



## THE CITY OF HENDERSONVILLE

160 6<sup>TH</sup> Avenue East  
Hendersonville, NC 28792  
(828) 697-3000

### CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

**FIRM:** Kimley-Horn and Associates, Inc.  
A North Carolina corporation  
421 Fayetteville St., Suite 600  
Raleigh, NC 27601  
(919) 677-2000

**PROJECT:** Clear Creek Greenway  
**PROJECT DESCRIPTION:** Construction of 2-mile section of Clear Creek Greenway, Beginning near Berkely Park and running to Highland Square Regional Activity Center ("Project")

**PROJECT NUMBER:** COH Project # \_\_\_\_\_

This Contract for Professional Engineering Services, and all exhibits and attachments, (collectively this "Contract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between, the City of Hendersonville, a municipal corporation of the State of North Carolina, (the "City") and, Kimley-Horn and Associates, Inc., a North Carolina corporation, having an address of 421 Fayetteville St., Suite 600, Raleigh, NC 27601 (the "Firm")

#### WITNESSETH

That for and in consideration of the mutual promises set forth in this Contract below, the sufficiency of which is acknowledged by the parties hereto, the parties do mutually agree as follows:

1. Scope of Services. The Firm agrees to perform for the City the following services according to the following requirements:

The Firm agrees to provide professional engineering services needed to complete the Project. Such professional engineering services shall constitute the "Work." The Scope of Services and Firm's Fee Schedule are attached as Exhibits B and C, which are incorporated herein by reference. Additional (extra) services are defined as any work not included in the Scope of Services in Exhibit B that are requested by the City or any review agencies ("Additional Services"). Unless otherwise specifically stated herein, all services will be provided on a lump sum, task-based basis, as specified on Exhibit C. Reimbursables for direct costs incurred (and not indirect costs) will be paid, in addition to the lump sum fee, at the rate of 1.0 times the Firm's actual costs. Any services not included in the Scope of Services in Exhibit B will be considered Additional Services. Additional Services will be identified either in writing or by verbal communication but must be approved in writing by the City before proceeding to perform such Additional Services. Additional Services will be billed at NCDOT approved rates.

The Firm will be responsible for providing properly licensed professionals to complete the Work in accordance with the standard of care ordinarily used by members of the Firm's engineering profession practicing under similar circumstances and at the same time in Henderson County. In addition to the indemnification obligations contained in the STANDARD TERMS AND CONDITIONS attached to this Contract, the Firm further agrees to indemnify and save harmless the City from claims and liabilities to the extent caused by the negligent errors or omissions of the Firm, including its engineers, technicians or subcontractors.

The Firm agrees to coordinate its Work with the work of any other separate professional services, contractors or with the work of the City's own forces to avoid delaying or interfering with their work.

The Firm must be properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and

must be properly authorized to conduct business in the state of North Carolina. The engineers performing the Work, and in responsible charge of the Work, must be a licensed Engineer in the State of North Carolina and must have a good ethical and professional standing.

The City reserves the right to terminate the professional service contract of the Firm based on the Firm's breach of this Contract (ex: schedule, responsiveness, quality of design, accuracy of documents etc.) or for convenience. The City reserves the right to modify or nonperform any portion of the Scope of Work described in Exhibit B Scope of Services, and in such event the City and Firm shall negotiate in good faith to make corresponding modifications to the Fee Schedule in Exhibit C.

2. Required Insurance. Firm shall be required to purchase and maintain during its performance under this Contract insurance coverage as shown on the Insurance Requirements as stated in Exhibit A, which is incorporated herein by reference. With the exception of Worker's Compensation and Professional Liability policies, all insurance purchased shall have a specific endorsement, copy of which shall be provided to the City, naming the City as an additional insured and for all insurance purchased, an endorsement providing that such insurance will not be cancelled without providing thirty (30) days advance written notice to the City.
3. Standard Terms and Conditions. The attached Standard Terms and Conditions shall be a part of this Contract. Such Standard Terms and Conditions are hereby incorporated by reference, and all parties agree to be bound thereby.
4. Marketing Use. The use of this project for marketing and reference purposes is subject to the City's consent.
5. Time for Performance of the Work. The Work will begin within ten (10) days of receipt of the Notice to Proceed from the City and shall conclude with the conclusion of the Project, unless sooner terminated as allowed by the Contract Documents. Milestones for the purposes of completion of the Work and billing and payment have been established, and are stated in Exhibit C.
6. Payment for Services. In consideration of the above services, the City will pay the Firm lump sum, tasked-based basis, in accordance with the submitted fee schedule in Exhibit C, attached hereto and incorporated by reference, up to, but not exceeding, the not-to-exceed-sum stated in the Fee Schedule in Exhibit C. Unless otherwise specifically stated in Exhibit C, reimbursables shall be billed at the Firm's actual cost, and shall count against the not-to-exceed sum stated. Firm will submit monthly invoices for Work performed during the month based upon the Work completed during the billing period which shall be paid thirty (30) days after receipt of undisputed invoices delivered. Invoices must be detailed as to time worked and tasks performed, materials used, and reimbursables billed. Additional Services will be at NCDOT approved rates. If any invoice is disputed by the City, in whole or in part, it shall provide a written explanation for such dispute to Firm within five days of receipt of the invoice and shall pay all undisputed amounts therein. All invoices must include a Sales Tax affidavit, detailing all sales taxes paid in the performance of the Work, including amounts paid to subcontractors, during the period of time represented on the invoice. If no sales taxes were paid, the sales tax affidavit shall reflect the amount paid as "\$0.00." The City shall not be obligated to pay any invoice omitting the sales tax affidavit. The City will provide the form to use for the Sales Tax Affidavit.
7. Project Funding. The Firm acknowledges that all or a part of the Work will be paid for or reimbursed to the City from the following sources of funding:
  - a. Federal funds, through the North Carolina Department of Transportation and the Federal Department of Transportation, Federal Highway Administration, pursuant to the Surface Transportation Block Grant Program (BGDA) under Title 23 of the United States Code and Title 23 of the Code of Federal Regulations, TIP: BL-0008;
  - b. State of North Carolina funds from:
    - 1) The North Carolina Parks and Recreation Trust Fund Grant, Project 2021-926, 07 NCAC 13K.0101-.0111; and
    - 2) NC Water Resources Grant, WRDG 2019S Clear Creek Greenway, CS18280; and

c. City of Hendersonville funds.

Therefore, Firm agrees to adhere to and comply with all State and Federal and local laws, rules and regulations applicable to the Work. Federal requirements are contained within the City's Federal Funding Addendum, attached hereto and incorporated by reference as an integral part hereof.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Hendersonville, North Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

KIMLEY-HORN AND ASSOCIATES, INC.

THE CITY OF HENDERSONVILLE

BY: \_\_\_\_\_ (SEAL)

Signature

\_\_\_\_\_  
Printed Name and Title

BY: \_\_\_\_\_ (SEAL)

John Connet, City Manager

This instrument has been preaudited in that manner required by the North Carolina Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
John Buchanan, Finance Director, City of  
Hendersonville

## STANDARD TERMS & CONDITIONS

1. **Acceptance.** Firm's acknowledgment of the terms of this Contract constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) Exhibits A, B, & C and The City of Hendersonville Federal Funding Addendum, all of the foregoing being attached hereto and incorporated herein by reference, and (iii) any other terms and conditions of a written agreement signed by Firm and the City that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Firm and the City with respect to the performance of the Work as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." Except as provided herein, no additional or supplemental provision or provisions in variance herewith that may appear in Firm's quotation, acknowledgment, invoice or in any other communication from Firm to the City shall be deemed accepted by or binding on the City. The City hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the City's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the City are subject to correction.
2. **Entire Agreement.** The Contract Documents constitute and represent the complete and entire agreement between the City and Firm and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the City. However, the Firm will not be liable for delays caused by circumstances beyond its control including without limitation, delays caused by acts of God, the City or its other consultants/contractors, federal, state, and local government authorities, strikes, riots, civil unrest, war, or unknown or concealed conditions, and if such delays occur, the Firm will be entitled to an equitable adjustment in the time for the performance of the Work and compensation.
4. **Relationship of the Parties.** The Firm is an independent Professional Engineering Company and not an affiliate of the City. The conduct and control of the work will lie solely with the Firm. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Firm and the City. Employees of the Firm shall remain subject to the exclusive control and supervision of the Firm, which is solely responsible for their compensation.
5. **(RESERVED).**
6. **Taxes.** Any applicable taxes paid shall be itemized on invoices.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the City.
8. **Indemnification.** To the greatest extent allowed by the law the Firm shall indemnify and hold harmless the City, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"), but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim. In the event that any portion of the Work performed under the Contract shall be defective in any respect whatsoever, the Firm shall indemnify and save harmless the City, its officers, agents, employees and assigns from all loss or the payment of all sums of money, but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim.
9. **Invoices and Payment Terms.** Invoice and Payment Terms are set forth in Section 5 in the Contract for Professional Engineering Services. All invoices and statements shall reference the City's Purchase Order Number, Contract number (if applicable) and Project Number, and shall be submitted to: City of Hendersonville, Accounts Payable, 160 6<sup>th</sup> Avenue East, Hendersonville, North Carolina 28792.
10. **Anti-Discrimination.** During the performance of the Contract, the Firm shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
11. **Insurance.** The Firm shall provide the insurance coverages shown on Exhibit A, attached hereto and incorporated herein by reference. The Firm shall provide the City with a North Carolina Certificate of Insurance and such endorsements as may be required by the Contract Documents PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance

shall be considered part of the Contract.

12. **Ethics in Public Contracting.** By submitting their prices and acceptance of this Contract, the Firm certifies that their proposal was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
13. **Applicable Laws and Courts.** This Contract shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and exclusive venue shall be in a court of competent jurisdiction for Henderson County, North Carolina. The Firm represents and warrants that it shall comply with all applicable federal, state and local laws, regulations and orders.
14. **Strict Compliance.** The City may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
15. **Assignment.** The Firm shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the City.
16. **General Provisions.** The City's remedies as set forth herein are not exclusive. Any delay or omission by the City in exercising any right hereunder, or any waiver by the City of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
17. **Obligations of the Firm.** The Firm shall adhere to all applicable laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Henderson, and the City of Hendersonville in the performance of the Work outlined in this Contract and any design documents, drawings and specifications applicable to the Work. The Work shall also adhere to all applicable federal, state and local laws, codes, ordinances, and regulations.
18. **Quality and Workmanship.** The Firm shall perform all Work in accordance with this Contract and the standard of care ordinarily used by members of the engineering profession practicing under similar circumstances and at the same time in Henderson County.
19. **Default.** Either Party may terminate the Contract, in whole or in part, upon thirty (30) days written notice upon a material breach by the other Party unless the alleged default is cured within the thirty (30) day notice period. The nonbreaching party shall have all remedies available at law or in equity in addition to any remedies provided in this Contract for material breach. In the event of a material breach by the Firm the City may procure upon such terms as the City shall deem appropriate, professional engineering services substantially similar to those so terminated, in which case the Firm shall be liable to the City for any excess costs for such similar services and any expenses incurred in connection therewith.
20. **Termination for Convenience.** The City shall have the right, without assigning any reason therefore, to terminate any Work under the Contract, in whole or in part, at any time at its complete discretion by providing ten (10) consecutive calendar days notice in writing from the City to the Firm. If the Contract is terminated by the City in accordance with this paragraph, the Firm will be paid for all Work performed and reimbursable expenses incurred at actual cost to the Firm up to the effective date of the termination. The City will not be liable to the Firm for any costs for materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.
21. **Instruments of Service and Work for Hire.** All Work performed by the Firm, and all data compiled, shall be considered Instruments of Service and Work for Hire, and shall be the Property of the Owner. The Firm shall retain a license in the Work performed and data compiled to use for the Firm's own purposes, and not for the benefit of any third party without the City's consent. The terms of this Paragraph shall survive the termination of this Contract for any reason, including but limited to for a material breach of either Party, or for the convenience of the Owner. In the event this Contract is terminated for any reason, the City shall be entitled to keep and use all design work provided by the Engineer and all data compiled by the Engineer. All representations and obligations with respect to the Work by the Firm under this Contract shall survive termination of this Contract unless this Contract is terminated by the Firm for the City's material breach, in which case use by the City of the Firm's design work and data compiled shall be at the City's own risk, and without any representation by the Engineer as to its accuracy or fitness for any purpose.
22. **Assignment.** Firm may not assign, pledge, or in any manner encumber the Firm's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the City's prior, express written consent.

