seven (7) days written notice of its intent to do so, terminate this Agreement and pursue its remedies for collection.
- 5.5 EXPERT WITNESS SERVICES:** It is understood and agreed that Goodwyn, Mills & Cawood, Inc. services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Professional Services Agreement Addendum may be negotiated between the Client and Goodwyn, Mills & Cawood, Inc. describing the services desired and providing a basis for compensation to Goodwyn, Mills & Cawood, Inc.
- 5.6 COST ESTIMATES:** Client hereby acknowledges that Goodwyn, Mills & Cawood, Inc. cannot warrant that estimates of probable construction or operating costs provided by Goodwyn, Mills & Cawood, Inc. will not vary from actual costs incurred by the Client.
- 5.7 LIMIT OF LIABILITY:** The limit of liability of Goodwyn, Mills & Cawood, Inc. to the Client for any cause or combination of causes resulting from the Services hereunder rendered shall be, in total amount, limited to the fees paid under this Agreement.
- 5.8 CONSTRUCTION SERVICES:** If, under this Agreement, professional services are provided during the construction phase of the project, Goodwyn, Mills & Cawood, Inc. shall not be responsible for or have control over means, methods, techniques, sequences, or procedures; or for safety precautions and programs in connection with the Work. Nor shall Goodwyn, Mills & Cawood, Inc. be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for Contractor's failure to comply with applicable laws, ordinances, rules or regulations. Under no circumstances will Goodwyn, Mills & Cawood, Inc. have any direct contractual relationship with the contractor, any subcontractors or material suppliers.
- 5.9 INSURANCE:** Goodwyn, Mills & Cawood, Inc. shall at all times carry, on all operations hereunder, worker's compensation insurance, public liability and property insurance, automotive public liability and property damage insurance, and professional errors and omissions insurance. At the request of the Client, Goodwyn, Mills & Cawood, Inc. will have the client listed as additional insured where appropriate.
- 5.10 ASSIGNMENT:** Neither the Client nor Goodwyn, Mills & Cawood, Inc. will assign or transfer its interest in this Agreement without the written consent of the other. Goodwyn, Mills & Cawood, Inc., however, does reserve the right to subcontract any portion of the Services.
- 5.11 SUSPENSION, TERMINATION, CANCELLATION OR ABANDONMENT:** In the event the Project described in, or the Services of Goodwyn, Mills & Cawood, Inc. called for under this Agreement, is/are suspended, canceled, terminated, or abandoned by the Client, Goodwyn, Mills & Cawood, Inc. shall be given seven (7) days prior written notice of such action and shall be compensated for the Services provided up to the date of suspension, termination, cancellation, or abandonment including reimbursable expenses in accordance with the provisions of this Agreement.
- 5.12 ENTIRETY OF AGREEMENT:** This Agreement embodies the entire Agreement and understanding between the parties, their successors and assigns hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto. The laws of the State of Alabama shall govern this Agreement unless specifically stated otherwise. This Agreement includes this document.
- 5.13 HOLD HARMLESS:** The Client will hold harmless and indemnify Goodwyn, Mills & Cawood, Inc. for any design changes, construction changes, or damages resulting from the use of a topographic survey or other information prepared by others and provided by the Client.
- 5.14 GENERAL CONDITIONS:** GMC will not provide a certification letter(s) for Site Plans designed by GMC without verifying, at a minimum and not limited to the following: finished floor elevations, storm sewer pipe sizes and invert elevations, sanitary sewer pipe sizes and invert elevations, water line pipe sizes, detention and outfall structure dimensions and elevations, curb and asphalt elevations.

Unless specifically detailed in the Scope of Work for this contract, the fees for these services are considered separate from and in addition to all other services and will be paid for by Client as a negotiated lump sum fee or hourly per the attached Rate Schedule.

