

SCOPE OF SERVICES

The tasks outlined below are the professional services to be provided by Kimley-Horn. The scope of services described for Lump Sum (LS) tasks will be completed for the lump sum fee indicated.

Trail Section 3A

Trail Section 3A will start approximately at the northwest corner of the James McKnight Park complex and extend over to Carlin Road, approximately 5,000 feet.

Task 1 Preliminary Hike and Bike Trail Alignment and Trail Head Plan \$8,000 (LS)

Based on the topographic survey prepared by others and previous discussions we will prepare a horizontal and vertical alignment plan for section 3A. On this plan we will identify the following:

- Suggested Trail head\column\rest area locations
- Suggested drinking fountain location(s)
- Suggested solar lighting locations
- Signage locations
- Grist Wheel mile marker locations
- Trail sections which will be permanent (concrete) or temporary (asphalt)
- Tree locations along permanent sections only
- 911 Marker Locations

The preliminary alignment plan will be submitted to the client for review and input. We anticipate attending one meeting on site to walk the preliminary alignment with city staff and a follow up meeting with city staff at the parks department office.

Task 2 Trail Section 3A Civil Construction Documents \$ 46,000 (LS)

Based on the site walk and city comments Kimley-Horn will prepare civil engineering plans consisting of the following:

- A. Cover Sheet – Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes and Project Specifications – Showing general notes related to proposed construction based on jurisdictional standards.
- C. Demolition Plan – Showing existing site conditions that will be removed.

- D. Dimension Control Plan - Showing the trail location\alignment and property boundary with dimensional ties for construction purposes.
- E. Paving and Striping Plan - Showing proposed trail paving for the permanent and temporary trail sections. The center stripe will be shown on the plans as dictated by the parks department.
- F. Grading Plan – the trail grading plan will be shown on a plan and profile sheet. The design of the trail will follow AASHTO and city standards. The grading plan will indicate spot elevations and contours for the trail section. Detailed grading of landscape areas will be designed by the landscape architect as part of their scope of work detailed in the landscape task. Retaining walls, if needed, will be shown with proposed top and toe elevations in a “wall zone”. If walls are required, we would anticipate them to be less than 4 feet in height and similar to other walls used in Mansfield on the trails and parks.
- G. Water Plan – Showing proposed drinking fountain(s) and their connection locations where domestic water is available to the site. These will be shown as a bid alternate on the plans and bid information.
- H. Storm Drainage Plan – We will indicate areas for permanent or temporary drainage culverts for crossings on the plans.
- I. Erosion Control Plan - Showing initial erosion control measures to be installed prior to disturbance of the trail corridor. The erosion control measures will be maintained and modified throughout site construction by the Contractor, and it is the Contractor's responsibility to modify the plan during construction as necessary to comply with the conditions of their permits. This task does not yield a SWPPP document.
- J. Constructions Details - Typical construction details for proposed site civil engineering improvements will be included by reference to applicable Mansfield standard details. If deemed necessary, construction details for certain site civil engineering improvements will be included in the plan set.

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

Task 3 Trail Section 3A Landscape, Wayfinding Signage, Trailhead Design \$15,000 (LS)

Based on the site walk, city comments, and the approval of the Preliminary Hike and Bike Trail Alignment and Trail Head Plan, Kimley-Horn will prepare landscape construction plans consisting of the following:

- A. Materials Legend / General Notes
- B. Hardscape Plan and Dimension Control Plan - Showing hardscape elements explicitly included in the Preliminary Hike and Bike Trail Alignment and Trail Head Plan., related hardscape materials and specifications, as well as the location and property boundary with dimensional ties for construction purposes.
- C. Planting Plans - Showing plant species, sizes, and location and associated details for canopy trees, ornamental trees, shrubs and groundcover, and turf.
- D. Details - Showing hardscape elements explicitly included in the Preliminary Hike and Bike Trail Alignment and Trail Head Plan. This includes detail plans, sections, and elevations. Required submittals, shop drawings, samples, cut sheets and mockups will be listed for approval by Landscape Architect. Kimley-Horn will not provide structural details for any vertical elements.
- E. Schematic Lighting Plans - Kimley-Horn will prepare Schematic Lighting Plans for the subject site. Kimley-Horn will coordinate with the Client, and Lighting Design Consultant to finalize the type and location of the lighting elements. The plan is expected to include pedestrian light poles, lit bollards, tree up-lighting, and landscape accent lights. This task does not include preparation of electrical plans or photometrics associated with the project lighting. Life-safety lighting and signage is excluded from our scope of services. We will coordinate the location of the electrical control box for the lighting.

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

Task 4 Trail Section 3A Opinion of Probable Construction Cost \$3,500 (LS)

Based on the approved civil and landscape plans, or the plans at a point the city deems substantially complete, we will prepare an Opinion of Probable Construction Cost (OPCC) for trail section 3A. This cost project will include approximate quantities and unit prices for each item identified. We will present this OPCC to the City for their review and input. Redesign based on the OPCC exceeding the city budget is not included in this letter agreement. If revisions are required to reduce the cost, we will provide the city with an addendum prior to beginning this work.

Task 5 Submittals and Permitting – 3A**\$ 4,000 (HR)**

This task is to capture effort expended by Kimley-Horn for project submittals and responses to review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the city for plan approval is unknown we have provided a projected level of effort. This task includes up to 40 hours of effort.

Task 6 Bidding Services – 3A**\$ 4,000 (LS)**

This task is for the bidding services effort as part of the City of Mansfield Bid Instructions Manual. Kimley

1. Prepare Bid Form for line items and alternate bid(s) items.
2. Attend Pre-bid conference
3. Attend Bid Opening
4. Prepare bid review with quantity sheet and confirm bidders have supplied the information required by the Bid Instructions Manual.