23. **No Third Party Beneficiaries.** There shall be no intended nor incidental third party beneficiaries of this Contract. The Firm shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party beneficiaries.
24. **Valid Contract.** In order for this Contract for Professional Engineering Services to be valid, it must be executed by the City Manager or his or her authorized designee, and must be pre-audited in that manner required by the Local Government Budget and Fiscal Control Act, as the same may be amended.
25. **Verification of Work Authorization.** The Firm shall comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify for all contractors and subcontractors.
26. **Iran Divestment List.** With the execution hereof, Firm, certifies that they are not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the work hereunder.
27. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Contract shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.
28. **Companies that Boycott Israel List.** With the execution hereof, Firm, certifies that they are not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.

## **EXHIBIT A**

### **MINIMUM INSURANCE REQUIREMENTS**

The Work under this Contract shall not commence until the Firm has obtained all required insurance and verifying certificates of insurance have been approved in writing by the City. The City shall be named as additional insured on all policies, except Worker's Compensation and Professional Liability policies. These certificates shall document that coverages afforded under the policies will not be cancelled until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the City of such cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

**a. Worker's Compensation and Employer's Liability**

The Firm shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

**b. Comprehensive General Liability Insurance**

The Firm shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the Firm or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury: \$1,000,000 per occurrence / \$2,000,000 aggregate

Property Damage: \$100,000 per occurrence / \$300,000 aggregate

Or,

Bodily Injury and Property Damage, combined single limit (CSL): \$1,000,000 per occurrence / \$2,000,000 aggregate

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work performed under the contract.

**c. Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Firm.

**d. Other Insurance**

The Firm shall obtain such additional insurance as may be required by the City or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

**e. Proof of Carriage**

The Firm shall furnish the City with satisfactory proof of carriage of the insurance required before written approval is granted by the City

## EXHIBIT B

### FIRM'S SCOPE OF SERVICES

KIMLEY-HORN & ASSOCIATES, INC., will provide the following engineering services in coordination with City staff and other contractors:

#### Project Understanding

Kimley-Horn understands that the Client wishes to contract with Kimley-Horn and its subconsultants for engineering services for 2 miles of greenway along Clear Creek and Allen Branch. This project is funded through 3 grants: Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF). Kimley-Horn understands the negotiation of this Agreement shall be conducted in accordance with all NCDOT requirements and guidelines.

### TASK ORDER NUMBER 1

#### Scope of Services

##### TASK 1 SURVEY – WETHERILL ENGINEERING

Wetherill Engineering, Inc. (WEI), as a subconsultant to Kimley-Horn, will perform all conventional survey services for this project. All survey services shall be performed in accordance with, and shall conform to, accepted Surveying and Engineering general practices and procedures with the detailed scope of work as set forth and described below. General limits of survey coverage along the mainline are described as follows: Approximately 11,750' +/- along the proposed alignment for the greenway 11,750 LF X Variable Width Corridor. Most of the corridor is 100-foot width centered on the alignment with additional areas added as needed.

Being the same area shown on the Microstation design file entitled "BL-0008\_rdy\_SurveyLimits.dgn". This file was sent from Kimley-Horn to Wetherill on 3-23-2022.

##### TASK 1A PROPERTY AND COURTHOUSE RESEARCH

WEI will obtain current deeds, maps, plats, and easement documents for all parcels adjacent to the project and for which right of way acquisition shall be required. There are approximately 10 parcels along the proposed corridor to be researched. WEI will provide a copy of all property information compiled during this task to the City. The City will be responsible for contacting the property owners prior to field surveys.

##### TASK 1B ESTABLISH HORIZONTAL AND VERTICAL CONTROL NETWORK

WEI will provide a horizontal and vertical traverse throughout the entire Project. Horizontal Control will be referenced to North Carolina Geodetic Survey datum, NAD83/2011 adjustment. Six (6) primary control GPS points will be established in accordance with NCDOT Standards. Secondary baseline control will consist of a "random baseline traverse" monumented by 18" lengths of #5 rebar with Plastic caps set flush with the ground, or MAG pavement nails where appropriate. Each control point will have x, y, and z coordinate values. Points will be set outside of disturbance limits as much as possible to ensure their longevity through construction. Vertical Control will be based upon United States Geodetic Survey NAVD88 datum. WEI will set benchmarks at 2,000-foot intervals throughout the project. Benchtie Nails placed in the base of trees shall be utilized where possible and shall be placed outside of the proposed construction limits. The benchmark locations and descriptions shall be shown on the final plans.



#### TASK 1C PAVEMENT DIGITAL TERRAIN MODEL

Sufficient horizontal and vertical data points will be collected throughout the project corridor to create a digital terrain model to accurately define topography and grades for all paved surfaces within the project limits as described above.

#### TASK 1D PLANIMETRIC MAPPING

WEI will field locate and map planimetric information not shown on Photogrammetry base mapping throughout the project limits as described above. Base mapping classification and labeling of the Photogrammetry data is included. Said information will include, but is not limited to the following:

- Drives - location, type, width
- Buildings - location, type and size
- Parking Lots - location and layout
- Signs - location, type and size
- Fences - location, type and size
- Utilities\*
  - Storm drainage - location, size, type, top and invert elevations, inlet and outlet location both inside and outside planimetric limits.
  - Gravity sanitary sewer - location, size, type, top and invert elevations
  - Water - location, valves (including top of nut elevations where accessible), meters, hydrants, wells (as surveyed and/or identified by Wake County records), and associated appurtenances.
  - Gas - location, valves, meters, vents and associated appurtenances.
  - Telephone – above ground appurtenances such as poles, pedestals, manholes and vaults.
  - Overhead transmission - location, poles, guys, markers, pedestals, pole number, equipment, vertical clearance at grade crossings, and type to include power, telephone, cable TV, traffic signal and other telecommunications/communication lines.
  - Underground utilities - location, pedestals, markers, and type to include power, telephone, cable TV traffic signal and other telecommunications/communication lines.
  - Owner names, addresses, phone numbers and contact persons will be provided for all utilities when available.
  - Bridges will include end bent elevations, location of the bridge deck, interior bent elevation and locations.
- \*Gravity utilities (drainage and sanitary sewer) location will be based on above ground appurtenances and visual inspection and depth measurements to determine invert elevations that may be accomplished from the surface. WEI will not enter the manhole to determine inverts and confined space investigations shall be considered as Additional Services (Article II). This scope does not include Tree Surveys. Tree surveys can be completed as an Additional Service.

#### TASK 1E SUPPLEMENTAL (OBSCURED) AREAS

WEI will perform field surveys of existing features in obscured areas (approximately 6.0 acres). Data will include all horizontal and vertical information for all planimetric features in the

obscured areas.

**TASK 1F STREAM SURVEYS**

WEI will collect sufficient horizontal and vertical data points along the tops of banks, toes of banks, and centerline of the stream for streams located at proposed crossings and will cover to the extents of the limits. Streams within the limits, but not at crossing locations, will not be surveyed and will be shown according to Photogrammetry mapping.

**TASK 1G BOUNDARY TIES AND EXISTING BOUNDARY MAPPING**

Locate the existing right of way and recorded easements for all roadways within the project limits.

Perform sufficient fieldwork to complete boundary surveys for simultaneous conveyances and other small parcels, less than one (1) acre in area, within the project limits.

Larger parcels one (1) acre in size and larger will be located by front corners and sufficient data to establish sidelines showing property corner ties. Complete boundary surveys on these parcels will be considered Additional Services (Article II).

**TASK 1H RIGHT-OF-WAY PLAT PREPARATION**

WEI will prepare recordable 8" x 14" legal size exhibits (in accordance with NC GS 47-30) for use in the conveyance of easements and rights-of-way necessary for the construction of the Project. It is estimated that 10 exhibits will be required to fully map the property impacts throughout the project corridor. Exhibit will contain calls around new rights-of-way and easements, areas, tie to nearest survey control and NC Grid Coordinates (NAD83/2011). Written legal descriptions are not included, but can be provided as an additional service. The Agreement includes two (2) preliminary submittals (bond plots for review) and one final submittal in PDF format.

The first preliminary exhibit submittal will be included with the 75% design submittal. The second preliminary submittal will occur after completion of the initial round of negotiations with property owners. Final exhibit submission will be in accordance with the schedule developed by the City and Kimley-Horn.

**TASK 1I RIGHT-OF-WAY AND EASEMENT MONUMENTATION**

This service is not part of this scope and will be addressed in a future task order once design is completed and the number of points is known.

**TASK 1J PHOTOGRAMMETRIC PANELS AND CONTROL**

WEI will set, locate and localize Photo Control Panels according to the Panel Plan provided by the Photogrammetry consultant. For the purpose of this scope and estimate, the number of control panels is assumed to be 15+/- panels. Panels will be located utilizing GPS RTN methods. Points will be collected a minimum of two times and must be within a tolerance of 0.07' horizontally and vertically. These observations will be averaged and localized to the project datum description according to NCDOT Location & Surveys Standards. Text files of the Panel Grid & Local coordinates will be provided to the Photogrammetry consultant and will contain the Localization information.

**TASK 1K SUBSURFACE UTILITY LOCATION (VACUUM EXCAVATION)**

Not Applicable – This service can be provided as an additional service if needed.

**TASK 1L SURVEY DELIVERY ITEMS**

WEI will compile and plot all planimetric and property line information at a scale of 1 inch equals 20 feet. This mapping shall be delivered in a MicroStation V8i file format for use in the development of final design plans. Drawing element symbology and text sizes shall follow North Carolina Department of Transportation NCMAP 3.3 or 4.0 standards.

WEI will provide Digital Terrain Model in a 3-D digital radial break-line survey format with x, y, and z digital coordinate information for each survey point, break-line, and triangular irregular network (TIN) line.

WEI will provide the City with one copy of all deeds and plats obtained during the courthouse research in PDF format.

## TASK 2 PHOTOGRAMMETRY – SPATIAL DATA CONSULTANTS

Spatial Data Consultants (SDC) will perform the following services:

### TASK 2A GPS GROUND CONTROL

Targeting and GPS ground control survey for a minimum of twenty (20) ground control stations will be accomplished using appropriate techniques to provide horizontal and vertical control. This control will be in accordance with the configuration on the attached project flight and control point diagram and will be furnished by Wetherill Engineering, Inc. (WEI). The ground control datum will be North Carolina State Plane grid coordinates, NAD83 (2011) horizontal and NAVD88 (Geoid 18) vertical, US Survey Feet, unless otherwise specified by Kimley-Horn and Associates, Inc., (KHA).

### TASK 2B DIGITAL AIRBORNE IMAGERY

Digital aerial imagery will be obtained with an unmanned airborne system (UAS) consisting of a Sony RX1R-II Professional Compact Camera and Microdrones md4-3000 unmanned aircraft vehicle (UAV).

Upon notice to proceed and weather permitting, color (RGB) aerial imagery will be flown of the site at approximately 328' (100 meters) above mean ground level (AMGL), resulting in an approximate ground sampling distance of 1.3 centimeters (0.04'). Upon completion of the UAS mission, the digital airborne imagery will be reviewed prior to leaving the project site to ensure flight tracking and coverage are correct.

The project flight and control point diagram provided with this proposal is considered preliminary. Flight line orientation relative to the project area of interest may change once the project area of interest has been assessed for possible line of site and terrain deviation issues. SDC operates in complete compliance with all FAA and NCDOT Aviation Division regulations for commercial UAS operations.

### TASK 2C DIGITAL AERO-TRIANGULATION

Fully analytical aero-triangulation will be performed to both verify the existing ground control and extend the ground control network and process absolute orientation of the stereo-imagery. This task will be accomplished utilizing Agisoft Metashape Professional software.