Initials_____

5.15 ADDITIONAL SERVICES NOT REQUIRING OWNER'S WRITTEN AUTHORIZATION: When necessary GMC will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, GMC need not request or obtain specific advance written authorization from Owner. GMC shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Additional services shall be compensated in accordance with the hourly rates presented in attached Exhibit, or by a lump sum fee if requested by the Owner.

- A. Services in connection with work change directives and change orders to reflect changes requested by Owner.
- B. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- C. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- D. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
- E. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
- F. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
- G. Services during the Construction Phase rendered after the original date for completion of the Work.
- H. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
- I. While at the Site, compliance by GMC and its staff with those terms of Owner's or Contractor's safety program provided to GMC subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

ATTACHMENT A
SCOPE OF SERVICES

Goodwyn, Mills & Cawood, Inc. (GMC) shall perform the following professional services.

- **Pre-Design Geotechnical Testing** **Lump Sum \$6,100**
GeoCon Engineering and Materials Testing, Inc. will produce a report detailing the existing soil conditions and recommendations on the roadway's design.
- **Right of Way Deeds and Drawings:** **Lump Sum \$2,500**
GMC will provide a ROW map, row acquisition sketches and descriptions to the City of Foley for the Right of Way acquisition.
- **Civil Roadway and Drainage Design:** **Lump Sum \$79,625**
GMC will provide a roadway design and set of construction drawings for the extension of South Juniper Street (approximately 4,500 LF) from County Road 20 to County Road 20 South.
- **ALDOT Permit for Turnout Modifications on SR-59** **Lump Sum \$8,500**
GMC will provide separate permit drawings for the turnout modifications and striping revisions on SR-59. This fee shall also include any revisions requested by ALDOT. Modifications required to the signal plans will be performed/provided by the signal designer.
- **ADEM Notice of Intent Registration:** **Lump Sum \$1,500**
GMC will provide a complete ADEM NOI document packet ready for the Owner's signature.
- **Bid Documents and Bidding:** **Lump Sum \$3,500**
GMC will prepare a Project Specification and Proposal package, obtain prices from contractors, answer contractor's questions and make a recommendation to the City of Foley to award the Contract. GMC will provide a Project Specification and Proposal package that will be signed by all parties once the Contract is approved.
- **Traffic Study and Traffic Signal Design** **Lump Sum \$43,500**
GMC will sub-contract the design of the volume development, data collection, and traffic analysis for the project to Kimley-Horn. The scope of services and associated fees are described in Attachment A.
- **Traffic Study and Traffic Signal Design Meetings And Construction Phase Services** **Hourly Not To Exceed \$10,000**
Kimley-Horn will provide these services in accordance with the description provided in Task 5 of Attachment A.
- **Construction Engineer & Inspection** **Lump Sum \$94,500**
GMC will provide construction engineering and inspection services for the duration of the construction of the project. These services will include the ADEM monitoring, daily site visits when construction activities are occurring, review of material submittals, processing of monthly pay requests and development of the record drawings.



2019
Standard Rate and Fee Schedule

Standard Hourly Rates

Principal	\$250.00
Vice President	\$200.00
Senior Project Manager	\$190.00
Project Manager	\$175.00
Senior Project Engineer/Geologist/Biologist/Ecologist	\$150.00
Project Engineer/Geologist/Biologist/Ecologist	\$140.00
Engineer Intern II	\$130.00
Engineer Intern I	\$110.00
Project Coordinator	\$90.00
Field Technician	\$125.00
Senior Designer	\$130.00
CADD Technician II	\$90.00
CADD Technician I	\$110.00
Contract Specialist	\$85.00
Executive Administrative Assistant	\$80.00
Administrative Assistant	\$70.00
Surveying:	
Survey Department Manager	\$115.00-\$130.00
Field Crew Supervisor	\$100.00
Survey Crew (two-man survey crew)	\$135.00
Survey Crew (three-man survey crew)	\$180.00
Survey Crew (four-man survey crew)	\$210.00