Task 7 Response to RFI / Submittals – Civil and Landscape – 3A**\$6,000 (HR)**

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

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

We have budgeted 30 hours of effort for this task.

Trail Section 3B**Task 8 Trail Section 3B Feasibility and Options Analysis****\$ 29,000 (LS)**

Trail Section 3B begins to the west of the terminus of Section 3A, approximately at the intersection of Cannon Drive and Carlin Road, and extends to the east along Cannon Drive turning northbound at Matlock Road and terminating at the existing 12' Hike and Bike Trail north of Walnut Creek. Section 3B is approximately 5,000 feet in length. Based on previous discussions, the city would like Kimley-Horn to prepare the following feasibility alignments for this section of trail.

- Carlin Road and Cannon Drive Intersection – 3 to 4 options based on the alignment;
- Cannon Drive – southside or northside of Cannon Drive;
- Matlock Road – eastside or westside of Matlock Road;
- Walnut Creek Pedestrian Crossing – eastside or westside and type of crossing structure.

Based on the above alignment options Kimley-Horn will prepare the following information for each alignment:

1. Alignment concept plan identifying major constraints
2. Required realignment of existing city facilities or utilities, etc.
3. Required easements required for alignment
4. Approximate cost of each alignment segment (OPCC) – see Task 11
5. Concepts for Walnut Creek Crossing utilizing previous information provided to the City by others, to assist in determining the least impactful and inexpensive route.
6. Landscape, signage, trail head, lighting locations will be shown on the concept alignments and included in the cost projections
7. This task includes walking the alignment with City staff once.

Kimley-Horn will compile this information into a report with Exhibits and present our findings with a recommended alignment to City staff.

Task 9 Trail Section 3B Opinion of Probable Construction Cost \$5,000 (LS)

Based on the concepts generated in Task 8 we will prepare an Opinion of Probable Construction Cost (OPCC) for each concept. This cost project will include approximate quantities and unit prices for each item identified. We will present this OPCC to the City for their review and input.

Task 10 Meetings; Exhibits; On-Call Services – 3A and 3B \$ 6,000 (HR)

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, and other stakeholders, to the extent requested by the client. This task will also capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description. This task includes up to 30 hours of effort.

ADDITIONAL SERVICES

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

INFORMATION PROVIDED BY THE CLIENT

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

- Executed copy of this agreement.
- City Trail details and preferences
- Previous Trail Studies

SCHEDULE

Kimley-Horn proposes the following schedule for the project.

August 26 th , 2019	Agreement to Staff for review and comment
September 10 th	Finalize Agreement with Staff
September 19 th	MPFDC Board Review
September 23 rd	City Council meeting approving contract
September 24 th	Email NTP from City Staff/survey begin by Britain and Crawford (BC)

Trail Section 3A

October 14 th	Receive survey for Section 3A from BC
October 25 th	Submit Preliminary Trail 3A plan
November 4 th	Meet with Staff to review Trail 3A plan
December 2 nd	Submit CD's for Trail Section 3A
December 13 th	Review comments with City Staff for 3A
December 20 th	Finalize CD's
January 15, 2020	Out to Bid
February 6 th	Receive Bids
February 20 th	Award Contract at MPFDC
February 24 th	Award Contract at City Council

Trail Section 3B

November 8 th	Submit Initial Feasibility and Options Analysis
November 22 nd	Meet with Staff to review Trail 3B Options
December 6 th	Submit Feasibility and Options Analysis Report with OPC
January 16 th	Present findings to MPFDC Board

FEE AND EXPENSES

Kimley-Horn will perform the Lump Sum Tasks for the total lump sum labor fee indicated. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

As stated in the attached Standard Provisions, payment of invoices will be due within 30 days of receipt. Kimley-Horn reserves the right to suspend services if payment has not been received within 30 days of receipt of the invoice.

Kimley-Horn will perform the services described in this scope of services on a lump sum (LS) basis.

Trail Section 3A

Task 1	Preliminary Hike and Bike Trail Alignment and Trail Head Plan	\$8,000	(LS)
Task 2	Trail Section 3A Civil Construction Documents	\$46,000	(LS)
Task 3	Trail Section 3A Landscape, Wayfinding Signage, Trailhead Design	\$15,000	(LS)
Task 4	Trail Section 3A Opinion of Probable Construction Cost	\$3,500	(LS)
Task 5	Submittals and Permitting – 3A	\$4,000	(HR)
Task 6	Bidding Services – 3A	\$4,000	(LS)
Task 7	Response to RFI / Submittals – Civil and Landscape – 3A	\$6,000	(HR)

Trail Section 3B

Task 8	Trail Section 3B Feasibility and Options Analysis	\$29,000	(LS)
Task 9	Trail Section 3B Opinion of Probable Construction Cost	\$5,000	(LS)
Task 10	Meetings; Exhibits; On-Call Services – 3A and 3B	\$6,000	(HR)

Total Projected Labor Fee	\$126,500
<i>(Excludes Reimbursable Expenses)</i>	



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 The City of Mansfield.

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

Please email all invoices to _____.

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

We appreciate the opportunity to provide these services to you. Please contact me at (972) 770-3008 or kevin.gaskey@kimley-horn.com should you have any questions.

Sincerely,

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

Shay Geach, P.E.
Project Manager

Attachment: Standard Provisions

Agreed to on this _____ day of _____, 2019.

City of Mansfield

(Signature)

(Print or Type Name)

(Title)

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

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

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

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

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

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

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25th day. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk.

In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

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

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

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

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

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

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

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

substance or condition is eliminated.

(15) Construction Phase Services.

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

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

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

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

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

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