### TASK 2D LiDAR ACQUISITION

LiDAR point cloud data will be obtained with a Riegl miniVUX-DL LiDAR sensor and Microdrones md4-3000 UAV equipped with an Applanix APX-20 IMU. The LiDAR point cloud data will be collected at approximately four hundred fifty (450) points per square meter (ppsm), simultaneously with the digital airborne imagery referenced above at approximately 328' (100 meters) AMGL. The unadjusted laser point cloud data will be reviewed in the field prior to leaving the site to ensure flight tracking and coverage are correct.

### TASK 2E LiDAR PROCESSING

Trajectory data from the Applanix APX-20IMU will be processed using Applanix POSPac UAV software. The laser point cloud data will be fully calibrated, georeferenced, and adjusted to the project specific ground control using Microdrones mdLiDAR and Terrasolid post processing software. The final adjusted laser point cloud will be colorized utilizing Global Mapper software.

### TASK 2F DIGITAL MAPPING

Digital terrain model (DTM), planimetric and topographic mapping for the area indicated on the attached flight and control point diagram, approximately fifty-two (52) acres, will be captured at a horizontal scale of one inch equals fifty feet (1"=50'), with one foot (1') contours as requested by KHA. This digital mapping will be produced utilizing our DATEM Summit Evolution Pro Softcopy Workstations. All visible planimetric features appropriate for this scale of mapping will be captured.

#### TASK 2G OBSCURE AREA - SUPPLEMENTAL FIELD SURVEY

Areas within the survey limits obscured by vegetation, shadows, view angle or any other natural condition will be left void of mapping unless the LiDAR point cloud density in such areas is sufficient to model the ground surface and meet the required contour vertical accuracy.

#### TASK 2H DIGITAL ORTHOIMAGE

A color-RGB digital orthoimage of the area indicated on the attached flight and control point diagram will be produced at 0.1-foot pixel resolution. This digital orthoimage will be processed using Agisoft Metashape Professional and Adobe Photoshop software. The final composite orthoimage will include full exploitation image coverage in TIFF and MrSID image formats.

#### TASK 2I STANDARDS OF ACCURACY

Digital mapping will conform to American Society of Photogrammetry and Remote Sensing (ASPRS), Positional Accuracy Standards for Digital Geospatial Data (Edition 1, Version 1.0, dated November, 2014) and Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standards.

In addition, all digital mapping compiled under this scope will comply with North Carolina Administrative Code 56.1606 (21 NCAC 56.1606), Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne and Spaceborne Surveys.

#### TASK 2J DELIVERABLES

- Image Post Processing Report in PDF Format
- Digital Mapping delivered in Microstation V8i Format (Separate DTM and Plan-Topo files)
- Digital Terrain Model (DTM) in Microstation TIN Format
- Color Digital Orthoimage in TIFF and MrSID Format
- Colorized LiDAR Point Cloud in LAS Format
- LiDAR Post Processing in PDF Format
- Signed and Sealed (PLS) Project Certification Letter in PDF Format

### TASK 3 WETLAND AND STREAM DELINEATION

Kimley-Horn understands the project area is an approximately 125-acre corridor with a planned greenway. Clear Creek extends east to west throughout the corridor. Allen Branch joins Clear Creek from the southeast at the eastern edge to the area. Mud Creek and Cherry Creek are tributaries that join Clear Creek on the south side. Land use is varied adjacent to and within the corridor, including utility services, commercial, residential, and government uses as well as forested areas.

In addition to the mapped streams, National Wetland Inventory (NWI) mapping shows a wetland near the confluence of Mud Creek and Clear Creek. Based on a preliminary review of the USDA Soil Survey, soils are a mix of hydric and nonhydric throughout the corridor.

#### TASK 3A PREPARE BASE MAPPING

Kimley-Horn will prepare the following natural resource figures:

- Vicinity Map
- USGS Topographic Map
- Soil Survey Map
- National Wetland Inventory (NWI)
- LiDAR (to show topography)

#### TASK 3B DELINEATION OF AQUATIC RESOURCES

Kimley-Horn will field locate and delineate the extent of wetlands and streams within the project area. Kimley-Horn will delineate wetlands using the three-parameter methodology set

out in the 1987 Wetland Delineation Manual and the Eastern Mountains and Piedmont Regional Supplement. Kimley-Horn will flag GPS locate the boundaries and will complete wetland and upland data forms for each delineated area. Kimley-Horn will complete the North Carolina Division of Water Quality Stream Identification form for each distinct stream reach.

**TASK 3C USACE CONCURRENCE ON AQUATIC RESOURCE BOUNDARIES**

Kimley-Horn will submit the delineation prepared in Task 3B to the USACE for a Preliminary Jurisdictional Determination (PJD). An agency field visit and one set of figure revisions has been accounted for in this task.

**TASK 3D SECTION 401/404 PERMITTING**

Kimley-Horn will coordinate with both USACE and NCDEQ. The field delineation will be incorporated into project design files so that impacts to regulated resources can be minimized. Unavoidable impacts will be submitted for Section 404/401 permitting with USACE and NCDEQ. The permit application will quantify impacts and have an accompanying narrative that describes the avoidance and minimization efforts and any required compensatory mitigation as well as existing conditions and constraints. It is anticipated that an additional agency field visit will be necessary during this task.

**TASK 4 HISTORICAL ARCHITECTURAL SURVEY – ACME PRESERVATION SERVICES**

Acme Preservation Services (APS) will provide these services on a cost-plus basis. APS will complete this work, including reporting, within two weeks of Notice-to-Proceed. If the North Carolina State Historic Preservation Office (HPO) determines that no additional survey or evaluation is needed in response to the information obtained for the below-listed tasks, APS will not conduct any further work, but remain on call to assist the project if needed. Should any additional historic architecture investigations or property evaluation be required, APS will provide those items under a separate scope of services.

**TASK 4A BACKGROUND RESEARCH**

APS will review readily available historical information for the project area to identify previously recorded historic architectural resources within, or adjacent to, the project corridor. The review will include examination of GIS data and HPO survey site files, environmental review reports, historical maps, and other data available in APS's collection and/or other local repositories.

**TASK 4B FIELDWORK**

APS may conduct a limited reconnaissance field survey of the trail corridor to identify any additional resources over 50 years of age adjacent to the abandoned railroad right-of-way.

**TASK 4C REPORT PREPARATION**

The results of the background study, possible reconnaissance field survey, and any communication with knowledgeable local individuals or organizations will be combined into a letter or brief summary report. This report will provide a detailed inventory of previously identified historic architectural resources within, or adjacent to, the trail corridor, as well as recommendations for any additional study needed. This report will be prepared for Kimley-Horn to use in coordination with the HPO and other appropriate stakeholders. Should any intensive property investigations or other services be required, APS will provide those services under a separate scope of services.

**TASK 5 THREATENED AND ENDANGERED SPECIES SURVEYS – THREE OAKS ENGINEERING**

Three Oaks Engineering, Inc. (Three Oaks), will provide protected species services associated with the subject project, Project No. BL-0008. Three Oaks will be performing this work as a subconsultant to Kimley-Horn and Associates, Inc. (Kimley-Horn), who is under contract with the City of Hendersonville, North Carolina. The North Carolina Department of Transportation (NCDOT) will also be reviewing this project. The work will be performed in accordance with the latest policies and procedures of the State of North Carolina Department of Transportation (State) and the Guidelines laid out and referenced in this Scope of Work.

**ASSUMPTIONS**

- Bat work will NOT include an emergence count, acoustic survey, mist netting, or species ID via guano sampling. If bats are present but cannot be identified to species visually and additional work is required, it will be scoped separately in the future. This statement excludes the I-26 bridge, which will require either an emergence count or placement of bat detectors to safely assess the structure; this will be completed under this scope for this structure only.
- Habitat assessments and/or surveys will be performed by Three Oaks. Assuming NTP by early May, all non-bat species can be surveyed for during one (1) field visit. If NTP is received after the end of May and swamp pink habitat is present, an additional survey visit will be required; that additional visit will be scoped separately in the future.
- Neither Informal (i.e., informal concurrence or self-certification) nor Formal Consultation (i.e., Biological Assessment and corresponding Biological Opinion) are included in this scope. If either are required, they will be scoped separately in the future.
- This Task Order has an expected duration of twelve (12) months from the issuance of the Notice to Proceed (NTP).
- This Task Order will be processed as a LUMP SUM contract.

#### PROTECTED SPECIES SURVEYS AND REPORTING

##### Data Collection and Report Preparation

Unless otherwise specified in this scope, Three Oaks will reference the NCDOT Environmental Coordination and Permitting Group (ECAP) template and guidance protocols presented on the following NCDOT website as of the date of this scope:

<https://connect.ncdot.gov/resources/Environmental/EAU/ECAP/Pages/default.aspx>

Data collection will follow:

- The NRTR Guidelines website as mentioned above. Reference will be made to:
  - Pre- Field Work and Field Work as listed in the guidance for Preparing Natural Resource Technical Reports, Version 4.2, updated September 3, 2021, and NRTR Guidance and Template, updated September 2021.
- United States Fish and Wildlife Service (USFWS) survey protocols and survey windows for relevant species.

The following tasks will also be included in the cost estimate spreadsheet:

- Pre-Field work
  - Preparation for field work will include creation of mapping, setup of equipment, review of North Carolina Natural Heritage Program (NCNHP) data, and noting of known reference populations, if the latter is possible.
- Protected Species Surveys
  - County-appropriate protected species surveys will be performed per the Preparing Natural Resource Technical Reports document on the website. Travel is included for this task. As of the date of this scope, the USFWS Information for Planning and Consultation (IPaC) website lists the following species for this project:
    - Bald eagle (Bald and Golden Eagle Protection Act; year-round)
    - Gray bat (Endangered; May 15-August 15)
    - Northern long-eared bat (Threatened; May 15-August 15)
    - Bog turtle (Threatened Due to Similarity in Appearance; April 1-October 1)
    - Bunched arrowhead (Endangered; mid-May-July)
    - Mountain sweet pitcher-plant (Endangered; April-October)



- Small whorled pogonia (Threatened; mid-May-early July)
  - Swamp pink (Threatened; April-May)
  - White irisette (Endangered; late May-July)
- Habitat assessments and/or surveys will be performed by Three Oaks. Assuming NTP by early May, all non-bat species can be surveyed for during one (1) field visit. If NTP is received after the end of May and swamp pink habitat is present, an additional survey visit will be required; that additional visit will be scoped separately in the future.
- A bat habitat assessment will also be completed for the project. The assessment and reporting will follow the most up to date NCDOT bat habitat assessment protocols, located here:
  - <https://connect.ncdot.gov/resources/Environmental/EAU/BSG/Documents/NCDOT%20SOP%202021%20Prelim%20Bat%20Habitat%20Assessment%20Struc%20Cave%20Mine.pdf>
- A bat habitat assessment form will be completed for each structure inspected and will accompany the Protected Species Survey Report.
- Bat work under this scope will NOT include an emergence count, mist-netting, an acoustic survey, or species ID via guano sampling. If bats are present but cannot be identified to species visually and additional work is required, it will be scoped separately in the future. This statement excludes the I-26 bridge, which will require either an emergence count or placement of bat detectors to safely assess the structure; this will be completed under this scope for this structure only.
- Draft Protected Species Survey Report
  - A Draft Protected Species Survey Report will be prepared for the project. Internal quality assurance using three-signature sign-off by the preparer, technical reviewer and quality assurance reviewer will be documented and provided with the DRAFT report.
- Review Comments and Final Protected Species Survey Report
  - Three Oaks will incorporate City and Kimley-Horn comments on the DRAFT report to create the FINAL Protected Species Survey Report. Internal quality assurance using a three-signature sign-off by the preparer, technical reviewer, and quality assurance reviewer will be documented and provided with the FINAL report.
- Project Management
  - This will involve project coordination, safety compliance, project billing, and coordination with the City and Kimley-Horn (including any meetings that will need to be coordinated).