Reimbursable Expenses

Vehicle Transport	\$0.48 per mile
Travel/Meals/Hotel	Cost plus twenty percent
Subcontractors	Cost plus twenty percent
Blueprints and Xeroxes (outside)	Cost plus twenty percent
Blueprints and Xeroxes (in-house)	\$.20 per sf
Other Reprographics	Cost plus twenty percent
Film and Development	Cost plus twenty percent
Digital Photography	\$.75 per image
Fax incoming and outgoing	No charge
Overnight mail, regular mail & shipping	Cost plus twenty percent
Telephone (toll charges)	Cost plus twenty percent
CAD translations	\$30.00 per file
CAD plots (outside)	Cost plus twenty percent
CAD plots (in-house)	
A-Size (8.5x11)	\$1.50
B-Size (11x17)	\$4.50
C-Size (17x22)	\$9.00
D-Size (22x34 or 24x36)	\$20.00
E-Size (30x42)	\$30.00
Color Laser Prints (in-house)	
A-Size (8.5x11)	\$3.00
B-Size 11x17)	\$5.00
GPS equipment	\$250.00 per day

ATTACHMENT A

May 20, 2019

Mr. Doug Bailey
Hutchinson, Moore, and Rauch, LLC
2039 Main Street
P.O. Box 1127
Daphne, Alabama 36526

Re: **Proposal for Professional Services:**
Traffic Study and Traffic Signal Design
County Road 20 W at S Juniper Street and SR 59/S McKenzie Street at County Road 20
Foley, Alabama

Dear Mr. Bailey:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to **Hutchinson, Moore, and Rauch, LLC (HMR)** ("Client") for traffic engineering services for the Juniper Street extension in the City of Foley, Alabama. These services include a phased approach to account for current 2019 conditions and projections for future conditions. The purpose of this analysis is to determine the traffic impacts and recommended laneage and intersection control at the two (2) intersections at which the Juniper Street extension is proposed to tie in.

Kimley-Horn has also been requested to revise one (1) previously approved traffic signal design for the intersection of County Road 20 W at S Juniper Street and to create one (1) new traffic signal design for the intersection of SR 59/S McKenzie Street at County Road 20 S. This proposal is in response to your request and our conversations with City of Foley and ALDOT staff. Our scope of service, schedule, and fee follow herein.

SCOPE OF SERVICES

Task 1A – Project Scoping & Volume Development

\$5,500

Kimley-Horn will discuss the project with HMR, City of Foley staff, and ALDOT staff to review and capture existing and future conditions data to understand the projected future traffic demands on the area surrounding the proposed Juniper Street extension. This discussion will also determine the future design year to project growth in traffic. Land uses and densities that are projected to be developed in the adjacent parcels to be included for the design year of the Juniper Street extension will be provided by the Client, ALDOT or the City of Foley.

At completion of this task, KH will submit a brief technical memorandum presenting all assumptions discussed to be used in analysis. The memorandum will also include tables and figures to document the trip generation, trip distribution, and trip assignment for the projected future development adjacent to the Juniper Street extension to analyze future conditions. Using the confirmed design year, a background growth rate will be included to capture growth of existing traffic without the introduction of any future development to the study network.

Task 1B – Data Collection**\$2,500**

Kimley-Horn will collect AM and PM peak turning movement counts (TMCs) at both study intersections that the proposed Juniper Street extension would connect to, as confirmed by the Client. These counts will include vehicular and pedestrian volumes. Origin-destination data will not be collected between intersections studies, but TMCs will be used to approximate the amount of traffic that would be expected to re-route existing travel patterns and use the proposed Juniper Street extension once the road is opened to traffic. This information will support the analysis portion of the study.

Task 2 – Traffic Analysis**\$5,500**

We will use the data collected and analyzed in Tasks 1A and 1B and documented in the technical memorandum, to model traffic conditions on a typical weekday AM and PM peak hour. The data will be input into a traffic model used to analyze existing 2019 conditions and the projected design year future condition, as determined in Task 1A.