#### Deliverables

- DRAFT Protected Species Survey Report, including all figures and appendices
- FINAL Protected Species Survey Report, including all figures and appendices – one bound hard copy (if requested) and electronic copies in Word and PDF format
- Bat survey form(s)
- One copy of all field notes in PDF format, if requested
- GPS files, if required
- A copy of all shapefiles used to create the figures
- QA/QC form with signatures

## TASK 6 ENVIRONMENTAL DOCUMENTATION

Kimley-Horn will prepare a Scoping/Start of Study Letter and accompanying figures. The letter will include the project description, the TIP number, anticipated project schedule, and the type of documentation proposed for the project. Kimley-Horn will distribute the letter to appropriate federal, state, and local agencies and summarize comments received from agencies. If scoping letter responses received from the respective agencies warrant further investigation and coordination or archaeological investigation, it will be considered Additional Services.

Kimley-Horn will prepare environmental documentation in compliance with the National Environmental Policy Act (NEPA). A Categorical Exclusion (CE) Type I-A document is expected for this project. A CE is a category of federal actions that do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

Kimley-Horn will complete a CE Action Classification Form which will determine if this project requires FHWA approval. FHWA approval is not expected to be required for this project. Coordination with NCDOT is required for approval of the CE. FHWA and NCDOT have entered into a Programmatic Agreement that enables NCDOT to approve Type I-A, and other types of, CE actions. The CE Type I-A classification will be verified after studies are completed and prior to approval of the CE. Kimley-Horn will distribute the CE electronically to appropriate parties after approval.

## TASK 7 GREENWAY DESIGN PLANS

### TASK 7A 30% PRELIMINARY PLANS AND ESTIMATE

Kimley-Horn will conduct an in-person Kickoff meeting with the City and NCDOT and conduct an initial field visit with two Kimley-Horn employees.

Kimley-Horn will prepare 30% Preliminary Plans which will consist of:

- Title Sheet
- Typical Sections including the preliminary pavement schedule
- Plan Sheets (1-inch = 20-feet horizontal)
  - Proposed design for the trail and crossing locations
  - Proposed designs for two trailheads – one at Clear Creek Road and one in front of the post office
  - Horizontal curve data
  - Superelevation
  - Preliminary slope stake lines
- Profile Sheets (1-inch = 10-feet vertical)
  - Existing and Proposed Profile for the greenway
  - Vertical curve data
- Cross Sections (1-inch = 10-feet)
  - Cross Sections every 50' for the greenway alignment
  - Station labels, cross slope labels and existing ground labels for each cross section
- Preliminary Stream Restoration Designs
- Conceptual Landscape and Hardscape Package
- Preliminary Opinion of Probable Construction Costs (OPCC)

Kimley-Horn will use the GEOPAK V8i Corridor Modeler to create design cross-sections. All plans, designs, specifications, and estimates shall conform to the latest edition of AASHTO and NCDOT standards and practices for highway construction. Prior to submitting the 30% Plans, Kimley-Horn will conduct a 30% Plans-In-Hand Field Review with two Kimley-Horn employees. Kimley-Horn will submit the 30% Plans in electronic (PDF) format to the City. The City will submit the 30% Plans in electronic (PDF) format to the NCDOT for review. Kimley-Horn will



provide a Quality Control/Quality Assurance review of the 30% Plans prior to submittal. After submitting the 30% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees.

Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. All provided opinions of probable costs are based on the information known to Kimley-Horn at the time and represent only Kimley-Horn's judgment as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

#### **TASK 7B PROJECT MANAGEMENT & COORDINATION**

Kimley-Horn will conduct miscellaneous coordination with City staff and provide project administration through the anticipated duration of this contract (3 months, September 2022 – November 2023). The coordination will include regular transmittals of project correspondence and records; review of analyses, documents, and designs; and telephone contact for items requiring attention.

Kimley-Horn will also conduct miscellaneous coordination with the three grant agencies (Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF)) and the Stewardship Program (conservation easement coordination) through the anticipated duration of this contract (3 months, September 2022 – November 2023). The coordination will include regular transmittals of project correspondence and records; review of grant requirements and potential grant extensions; and telephone contact for items requiring attention.

Kimley-Horn will conduct virtual bi-weekly meetings to coordinate with City staff for the first 3 months of the project (September 2022 – November 2023) for a total of 6 meetings with up to six Kimley-Horn employees in attendance.

Kimley-Horn will prepare and submit monthly progress reports through the anticipated duration of this contract (3 months, September 2022 – November 2023).

Kimley-Horn will create a Microsoft Project schedule for key deliverables listed in this scope. The schedule will be updated as needed, approximately monthly through the anticipated duration of this task order (3 months, September 2022 – November 2023).

#### **TASK 8 SIGNAL WARRANT ANALYSIS**

Kimley-Horn will perform an existing year and future year signal warrant analysis for the vehicular and pedestrian volume warrants (Warrants 1, 2, 3, and 4) at the intersection of Lakewood Road at Highlands Square Drive. A 13-hour traffic count will be performed to determine the existing traffic volumes at the intersection, and this will be used to perform the existing year warrant. To perform the future year warrant, traffic volumes will be projected using an annual growth rate and any known development in the vicinity of this location. Future year projected pedestrian volumes will be determined by performing a pedestrian count at the existing Oklawaha Greenway at Glover Road crossing. Kimley-Horn will summarize the findings of the signal warrant analysis in a letter report to the City.

#### **TASK 9 UTILITY COORDINATION AND UTILITY BY OTHERS PLANS**

##### Private Utilities Coordination

Kimley-Horn will identify ownership of private utilities (dry utilities) within the Project corridor and coordinate with the utility owners on what will need to be relocated, adjusted, or abandoned. The design and adjustment of privately owned utilities will be the responsibility of the respective owners. Kimley-Horn will review utility relocations to make sure they do not conflict with greenway design or each other. Kimley-Horn will contact the private owners and request the utility owners provide private utility relocation plans. Kimley-Horn will develop Utilities by Others (UBO) plans which will be used in the field to verify existing utilities, locations, types, available sizes, and available services to buildings. Existing and proposed private utility locations will be shown on the UBO plans. The UBO plans will include retaining or removing existing utility poles and hand holes, and relocating utility services, provided by utility companies. Kimley-Horn will

utilize information provided by private owners to determine restrictions to relocations. Such information will be utilized to determine the costs and benefits of shifting the alignment(s) versus relocating the private utility facilities.

Prior to the completion of the 30% Design phase of the Project, Kimley-Horn will conduct a preliminary utility coordination meeting to review the proposed design with utility owners, including up to two (2) Kimley-Horn employees visiting the project site. The utility owners will be asked to begin drafting their conceptual private utility relocation plans at this time.

During the 75% Design phase of the Project, Kimley-Horn will provide drainage design plans to all private utilities. Kimley-Horn will coordinate with utility owners to determine restrictions to relocations, and to identify cost-prohibitive adjustments. This will occur such that development of private utility relocation plans, and any necessary easements may be coordinated and included in the 75% Design submittal. Kimley-Horn will work with utility owners to identify areas that may require additional permanent utility easements (PUE), advanced excavation (fill or cut) and/or tree clearing to prepare site for new pole locations. Kimley-Horn will conduct a final utility coordination meeting to review the proposed utility design with utility owners, including up to two (2) Kimley-Horn employees visiting the project site.

Utility Construction Plans consisting of any water and sewer relocation design, as well as the construction coordination of these relocations (both dry and wet utilities) are considered Additional Services. Kimley-Horn will continue to assist with utility coordination efforts through the Bid Opening. Street Lighting Coordination with the Town or Duke Energy progress will be considered Additional Services.

## TASK ORDER NUMBER 2

### SCOPE OF SERVICES

Kimley-Horn and its subconsultants will provide the services specifically set forth below.

#### TASK 1 STREAM RESTORATION – WILDLANDS ENGINEERING

Wildlands Engineering will perform the following services:

##### TASK 1A MEETINGS & COORDINATION

Two Wildlands staff will attend an on-site kickoff meeting and site walk to review portions of the project pertaining to Wildlands scope and to convey any background information to Kimley-Horn (KH) and the project team (from prior projects that Wildlands has been involved in within the corridor).

When requested by KH, Wildlands will attend biweekly call-in meetings that are pertinent to Wildlands scope of work. Wildlands has assumed 12 hours of meeting attendance and follow-up, roughly equivalent to 30-40% of the anticipated meetings over the 1-year duration of this phase of the project.

On an as needed basis (as requested by KH), Wildlands Asheville Office staff will assist with local coordination due to their proximity to the project and familiarity with the various project components. Potential local coordination tasks may include such things as meeting subconsultants or stakeholders for review of field needs/conditions, reviewing and documenting field conditions for design team, or other activities. 24 hours have been reserved for this purpose. Additional assistance would be negotiated as supplemental services.

Wildlands will compile and provide existing topographic and hydraulic modeling data for Allen Branch segment of the proposed greenway. Hydraulic modeling data will be best available data based on the progress of the on-going Letter of Map Revision for the Multi-area Streambank Restoration (MASR) Project which includes the stream restoration work and in-progress sanitary sewer upgrades (and associated potential minor grading of streambed). The model will also be required to account for NCDOT embankment grading and riprap placement that were not originally proposed under the MASR but which are part of the current conditions that will be captured in as-built topographic data.

##### TASK 1B STREAM STABILIZATION

###### UT to Clear Creek

Wildlands has reviewed the DWR grant for stream and greenway-related activities. The proposed stream work is to stabilize a short segment of an Unnamed Tributary (UT) to Clear Creek just downstream of the I-26 crossing on the left bank. The tributary was stated to have existing headcutting and vertical instability. From City drawings, the work appears to require 50-150 LF of streambed and bank restoration activities. The total distance of stream leading uphill to the existing development is approximately 450 LF. The upper 300 LF will be observed, but assessment and design work is assumed to be focused on the downstream 150 LF of the UT. Wildlands will conduct an initial assessment to identify the exact limits of work, conceptual design approaches, and future assessment, design and coordination needs. Wildlands will request through KH any specific stream-related topographic survey needs. It is anticipated that the design team surveyor will need to provide 150 LF of detailed topographic survey of the channel, including any and all constraints (utilities, roads, structures, etc.), locating these both horizontally and vertically, where relevant.

Wildlands will coordinate activities on UT to Clear Creek with the greenway and crossing designers in order to develop an integrated approach to the crossing and stream stabilization work. Wildlands has allowed 2-4 hours for coordination time with the design team and an equal

amount of time for internal communication within the stream design team.

Wildlands will complete a 30% design with a plan-profile sheet and preliminary grading. KH will provide design mapping for the greenway and crossing to be shown with the proposed stream stabilization activities that will address vertical stability and streambank erosion within the <= 150 LF tie-in reach.

Wildlands will incorporate comments from 30% and develop a 75% set of plan sheets to include update and refinement of the plan-profile sheet, draft final grading, the majority of any necessary project detail sheets for stream work, and typical sections if necessary. The refinement of the design will be supported by final assessment and design work which may include a combination of follow-up field data collection and geomorphic design based on typical design ratios or reference reach data. No walls, crossing design, or FEMA coordination are anticipated under this task (the stream is in the hydraulic shadow of I-26 and there appears to be sufficient space to address bank concerns with grading and benching, as necessary).

Wildlands will prepare 90% and final plans based on 75% comments and internal coordination with greenway and crossing designers. Wildlands will prepare supplemental specifications for stream stabilization elements and will provide quantity and cost estimate information at 75%, 90% and 100%.

#### TASK 1C GEOMORPHIC ASSESSMENTS AND DESIGN CONCEPTUALIZATION AND REVIEW

Wildlands will assess and evaluate the following stream-design related design alternatives that influence greenway alignment and cost considerations:

##### Clear Creek Kayak Launch

The City desires to evaluate the potential for a river access location near the trailhead off Clear Creek Road. Wildlands will complete an initial feasibility assessment of siting, probable type, and cost magnitude estimate to design and implement the access.

Wildlands will visit the site with City staff and will work with the greenway design team to integrate the river access into the proposed greenway alignment and other improvements.

Wildlands will assess the alignment and profile of the proposed river access and prescribe options for the type of structure (ramp, staircase), construction materials, and related considerations. Wildlands will produce a plan-profile sheet (figure) in 11x17 or 22x34 .pdf format to depict the concept design. A cost estimate will be prepared to estimate the design and construction costs based on the preliminary river access concept.

##### Clear Creek Underpass

The City desires to evaluate the feasibility and major design considerations associated with a potential greenway underpass at Clear Creek Road. Wildlands focus will be the bank grading and stabilization requirements associated with implementation of an underpass.

Wildlands will coordinate survey needs and obtain base mapping from KH and surveyor and review parcel data, ROW, and conservation easement language. Topographic data will be provided in Civil 3D .dwg or .xml format. Wildlands will evaluate bankfull bank geometry versus existing geometry, bank toe and face protection measures and upstream and downstream tie-in grading to help evaluate limits of impact, geometry & vertical clearance, existing conservation easement impacts, and approximate cost of work.

Wildlands will provide preliminary grading contours, plan view structure/stabilization layout, and will cut 1-2 cross sections to show existing versus proposed ground conditions in order to accommodate the underpass from a streambank perspective.

The deliverable will be plan and section information in Civil 3D along with a preliminary sheet layout depicting relevant streambank work, or this information can be provided as a 11x17 or 22x34 pdf.

Wildlands will provide a 1-page summary of streambank geometric and stabilization considerations related to the underpass design, including cost information for the proposed stream grading and practices if the proposed underpass appears reasonably feasible. KH will integrate these with other considerations as part of completing the underpass feasibility

assessment.

#### Mud Creek Geomorphic Review of Proposed Crossing

The City desires to evaluate streambank stability in the vicinity of the Mud Creek greenway crossing in order to identify any long-term stability concerns that could affect the proposed bridge.

Wildlands will evaluate the bridge site location and the streambank condition of Mud Creek and Clear Creek for a distance of 150' upstream on Clear Creek and 400' upstream on Mud Creek. Cherry Branch conditions will also be reviewed. Evaluations will consist of visual review of bank conditions to include an assessment of bank erosion, toe erosion, potential for tree loss, and subsequent risk to the proposed structure.

Wildlands will provide review and comment or an equivalent amount of design time at the 75% and 90% design stages. The focus is anticipated to be approach and exit grading of the streambanks to ensure that any existing stability from dense bank vegetation is maintained through appropriate bank grading and revegetation measures under proposed conditions.

If the need for more extensive treatment or assessment of alternative crossing siting locations, modifications to or supplement of this proposed scope will be required.

## TASK 2 PUBLIC INVOLVEMENT AND ENGAGEMENT

Kimley-Horn will coordinate with the City concerning postcard distribution, workshop set-up, and workshop announcements. Kimley-Horn will prepare one (1) postcard mailer and facilitate distribution of up to 200 copies. The postcard will describe the project elements and announce the Citizen Informational Workshop (CIW). The draft postcard will be submitted electronically to the City for review prior to finalization.

Kimley-Horn will prepare materials including one hundred (100) handouts and two (2) roll plots of one (1) build alternative for the CIW. A draft handout will be submitted electronically to the City for review prior to the CIW. The City will be responsible for arranging the meeting facilities and advertising the CIW. Kimley-Horn will provide four (4) project members in attendance. Kimley-Horn will also prepare meeting minutes in coordination with the City.

## TASK 3 GREENWAY DESIGN PLANS

### TASK 3A 75% RIGHT-OF-WAY PLANS AND ESTIMATE

Kimley-Horn will incorporate comments from the City and NCDOT on the 30% Plans. The 75% Right-of-Way Plans will include an index of sheets, typical sections, revised plan sheets with storm drainage design and proposed right-of-way and easements, profile sheets, streetscape plans and details, erosion control plans, stream restoration plans, traffic control plans, utilities by others plans, pavement marking plans, signing plans, construction details, and cross sections. Kimley-Horn will submit the 75% Plans in electronic (PDF) format to the City as well as an updated OPCC. The City will submit the 75% Plans in PDF format to the NCDOT for review.

Kimley-Horn will provide a Quality Control/Quality Assurance review of the 75% Plans prior to submittal. After submitting the 75% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees.

Kimley-Horn will submit revised 75% Plans in electronic (PDF) format to the City for right-of-way acquisition.

### TASK 3B 90% PLANS, SPECIFICATIONS, AND ESTIMATE

Kimley-Horn will submit 90% Final Plans, including structure plans, technical specifications, final OPCC, and bid documents to the City in electronic (PDF) format. The City will submit 90% PS&E in electronic (PDF) format to the NCDOT for approval. Kimley-Horn will provide a Quality Control/Quality Assurance review of the 90% Final Plans prior to submittal. After submitting the 90% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees.

### TASK 3C 100% PLANS, SPECIFICATIONS, AND ESTIMATE

Kimley-Horn will incorporate comments from the City and NCDOT on the 90% PS&E and submit

the 100% final signed and sealed PS&E in electronic (PDF) format for use by the City in the bidding and construction phases. Reproducible drawings will be 22-inch by 34-inch in accordance with NCDOT standards. Kimley-Horn will provide applicable CADD files to the City in DGN and/or DWG format if requested.

#### TASK 3D BID PHASE SERVICES

The City will be responsible for developing and issuing the bid advertisement on the City website and in the local newspaper. The City will also develop the front-end bid documents for the Bid Package and provide them to Kimley-Horn.

Kimley-Horn will be responsible for:

- providing Final 100% Plans and Specifications to the virtual plan room for review by Contractors
- conducting one mandatory in-person Pre-Bid Conference
- maintaining a bidder's log
- responding to up to five (5) Contractors' requests for information and clarification
- issuing up to three (3) formal addenda. One of the addenda will include minutes for the Pre-Bid Conference
- conducting the virtual bid opening of sealed bids
- tabulating the bids received
- evaluating the compliance of the bids received with the bidding documents

#### TASK 3E PROJECT MANAGEMENT & COORDINATION

Kimley-Horn will conduct miscellaneous coordination with City staff and provide project administration through the anticipated duration of this contract (9 months, December 2022 – August 2023). The coordination will include regular transmittals of project correspondence and records; review of analyses, documents, and designs; and telephone contact for items requiring attention.

Kimley-Horn will also conduct miscellaneous coordination with the three grant agencies (Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF)) and the Stewardship Program (conservation easement coordination) through the anticipated duration of this contract (9 months, December 2022 – August 2023). The coordination will include regular transmittals of project correspondence and records; review of grant requirements and potential grant extensions; and telephone contact for items requiring attention.

Kimley-Horn will conduct virtual bi-weekly meetings to coordinate with City staff for the first 3 months of the project (December 2022 – February 2023) with up to six Kimley-Horn employees in attendance. The meetings will shift to monthly for the final six months of the project (March 2023 – August 2023) for a total of 12 meetings.

Kimley-Horn will prepare and submit monthly progress reports through the anticipated duration of this contract (9 months, December 2022 – August 2023).

Kimley-Horn will create a Microsoft Project schedule for key deliverables listed in this scope. The schedule will be updated as needed, approximately monthly through the anticipated duration of this task order (9 months, December 2022 – August 2023).

#### TASK 4 HYDROLOGIC AND HYDRAULIC DESIGN

##### Stream Modeling and FEMA Coordination

Within the proposed project area, there are three FEMA-regulated streams. Clear Creek and Mud Creek are FEMA detailed studied streams with a regulatory floodway. Allen Branch is a FEMA limited detailed study stream with established non-encroachment areas. Based on Kimley-Horn's preliminary investigation, it is anticipated that the proposed greenway and the two anticipated bridge crossings will encroach into the regulatory floodway, non-encroachment, and floodplain areas along the streams and will require a hydraulic

analysis to be performed for the calculation of potential impacts to base flood levels. Encroachments into the FEMA-regulated floodways and non-encroachment areas will be minimized to the maximum extent practical to aid in the approval process. The design of the greenway will involve consideration for limiting natural grade changes within the floodway areas to reduce impact to base flood levels. Based on the work proposed and the amount of encroachment within regulated areas, it is anticipated that the project will result in increases in the base flood levels, therefore this Scope of Services assumes that a Conditional Letter of Map Revision (CLOMR) must be prepared for the project. It is assumed that there will be two bridge crossings over the FEMA regulated streams, one over Allen Branch and one over Mud Creek. Sizing and design of additional crossings is considered an additional service. Bridge Survey Reports (BSRs) are not included in this Scope of Services and are considered an additional service. FEMA hydrologic data will not be revised as a part of this study. The hydraulic analysis and CLOMR reporting process will include the following steps:

- Review NCFMP hydraulic modeling data for Clear Creek, Mud Creek, and Allen Branch, including previously approved LOMRs, if available. It is assumed that the HEC-RAS models will be available from NCFMP. All three FEMA regulated streams were most recently mapped in 2008, and models appear to be available online. It is assumed that the FEMA effective HEC-RAS model will be the base model for this hydraulic analysis.
- Perform a field investigation and gather supplemental hydraulic survey.
- Develop duplicate effective, corrective effective, and existing conditions HEC-RAS modeling plans. Corrected effective and existing conditions modeling geometry will incorporate corrections to the received effective model based on survey and field investigation data.
- Coordination with greenway, structural, and stream restoration design teams during design.
- Revised conditions HEC-RAS modeling plans will be developed to evaluate the proposed improvements that encroach into the floodplain and floodway. Proposed project alternatives will be simulated to assist in the development of a design which minimize floodplain impacts.
- The scour potential for the two proposed bridge will be evaluated under effective FIS 100-year flow conditions for the FEMA crossings.
- A CLOMR application package will be submitted to the City's floodplain administrator for review. A CLOMR submittal will include a project narrative, modeling comparison tables, certified topographic work map, annotated FIRM, design plans, NFIP Part 65.12 evaluation of alternatives, insurable structure no-impact certification, and impacted property owner notifications, revised flood profiles, revised floodway data table, applicable MT-2 forms, supporting FIS data, and hydraulic modeling and GIS mapping files associated with the analysis. The Client shall be responsible for application fees effective at time of submittal associated with this Task (currently \$6,750, subject to change). Upon authorization from the administrator, Kimley-Horn will submit the CLOMR to NCFMP, which has a maximum of 90 days to review the submittal. NCFMP will also have 90 days to review any comment responses prepared by Kimley-Horn. It is assumed that all map revisions will fall within City of Hendersonville jurisdiction and will not require coordination with other jurisdictions.
- Kimley-Horn will coordinate with the local Floodplain Administrator and NCFMP to facilitate the review and approval of the CLOMR.
- Once project construction is complete, a Letter of Map Revision (LOMR) will be required. This would be considered an additional service and is not included as part of this task.

#### Hydraulic Analysis

Kimley-Horn will perform hydraulic analysis for drainage pipe crossings and linear ditches along the proposed alignment of the greenway and evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls) that may be impacted by the proposed greenway for



incorporation into the 75% right of way plans. This analysis will be based upon the topographical information included in the survey and base information available for drainage designs such as GIS contour information, USGS Quad maps, and FEMA information. All hydraulic designs will be completed in accordance with the City of Hendersonville and NCDOT requirements for Hydraulic Design, whichever is more stringent. The anticipated tasks associated with the drainage design concurrent with the 75% plans include:

- Conduct field reconnaissance of existing and proposed drainage features and patterns associated with proposed greenway pipe crossings and existing ditches. Supplemental hydraulic surveys will be performed in addition to the provided survey, to be used to set proposed bridge elevations and proposed culvert inverts.
- Size all cross pipes along greenway alignment and determine critical greenway profile minimums to allow for the proposed cross pipes. Communicate these critical profile control points to the greenway design staff to facilitate establishing the vertical profile grade. No cross pipes over 72" in diameter are anticipated. If a culvert over 72" is required, a Culvert Survey Report would be required by NCDOT and will be considered additional services. Culverts will be sized using HY-8 software by FHWA.
- Design proposed ditches necessary to appropriately drain low areas adjacent to proposed greenway and to replace existing ditches impacted by the proposed greenway. Design proposed storm drain systems (drop inlets, open end pipes, catch basins, etc.) if necessary utilizing Geopak Drainage software.
- Evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls) that may be impacted by the proposed greenway.
- Finalize hydraulic designs for ditches, storm drainage systems, drop inlet locations, outfall analyses, and final cross pipe designs.
- Draft the proposed drainage features (ditches, cross pipes, inlets, etc.) and associated labeling.
- Draft the proposed ditches and final cross pipes into the greenway profile sheets. These ditch profiles will be processed in Geopak to generate the proposed ditches in cross section.
- Design two (2) BMPs for parking lot facilities.
- Prepare Permit Drawings.
- Complete Drainage Summary Sheet.