Any effort associated with revisions to the model, including altering assumptions, will be performed at our hourly rates within the budget included in Task 5.

Once the results of the traffic model have been finalized KH will prepare a technical memorandum that summarizes the analysis and results using tables and figures, with any additional recommendations.

Task 3 – Traffic Signal Re-Design**\$15,000**

Using the digital base mapping in AutoCAD or Microstation format provided by the Client (as developed under the Juniper Street Extension to CR 20 S Project), Kimley-Horn will prepare plans for a full traffic signal re-design at the intersection of County Road 20 W at S Juniper Street. The existing signal will be fully replaced. The design will be based on the proposed intersection geometrics developed under the current Juniper Street Extension to CR 20 S project. The proposed signal design will include the following: proposed pole and signal head locations, proposed cabinet location, proposed controller input file assignments, proposed phasing diagram, vehicle detection locations, proposed conduit and junction box locations, proposed pedestrian push button and pedestrian displays, sign details, and necessary notes. Traffic signal plans will be submitted at a scale of 1"=30'. This task will include up to two (2) sets of revised plans per City of Foley review.

Task 4 – Traffic Signal Design**\$15,000**

Using the digital base mapping in AutoCAD or Microstation format provided by the Client (as developed under the Juniper Street Extension to CR 20 S Project), Kimley-Horn will prepare plans for a full traffic signal design at the intersection of SR 59/S McKenzie Street at County Road 20 S. The design will be based on the proposed intersection geometrics developed under the current Juniper Street Extension to CR 20 S project. The proposed signal design will include the following: proposed pole and signal head locations, proposed cabinet location, proposed controller input file assignments, proposed phasing diagram, vehicle detection locations, proposed conduit and junction box locations, proposed pedestrian push button and pedestrian displays, sign details, and necessary notes. Traffic signal plans will be submitted at a scale of 1"=30'. This task will include up to two (2) sets of revised plans per ALDOT and/or City of Foley review.

Task 5 – Meetings and Construction Phase Services (as-needed hourly)

Kimley-Horn can provide continuing professional services to address issues or concerns that may arise during the design and/or construction phases of this project. These services will be provided on an as-needed hourly basis as required by the Client at our then-current hourly rates. Effort associated with this task will vary depending on the direction of the Client and needs that may arise during the design and/or construction of the traffic signals. We have included up to 40 hours of effort in this task budget. Examples of potential services include the following:

- Client Consultant Meetings: Up to two (2) Kimley-Horn staff will attend up to one (1) Pre-Construction Meeting with the City, the Client, and/or the Contractor prior to commencement of Work at the Site.
- Construction Phase Services: Up to two (2) Kimley-Horn staff will make up to one (1) site visit to the Site as directed by the Client in order to observe the progress of construction. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of the Contractor's work. Observations are to be limited to spot checking, selective measurements, and similar methods of general observation. Based on information obtained during such visits, the Consultant will evaluate whether the Contractor's work is generally proceeding in accordance with the Contract Documents, and the Consultant will keep the Client informed of the general progress of the Work.

Kimley-Horn shall not, during such visits or as a result of such observations, supervise, direct, or have control over the Contractor's work, nor shall the Consultant have authority over or responsibility for the means, methods, techniques, equipment choice or usage, sequences, schedules, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work, nor for any failure of the Contractor to comply with applicable laws and regulations. The 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.

Task 6 – Additional Services (as-needed hourly)

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then-current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional meetings as necessary and as authorized by the Client on an hourly basis.
- Traffic signal timing
- Additional traffic signal designs
- Signal warrant analysis
- Vehicular, bicycle, or pedestrian data collection
- Right-of-way plats
- Offsite detour plans
- Design variances and design exceptions to current applicable design criteria
- Design of roadway or pedestrian lighting
- Design of landscape or special hardscape features

INFORMATION PROVIDED BY CLIENT

Kimley-Horn will rely upon the accuracy and completeness of all documents, surveys, reports, plans, and specifications provided by the Client, the Client's consultants, or by others for whom Kimley-Horn is not legally responsible. The Client acknowledges that verifying the accuracy and completeness of such items is not part of Kimley-Horn's scope of services.