#### TASK 5 EROSION CONTROL DESIGN

Kimley-Horn will design and specify erosion control measures in accordance with the requirements of NCDEQ and the County. These measures will include silt fence along any channel banks and low areas to capture sediment-laden runoff, as well as rock silt check dams to decrease runoff velocities in channelized drainage areas.

Kimley-Horn will show erosion control measures and special details not shown in the Erosion Control Manuals as part of the construction plan set. Following an initial review by the Client, Kimley-Horn will submit erosion control plans and supporting documentation to NCDOT. It is anticipated that the County will not review the plans. This Scope of Services includes responding to one round of comments from NCDOT before submitting to NCDEQ. After approval from NCDOT, Kimley-Horn will coordinate with the Regional Office of NCDEQ for review and approval prior to approval of the final greenway. This Scope of Services assumes one round of comments from NCDEQ. Upon approval of the erosion control plans, Kimley-Horn will apply for the NCG01 permit. All application fees will be the responsibility of the Client. Based on NCDEQ's current review standards, a land disturbance permit will not be issued until documentation of permit approvals and right of way and easement acquisition can be provided.

#### TASK 6 WORK ZONE TRAFFIC CONTROL DESIGN

Kimley-Horn will develop Transportation Management Plans in accordance with the Guidelines for Transportation Management Plan Development, dated January 2010. The Transportation Management



Plans and quantities will be submitted to the City and NCDOT for review at the 75%, 90% and 100% submittals.

#### Project Information

- Greenway crosses Clear Creek Road and Lakewood Road
- Project Length: Estimated (2± miles)
- L-Lines: 1
- Y-Lines: 2
- Existing Signalized Intersections: 0

#### Assumptions

- Temporary Shoring: None
- Temporary Pavement: None
- Off Site Mainline Detours: None
- Number of Phases: 2

#### Final Work Zone Traffic Control (WZTC) Design Plans

The Transportation Management Plans will consist of a title sheet, general notes, and phasing notes as required. Standard NCDOT WZTC details will be referenced in the plans. Kimley-Horn will calculate WZTC quantities.

- Estimated Number of Sheets:
  - Title Sheet/ General Notes/ Phasing: 4
  - Details per Phase: 0
  - Special Details: 0
  - Total Sheets: 4

## TASK 7 GEOTECHNICAL – FALCON ENGINEERING

Falcon Engineering's scope of geotechnical services will include subsurface investigation and recommendations for paved greenway trail and bridge structures.

### TASK 7A STRUCTURE INVESTIGATION

Falcon will perform one Standard Penetration Test (SPT) boring near each end of each bridge structure (total 4 borings). Bridge borings will be advanced to depths sufficient for driven pile or spread footing design. Generally, we assume an average depth of 30 feet will be sufficient for bridge borings. If auger refusal is encountered at depths less than 10 feet, limited rock coring may be performed to assess rock excavation characteristics. Based on aerial photography it appears that access to one side or the other of each crossing may be excessively difficult. We will endeavor to access both sides of each bridge with SPT drilling equipment; however, if access proves excessively difficult, we will instead perform hand augers with rod soundings on the difficult access side. Based on consistency of data from the provided previous subsurface investigations, we believe this approach will provide a suitable level of confidence for provision of structure foundation recommendations.

### TASK 7B GREENWAY INVESTIGATION

Based on the provided previous subsurface investigations, and the assumption that backfill placement and compaction was monitored/tested throughout sewer construction, we do not propose a comprehensive subsurface investigation of the greenway alignment. Instead, we will perform five (5) shallow hand auger borings (3 feet) with dual-mass dynamic cone penetrometer (DCP) testing as a spot check to verify typical subgrade support in backfilled and virgin soil areas.

### TASK 7C FIELD INVESTIGATION PROCEDURES

Falcon will contact the NC811 to request the location of subscriber utilities in the vicinity of

the proposed boring locations. We will also coordinate with City staff to identify and locate any additional utilities in the area if needed and to provide access through easement gates. Falcon will locate the test borings in the field using a handheld GPS capable of sub-meter accuracy and coordinates obtained from georeferenced project drawings provided by others. Following completion of the borings, Falcon will utilize existing survey information to determine approximate test boring elevations.

Representative soil samples will be collected from hand auger cuttings, stratified, visually classified in the field in general accordance with the AASHTO Soil Classification System, sealed in moisture-proof containers, and transported to our laboratory. We will also collect bulk soil samples of hand auger cuttings from areas of proposed roadway cut or near-grade construction for laboratory compaction and CBR testing.

#### TASK 7D LABORATORY TESTING

Select split spoon and bulk samples will be transferred to our laboratory and tested for Atterberg limits, grain size analysis, moisture content (Qty. 4 each), standard Proctor compaction, and soaked California Bearing Ratio (Qty. 2 each). Laboratory testing will be performed in general accordance with the applicable test method noted in the attached manday estimate.

#### TASK 7E GEOTECHNICAL REPORTING AND RECOMMENDATIONS

After completion of our Field and Laboratory Investigation, Falcon will prepare the following documents in general accordance with NCDOT GEU formats:

- Subsurface Investigation – Inventory (11x17, adopted from roadway format), and including investigation data for boardwalk structure
- Written Roadway Recommendations and Summary of Quantities (8.5x11) – graphic recommendations (plan/profile/cross sections) are not proposed
- Structure Foundation Recommendations (8.5x11 written recommendations)

Additional services including but not limited to excessive coordination efforts required to gain site access to the site or necessary portions of the site, subscriber utility location delays, owner imposed delays to performing our work on-site, additional or deeper borings or other testing not explicitly included herein, investigation or recommendations for additional project elements not included in the project as described herein, attendance at design team meetings, review of project documents following completion of our report, and observation/testing/inspection services during construction will be invoiced on a time and materials basis in accordance with attached unit rate schedule.

#### TASK 8 STRUCTURE DESIGN

Kimley-Horn will perform the structural design of the pedestrian bridges (two (2) sites, assumed single span bridges of varying span length – to be determined in final design) in accordance with the AASHTO Guide Specification for the Design of Pedestrian Bridges, and the AASHTO LRFD Bridge Design Manual; and based on the foundation recommendations, provided by the project Geotechnical subconsultant, and the hydraulic analysis. It is assumed that each of the pedestrian bridges will consist of a prefabricated superstructure (designed by others), supported by cast-in-place concrete on steel H-Piles designed by Kimley-Horn. Geotechnical recommendations were not available at the time of this scope and fee. If a different substructure unit or foundation type is recommended than that assumed above, Kimley-Horn will develop a new scope and fee for any additional effort.

##### Preliminary Structure Plans

Kimley-Horn will develop Preliminary Structure Plans, which will include two (2) plan sheets for each crossing showing plan, profile, and typical section. Preliminary Structure Plans will be submitted to the City and NCDOT for review at the 75% plan phase.

Kimley-Horn will incorporate any comments on the Preliminary Structure Plans provided by the City and NCDOT prior to moving to the final design and plan production phase.

### Final Structure Plans

Kimley-Horn will finalize the design of the pedestrian bridge substructures and develop Final Plans and Specifications. Limited prefabricated pedestrian bridge superstructure details will be provided for illustrative purposes only to convey the bridge concepts for the City's approval. The Final Structure Plans and Specifications will be submitted to the City and NCDOT for review at the 90% plan phase.

Kimley-Horn will incorporate City and NCDOT 90% review comments and finalize the 100% Final Construction Document Bridge Plans and Specifications, and calculations.

### Pedestrian Bridge Basis of Design

- Bridge length, span options, and height above creek/stream shall be based on hydraulic requirements.
- The maximum walkway (clear) width for the pedestrian bridges shall be 10 feet.
- The maximum vehicular live load on the pedestrian bridges shall be H-5.
- The anticipated span range for the pedestrian bridges is 60 to 80 feet, all single span structures.
- Pedestrian bridge superstructure will be prefabricated structures designed by others, based on the details and performance specification in the contract documents.
- The anticipated substructure units will consist of reinforced concrete founded on steel H-Piles.

### Timber Boardwalk Feasibility Analysis

Kimley-Horn will provide structural due diligence concerning the constructability and probable construction cost associated with low-level timber boardwalk in flood prone areas along the project corridor. The study will require special attention to hydraulic, geotechnical, and geometric limitations. Kimley-Horn will provide to the City the proposed costs associated with each option as well as the viability of low-level timber boardwalk.

Timber boardwalk design and detailing are not included in this scope of work since the need for timber boardwalk is unknown at this time and will not be determined until final design. The addition of timber boardwalk during Preliminary Design will be considered additional services.

Reinforced concrete box culvert design and detailing are not included in this scope of work since Kimley-Horn does not anticipate the need for box culvert in the design. The addition of reinforced concrete box culvert during Preliminary Design will be considered additional services.

Construction phase services are not included in this scope of work.

## TASK 9

### LANDSCAPE AND HARDSCAPE DESIGN

Kimley-Horn will develop landscape and hardscape design plans in tandem with the overall project design schedule. The plans will consider all results discovered during the public engagement phase of the project and will work to incorporate program findings throughout the design. All plan sheets will be drawn to a scale which is consistent with the overall plan set, but are at a scale large enough for pricing takeoffs and construction guidance. It has been assumed that the scope of design work will include up to twelve (12) bench / fitness station locations along the alignment, trailhead layout and design, and up to two (2) enhanced pocket park areas along the alignment. Each area will be designed, drawn, and detailed individually.

Kimley-Horn will present drawings in the following design process:

- 30% Concept Package – Kimley-Horn will prepare a hand drawn graphic concept package for presentation and review by the Client team for decision making. Kimley-Horn will respond and revise the package up to one (1) round of comments prior to moving forward to the next deliverable
- 75% Design Development Plans – Kimley-Horn will create a drawing package in a computer-generated format based upon the concept package feedback and approval. This package will be suitable for cost estimation and construction feasibility. Kimley-Horn does not anticipate any major design changes at this phase and additional revisions will be considered additional services.

- 90% - 100% Construction Drawings – After approval and in tandem with the overall greenway plans, Kimley-Horn will develop Construction Ready drawings for incorporation in the bid package. These drawings will be prepared for bidding and construction.

Any changes to the design above and beyond the scope provided above will be considered additional services.

#### TASK 10 SIGNING AND PAVEMENT MARKING DESIGN

Kimley-Horn will develop Signing and Pavement Marking Plans at a scale of 1"=20' and as outlined for a Category III project in the NCDOT "Signing and Delineation Unit Design Guidelines", dated September 2019.

The plans will:

- Delineate the Final proposed pavement markings
- Identify curb ramp locations and types
- Identify all existing signs and note their disposition (remove, reset, dispose, etc.).
- Identify all proposed warning and regulatory installations. It is Kimley-Horn's understanding that LED flashing signs with push buttons will be installed at the Clear Creek Road and Lakewood Road crossings, though this may change based on the Signal Warrant Analysis included in the scope of services.
- Determine all signing and pavement marking quantities.

All designs and details will be in accordance with MUTCD, NCDOT, and applicable local standards as appropriate.

- Estimated Number of Sheets
  - Title Sheet: 1
  - Detail Sheets: 2
  - Plan Sheets: 2
  - Total Sheets: 5

#### TASK 11 RIGHT-OF-WAY ACQUISITION

Right of Way Consultants (RWC) will perform the following tasks:

##### Negotiation

- A detailed study of the greenway plans to include a field study for items such as property lines, improvements, out-conveyances, and others to assure correctness of the plans. It shall further compare the property in relation to the approved plans and the approved claim report valuation (or appraisal) after, for which necessary documents are to be prepared by RWC in the required format.
- All negotiations will be in compliance with the NCDOT's Right of Way Manual and/or Federal/State Guidelines.
- RWC will make research ownership of each property. An initial contact with each property owner, and/or their representative as may be required, for the purpose of providing the property owner with information about the project and its effect upon their property.
- If applicable or if condemnation is needed or if the property is damaged, RWC will request or provide appraisals containing the necessary and required information regarding the property and its ownership as affected by the project. RWC will provide information for title investigations on each individual as necessary.
- If required, RWC will prepare all deeds, agreements, and instruments of conveyance necessary to acquire the appropriate right of way.

- RWC will make offers based on the approved appraisals or claim report valuations, to the owner(s) of each property for the proposed right of way and advise said owners of applicable relocation benefit entitlements.
- RWC will conduct follow-up negotiations as may be appropriate and necessary. RWC will prepare negotiation reports and documentation; and coordinate the retention of improvements with applicable owners.
- When settlements have been reached with owners, RWC will submit final reports on each property claim containing the instruments of conveyance, requests for payment, and the required documentation to the Client for processing and issuance of a check for payment.
- If negotiations are unsuccessful, RWC will submit a request for condemnation on each involved parcel, with appropriate documentation, for processing and the initiation of litigation through condemnation on said claim. RWC appraisers and staff will not provide any testimony as part of this scope.
- RWC will provide a monthly status report of projects/parcels, negotiation, and improvement disposition.

#### Appraising

RWC will provide formal appraisals and/or appraisal reviews that comply with NCDOT's Uniform Appraisal Standards and General Legal Principles for Highway Right-of-Way Acquisitions to determine that the appraisal meets NCDOT's guidelines and requirements, conforms to acceptable appraisal standards and techniques, does not include any non-compensable items or exclude any compensable items, and that the value conclusions are reasonable and based on facts presented in the appraisal.

#### Relocation

There are no known improvements that need to be relocated at this time.

#### Closings

Closing of each claim will involve:

- Updating title information to date where title has been obtained.
- Recordation of the instruments of conveyance, with appropriate documentary stamps attached to the Register of Deeds Office in the County where the project is located.
- Delivery of the check for the purchase of right of way to owner by parcel post (return receipt requested), or by personal delivery with signed acknowledgement of acceptance.
- Notification of tax proration for the part taken.
- Submittal of closing package including the above documents to the Client.

#### Legal Staff

RWC will provide title opinions on all parcels as required.

#### CADD Descriptions / Surveying

All right of way staking and CADD descriptions are to be provided by the Wetherill Engineering as a part of Task 1.

## **FUTURE SERVICES TO BE INCLUDED IN THIS CONTRACT**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. The City has requested the following services be included in this contract but under a separate Task Order to be negotiated at a later point. The City reserves the right to not contract with Kimley-Horn for any or all of the services listed below. The City also reserves the right to go through a competitive process for any or all of the services listed below. It is understood and agreed that addition of any of the services listed below to this contract may require the express written permission of NCDOT.

- Construction Phase Services (Only with express permission of NCDOT)
- Construction Engineering and Inspection (CEI) (Only with express permission of NCDOT)

## **ADDITIONAL SERVICES**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current NCDOT approved hourly rates. Additional services we can provide include, but are not limited to, the services listed below. The City reserves the right to not contract with Kimley-Horn for any or all of the services listed below. The City also reserves the right to go through a competitive process for any or all of the services listed below. It is understood and agreed that performance of any of the following additional services may require the express written permission of NCDOT.

- Tree Surveys
- Subsurface Utility Location (Vacuum Excavation)
- Investigations regarding hazardous materials, waste, or contamination
- Groundwater studies or analysis
- Bat emergence counts, mist-netting, acoustic surveys or species ID
- Phase I or Phase II archaeological investigations
- Traffic Noise Analysis
- Project Level Air Quality Analysis
- Environmental Justice Analysis
- Cultural Resources Survey
- Section 6(f) Coordination
- Formal 4(f) Coordination
- Significant modification or redesign based on agency comments
- Section 7 Consultation with the USFWS
- Limited English Proficiency (LEP)
- Bridge Survey Reports (BSRs) and Culvert Survey Reports (CSRs)
- Letter of Map Revision (LOMR)
- On-site mitigation design
- Water and Sewer Relocation Design
- Utility Relocation/Construction Coordination
- Restroom Facility/Building Design at Trailheads
- Lighting and Electrical Design and Coordination
- Asbestos Inspections
- Asbestos Abatement
- Well Abandonment
- Construction Materials Testing (CMT)

## **INFORMATION PROVIDED BY CLIENT**

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

- Existing record information, investigations and reports including previous roadway construction plans, utility plans and inventories available within the project corridor
- Documentation for Grant Agreements
- Record drawings for water and sanitary sewer systems
- Project advertising and permitting fees
- Timely review of submittals and responses to requests for information

**EXHIBIT C**  
**Lump Sum, Task-Based Fee Schedule for the Work**

**TASK ORDER 1**

Kimley-Horn will perform the services in Tasks 1 – 9 for the total lump sum fee below.

Task 1	Survey	\$ 67,586.56
Task 2	Photogrammetry	\$ 17,288.52
Task 3	Wetland and Stream Delineation	\$ 51,080.34
Task 4	Historical Architectural Survey	\$ 2,765.10
Task 5	Threatened and Endangered Species Surveys	\$ 15,460.38
Task 6	Environmental Documentation	\$ 25,431.22
Task 7	Greenway Design Plans	\$ 83,985.57
Task 8	Signal Warrant Analysis	\$ 7,158.55
Task 9	Utility Coordination and Utility By Others Plans	\$ 17,286.41

Total Lump Sum Fee	\$ 288,042.65
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**TASK ORDER 2**

Kimley-Horn will perform the services in Tasks 1 – 11 for the total lump sum fee below.

Task 1	Stream Restoration	\$ 29,517.82
Task 2	Public Involvement and Engagement	\$ 10,656.79
Task 3	Greenway Design Plans	\$ 118,470.63
Task 4	Hydrologic and Hydraulic Design	\$ 99,264.84
Task 5	Erosion Control Design	\$ 16,414.74
Task 6	Work Zone Traffic Control Design	\$ 14,193.56
Task 7	Geotechnical	\$ 24,796.11
Task 8	Structure Design	\$ 63,049.19
Task 9	Landscape and Hardscape Design	\$ 26,959.42
Task 10	Signing and Pavement Marking Design	\$ 17,040.49
Task 11	Right-of-Way Acquisition	\$ 50,000.00

Total Lump Sum Labor Fee	\$ 470,363.59
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Individual task amounts are also provided. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at actual cost. Indirect costs will not be billed. All permitting, application, and similar project fees will be paid directly by the Client. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

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:

XXX Please email all invoices to: [accountspayable@hvlnc.gov](mailto:accountspayable@hvlnc.gov)

XXX Please copy [cconard@hvlnc.gov](mailto:cconard@hvlnc.gov); [bshanahan@hvlnc.gov](mailto:bshanahan@hvlnc.gov); [bdetwiler@hvlnc.gov](mailto:bdetwiler@hvlnc.gov)





### **THE CITY OF HENDERSONVILLE FEDERAL FUNDING ADDENDUM**

This **FEDERAL FUNDING ADDENDUM** (this "Addendum") is entered into by and between [\_\_\_\_\_] , a [\_\_\_\_\_] ("Contractor"), and [\_\_\_\_\_] , a [\_\_\_\_\_] ("Unit"), and forms an integral part of the Contract (as defined in Section I hereof).

#### **RECITALS**

**WHEREAS**, Unit has received, either as a Recipient or Subrecipient (as each such term is defined in Section I hereof) a payment from the \_\_\_\_\_ Fund ("Federal Fund" or "Fund") established pursuant to [Insert name and legal citation of federal law governing funding] ("Federal Funding Act"); and

**WHEREAS**, Unit intends to pay, in part or in whole, for the cost of the Contract (as defined in Section I hereof) using monies received from the Federal Funds; and

**WHEREAS**, in using such funds, Unit must comply with the terms of Federal Funding Act, regulations issued by the U.S. Department of Transportation, Federal Highway Administration, operating through the North Carolina Department of Transportation ("Federal Administering Agency" or "Agencies") found at Title 23 of the Code of Federal Regulations and Title 23 of the U.S. Code, and the Locally Administered Project – Federal, grant Agreement, TIP# BL-0008, Federal Aid Number: CFDA# 20.205, governing the expenditure of monies distributed from the Federal, the Award Terms and Conditions applicable to the Federal Funds, and such other guidance as the Federal Administering Agency or Agencies has issued or may issue governing the expenditure of monies distributed from the Federal Funds (collectively, the "Regulatory Requirements"); and

**WHEREAS**, pursuant to the Regulatory Requirements, Unit must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as the Federal Administering Agency or Agencies has determined or may determine are inapplicable to the Federal Funds; and

**WHEREAS**, pursuant to 2 C.F.R. § 200.327, Unit must include within the Contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum; and

**WHEREAS**, Unit shall not enter into the Contract or make any distributions of funds to Contractor using monies from the Federal Funds absent Contractor's agreement and adherence to each term and condition contained herein.

**NOW THEREFORE**, Contractor and Unit do mutually agree as follows:

#### **AGREEMENTS**

##### **I. Definitions**

- A. Unless otherwise defined in this Addendum, capitalized terms used in this Addendum shall have the meanings ascribed thereto in this Section I.
1. "Federal Funding Act" shall mean Title 23 of the United States Code, and regulations promulgated pursuant thereto, including Title 23 of the Code of Federal Regulations, as amended.
  2. "Administering Agency" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[a]ny department, agency and establishment in the executive branch of the [United States] government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts."). The Administering Agency is the U.S. Department of Transportation, Federal Highway Administration, the North Carolina Department of Transportation.
  3. "Applicant" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.").
  4. "Construction Work" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.").
  5. "Contract" shall mean the legal instrument by which Unit, as a Recipient or Subrecipient, shall purchase from Contractor property or services needed to carry out a project or program under a federal award, and of which this Addendum shall constitute an integral part. **For this Addendum, the Contract includes that Contract for Professional Engineering Services, made and entered into between the Contractor and the Unit for the following Project: Clear Creek Greenway, Construction of 2 mile section of Clear Creek Greenway, Beginning near Berkely Park and running to Highland Square Regional Activity Center, dated \_\_\_\_\_.**
  6. "Contractor" shall mean the entity named as "Contractor" in this Addendum that has received a Contract from Unit. As used herein "Contractor" includes consultants, and "subcontractor" includes "subconsultants."
  7. "Federally Assisted Construction Contract" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.").

8. "Government" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he government of the United States of America.").
9. "Laborer" or "Mechanic" shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: ("The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.").
10. "Recipient" shall mean an entity that receives a federal award directly from a federal awarding agency. The term does not include subrecipients or individuals that are beneficiaries of an award.
11. "Subcontract" shall mean any agreement entered into by the Contractor, or by a Subcontractor, to furnish supplies or services for the performance of this Contract or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
12. "Subcontractor" shall mean an entity that receives a Subcontract.
13. "Subrecipient" shall mean an entity that receives a subaward from a pass-through entity to carry out part of a federal award; but it does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
14. "Tier" shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.
15. "Unit" shall have the meaning indicated in the preamble to this Addendum.

## II. Equal Employment Opportunity

- A. If this contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, Contractor agrees as follows:
  1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
  4. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  6. Contractor will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Contractor may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  8. Contractor will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unit further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if Unit so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

9. Unit agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Contractor and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.
10. Unit further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Unit agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- B. If this Contract is not a Federally Assisted Construction Contract exceeding \$10,000, the provisions of Section I.A. of this Addendum shall not apply.

### **III. Davis-Bacon and Copeland "Anti-Kickback" Act**

- A. For all prime construction, alteration or repair contracts in excess of \$2,000, the Contractor, and Contractor's subcontractors, shall comply with the Davis-Bacon Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.
- B. Contractor and any Subcontractors performing work under the Contract shall comply with the "Copeland Anti-Kickback Act", 18 U.S.C. § 874. The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- C. Unit shall report all suspected or reported violations of the Davis-Bacon Act and the Copeland Anti-Kickback Act to the Federal Administering Agency or Agencies.
- D. Exception: This Article III Paragraph A shall not apply where the Federal Administering Agency or Agencies has indicated that Davis-Wage Act wage requirements are not applicable.