The following is to be supplied by the Client in support of this proposal:

- Site plan of proposed future development location, including proposed access, land uses, and densities
- Future population forecasts and changes to adjacent parcels
- AutoCAD or Microstation format of proposed intersection geometrics (as developed under the Juniper Street Extension to CR 20 S Project) for the following locations:
 - County Road 20 W at S Juniper Street
 - SR 59/S McKenzie Street at County Road 20 S
- Topographic survey including Right-of-Way and Utilities for the following locations:
 - County Road 20 W at S Juniper Street
 - SR 59/S McKenzie Street at County Road 20 S

FEE AND SCHEDULE

Kimley-Horn will accomplish the services outlined in Tasks 1-4 for a lump sum fee of **\$43,500**. Services will be billed as a percent complete. Additionally, Task 5 (Meetings and Construction Phase Services) will be performed at our then-current hourly rates plus expenses on an as-needed basis against a budgeted amount of **\$10,000**. Task 6 (Additional Services) will be performed at current hourly rates plus expenses.

LUMP SUM Tasks:

Task 1A – Volume Development	\$ 5,500
Task 1B – Data Collection	\$ 2,500*
Task 2 – Traffic Analysis	\$ 5,500
Task 3 – Traffic Analysis	\$ 15,000
Task 4 – Traffic Analysis	\$ 15,000
Total Lump Sum Fee	\$ 43,500

** Data collection total cost subject to change should intersection(s) or data collection change after meeting with the Client.*

Additionally, Kimley-Horn will perform the services in Task 5 on an hourly rate basis against a budgeted amount of **\$10,000**.

HOURLY Tasks:

Task 5 – Meetings and Construction Phase Services	\$ 10,000
Total Hourly Not-to-Exceed Fee	\$ 10,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number. Any efforts associated with Task 5 will not be performed without prior

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

Kimley-Horn will provide our services as expeditiously as practicable based on a mutually agreeable schedule. Given notice to proceed and upon receipt of requested data and information from the Client, Kimley-Horn will undertake the services listed in Tasks 1-4.

CLOSURE

In addition to the matters set forth herein, our agreement shall include, and shall be subject to, the Standard Provisions hereto and hereby incorporated herein. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to **Hutchinson, Moore, and Rauch, 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 include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

If you concur in all the forgoing and wish to direct us to proceed with the aforementioned services, please have authorized persons execute the enclosed copy of this Agreement in the spaces provided below and return the same to the undersigned. We will commence services only after we have received a fully-executed copy of the Agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to submit this proposal to you. We look forward to performing these services for you and will begin work immediately upon your notification. Please contact me at 512-418-4504 or at lance.ballard@kimley-horn.com should you have any questions or requested changes.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Lance Ballard, P.E. (AL, GA, TX)
Project Manager



Kenn Fink, P.E. (GA)
Senior Vice President

Attachments: Hourly Rate Schedule
Standard Provisions

Hutchinson, Moore, and Rauch, LLC

By: _____

(Date)

(Print or Type Name)

Title: _____
(Member or Manager, as authorized)

(Email Address)

_____, Witness

Kimley-Horn and Associates, Inc.
Hourly Rate Schedule
Through June 30, 2019

Classification	<i>Rate</i>
Analyst	\$125 - \$215
Professional	\$195 - \$240
Senior Professional I	\$210 - \$305
Senior Professional II	\$290 - \$320
Senior Technical Support	\$130 - \$205
Support Staff	\$80 - \$120
Technical Support	\$75 - \$120

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 survey, 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 as the Client may require.
 - (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 maximum rate allowed by law. 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 one year 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 in which the Project is located. 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.