### **IV. Contract Work Hours and Safety Standards Act**

- A. *Overtime Requirements.* No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in Section IV.A. (Overtime Requirements), above, Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section IV.A. (Overtime Requirements), above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section IV.A. (Overtime Requirements), above.
- C. *Withholding for Unpaid Wages and Liquidated Damages.* Unit shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Section IV.B. (Violation; Liability for Unpaid Wages; Liquidated Damages) of this Section.
- D. *Subcontracts.* Contractor or Subcontractor shall insert in any Subcontract the clauses set forth in Sections IV.A. through IV.D. and also a clause requiring Subcontractors to include these clauses in any lower-Tier Subcontracts. Contractor shall be responsible for compliance by any first-Tier Subcontractor or lower-Tier Subcontractor with the clauses set forth in Sections IV.A. through IV.D.
- E. *Payroll and Records.* Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by

Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Federal Administering Agency or Agencies and the Department of Labor, and Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

- F. *Exceptions.* None of the requirements of Section IV of this Addendum shall apply if this Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

**V. Rights to Inventions Made Under a Contract or Agreement**

- A. The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.
1. Any subject data developed under the Contract, whether or not a copyright has been obtained, and
  2. Any rights of copyright purchased by Contractor using federal assistance funded in whole or in part by the Federal Administering Agency or Agencies.
- B. Unless Federal Administering Agency or Agencies determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit the Federal Administering Agency or Agencies to make available to the public either (1) Federal Administering Agency's or Agencies' license in the copyright to any subject data developed in the course of the Contract or (2) a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Government may direct.
- C. Unless prohibited by North Carolina law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.
- D. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- E. Data developed by Contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work. Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.
- F. For the purposes of this Section V, "subject data" means "recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the Contract." Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract."

**VI. Clean Air Act and Federal Water Pollution Control Act**

- A. *Clean Air Act.* Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to Federal Administering Agency or Agencies and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Federal Administering Agency or Agencies.
- B. *Federal Water Pollution Control Act.* Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to Federal Administering Agency or Agencies and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Federal Administering Agency or Agencies.

**VII. Debarment and Suspension**

- A. Due to its receipt of Federal Funds, Unit is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Contract is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (31 C.F.R. § 19.220(b)(2)) or the Federal Administering Agency or Agencies ((2 C.F.R. § 180.220(b)(2); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
- B. If this Contract is a covered transaction as set forth in Section VII.A., above, Contractor hereby certifies as of the date hereof that Contractor, Contractor's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Contractor and Contractor's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the

Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Contract shall be void, (2) Unit shall not make any payments of federal financial assistance to Contractor, and (3) Unit shall have no obligations to Contractor under this Contract.

- C. Contractor must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Unit, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- D. If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Unit, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

#### **VIII. Byrd Anti-Lobbying Amendment**

- A. Contractor certifies to Unit, and Contractor shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to the Unit, which will, in turn, forward the certification(s) to Treasury. Contractor shall cause the language of this Section VIII.A. to be included in all Subcontracts. This certification is a material representation of fact upon which Unit has relied when entering into this Contract, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- B. Contractors that bid or apply for a contract exceeding \$100,000 (including this Contract, if applicable) also must file with Unit the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.
- C. Contractor also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.

#### **IX. Procurement of Recovered Materials**

- A. Section IX.B. shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Unit's preceding fiscal year exceeded \$10,000.
- B. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA's website. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### **X. Prohibition on Contracting for Covered Telecommunications Equipment or Services**

- A. *Definitions.* Unless otherwise defined in this Contract, capitalized terms used in this Section X shall have the meanings ascribed thereto in this Section X.A.
  - 1. "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
  - 2. "Covered Foreign Country" means the People's Republic of China.
  - 3. "Covered Telecommunications Equipment or Services" means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
  - 4. "Critical Technology" means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).
  - 5. "Interconnection Arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
  - 6. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
  - 7. "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

8. "Telecommunications Equipment or Services" means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

**B. Prohibitions.**

1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
2. Unless an exception in Section X.C. applies, Contractor and any Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Federal Funds) received from a federal government to:
  - a. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
  - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
  - c. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or
  - d. Provide, as part of its performance of this Contract, any Subcontract; any other contractual instrument; or any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.

**C. Exceptions.**

1. This clause does not prohibit Contractor or Subcontractors from providing:
  - a. A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or
  - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
  - a. Covered telecommunications equipment that:
    - i. Is not used as a Substantial or Essential Component of any system and
    - ii. Is not used as Critical Technology of any system.
  - b. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

**D. Reporting Requirement**

1. In the event Contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if Contractor is notified of such by a Subcontractor at any Tier or by any other source, Contractor shall report the information in paragraph D.2(d)(2) of this Section X to Unit, unless procedures for reporting the information are established elsewhere in this Contract.
2. Contractor shall report the following information to Unit pursuant to paragraph D.1 of this Section X:
  - a. Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - b. Within ten business days of submitting the information in paragraph D.2.a. of this Section: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe (i) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (ii) any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

- E. *Subcontractor.* Contractor shall cause to be inserted into all Subcontracts and other contractual instruments relating to the performance of this Contract the substance of this Section X, including this paragraph E.

**XI. Domestic Preferences for Procurements**

**A. For purposes of this Section XI, the terms below are defined as follows:**

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.
2. "Manufactured Products" means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- B. As applicable, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. Contractor shall cause any Subcontractors to include the requirements of this Section XI in any Subcontracts.

**XII. Solicitation of Minority and Women-Owned Business Enterprises**

- A. If Contractor intends to let any Subcontracts, Contractor shall (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
- B. For the purposes of Section XII.A., an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

**XIII. Prompt Pay Requirements**

- A. Contractor must pay all subcontractors for satisfactory performance within 30 days from receipt of payment from the Unit. Any withheld retainage from a subcontractor must be paid to the subcontractor within 30 days from satisfactory final completion of the subcontract work. For the purposes of this Section XIII, a subcontractor's work is satisfactorily finally completed when all of the tasks outlined in the subcontract has been accomplished and documented. Any of the subcontractor's work partially accepted by the Contractor shall be deemed to be satisfactorily completed for purposes of triggering the prompt payment requirements of this Section.
- B. At any time during the performance of the Work that Contractor does not adhere to the prompt payment requirements of this Section XIII, the Unit may withhold payment owed the Contractor, including any retainage withheld by the Unit, until Contractor provides proof that subcontractor(s) have been paid current to that time.

**XIV. Access to Records**

- A. Contractor agrees to provide Unit, the Department of the Federal Administering Agency or Agencies, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigations. Contractor agrees to permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- B. Contractor agrees to retain all records covered by this Section XIV for all activities or work funded in whole or in part by funds provided pursuant to the Federal Funding Act for 3 years, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract. **Special Note: State of North Carolina law and funding requirements mandate that such records, for the Underlying Contract, be retained for 6 years. Notwithstanding the 3-year retention requirement under this Section XIV, Contractor shall adhere to the 6 year retention requirement of State law.**

**XV. Conflicts of Interest; Gifts and Favors**

- A. Contractor understands that (1) Unit will use Federal Funds to pay for the cost of this Contract and (2) the expenditure of Federal Funds is governed by the conflict of interest policy of the Unit – the **City Of Hendersonville Conflict Of Interest Policy Applicable To Contracts And Subawards Of The City Of Hendersonville Funded In Whole Or In Part With Federal Funds**, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
- B. Contractor certifies to Unit that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Unit involved in the selection, award, or administration of this Contract (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
- C. Contractor certifies to Unit that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Unit. Should Contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.

**XVI. Assurances of Compliance with Title VI of the Civil Rights Act of 1964**

- A. Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Federal Administering Agency or Agencies' Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et*

seq., as implemented by Federal Administering Agency or Agencies' Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

**XVII. Other Non-Discrimination Statutes**

- A. Contractor acknowledges that Unit is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Federal Funds:
1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Federal Administering Agency or Agencies's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

**XVIII. Miscellaneous**

- A. *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Unit encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- B. *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Unit encourages Contractor to adopt and enforce policies that ban text messaging while driving.
- C. *Reporting.* The Contractor shall make such reports for the benefit of the Unit as are required by the Federal Administering Agency, and shall cause all subcontractors to make such required reports, including but not limited to all reports required by the Federal Funding Accountability and Transparency Act (FFATA).

- XIX. Special Provisions.** The Federal Administering Agency has promulgated contractual requirements, which are contained in the Supplemental Provisions, Attachment 2, the terms of which are specifically incorporated herein by reference, and Contractor agrees to be bound thereby. To the extent Attachment 2 conflicts with the requirements of this Federal Funding Addendum, Attachment 2 shall take precedence.

**XX. Conflicts and Interpretation**

- A. To the extent that any portion of this Addendum conflicts with any term or condition of this Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

**CONTRACTOR:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNIT:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ATTACHMENT 1**  
**TO**  
**FEDERAL FUNDING ADDENDUM**  
**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of the undersigned's knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**ATTACHMENT 2**

**TO FEDERAL FUNDING ADDENDUM**

**SUPPLEMENTAL PROVISIONS REQUIRED BY 23 CFR 172**

**FEDERAL HIGHWAY ADMINISTRATION'S PROCUREMENT, MANAGEMENT AND ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES**

In addition to the rights granted to the Unit in the Underlying Agreement, the following provisions apply. As used herein "Underlying Agreement" refers to the agreement and federal funding addendum to which this Attachment is attached. As used herein "Contractor" includes consultants, and "subcontractor" includes "subconsultants." To the extent this Attachment 2 conflicts with the Underlying Agreement, this Attachment 2 shall take precedence.

**1. Rights in Data and Copyrights.**

- a. *Definition of "Subject Data."* As used in this Attachment, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
  - b. *Federal Rights in Data and Copyrights.* The Contractor agrees that it must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
  - c. *Restrictions on Access to Patent Rights.* Nothing in the Underlying Agreement or this Attachment pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - d. *Data Developed Without Federal Assistance or Support.* The Contractor agrees that in certain circumstances it may need to provide to the Federal Government data developed without any federal assistance or support. Nevertheless, this Attachment generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Underlying Agreement. The Contractor agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- 1) *Requirements to Release Data.* The Contractor understands and agrees that the Federal Government may be required to release data and information that the Contractor submits to the Federal Government as required under the Freedom of Information Act (FOIA), 5 U.S.C. § 552;
  - 2) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the accompanying Underlying Agreement, and any Amendments thereto.

**2. Record Retention and Access to Sites of Performance.**

- a. *Types of Records.* The Unit and Contractor agree to retain, and will require all subcontractors to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. *Retention Period.* All records shall be maintained for three years.
- c. *Access to Recipient and Third Party Participant Records.* The Unit and Contractor agree, and assures that each subcontractor, if any, will agree to:
  - 1) Provide, and require its subcontractors at each tier to provide, sufficient access to inspect and audit records and information related to the Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives;
  - 2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to the Underlying Agreement under the control of the Unit, Contractor and their subcontractors, within books, records, accounts, or other locations; and
- d. *Closeout.* Closeout of the Award does not alter the record retention requirements of this section of this Master Agreement.

**3. Appendix A of the Title VI Assurances (US DOT Order 1050.2A).** During the performance of the Underlying Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. *Compliance with Regulations:* The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. *Non-discrimination:* The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- d. *Information and Reports:* The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the

contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- e. *Sanctions for Noncompliance:* In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration, may determine to be appropriate, including, but not limited to:
- 1) withholding payments to the contractor under the contract until the contractor complies; and/or
  - 2) cancelling, terminating, or suspending a contract, in whole or in part.
- f. *Incorporation of Provisions:* The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. **Appendix E of the Title VI Assurances (US DOT Order 1050.2A).** During the performance of the Underlying Agreement, the Contractor, for itself, its assignees, and successors in interest (collectively hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**5. Federal Cost Principles.** At all times, Contractor shall adhere to the Federal Cost Principles as contained in 48 CFR Chapter 1, Subchapter E, Part 31 of the Federal Acquisition regulation for determination of allowable costs of commercial, for-profit entities.

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Signature of Contractor's Authorized Official

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Date

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Name and Title of Contractor's Authorized Official

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Date