



January 20, 2025

Ms. Michelle Dunson  
**City of Madison – Engineering Department**  
100 Hughes Road  
Madison, Alabama 35758

Re: ***Proposal for Professional Services – Notification: 25-006***  
Intersection Improvements  
Sullivan Street and Mill Road  
Madison, Alabama

Dear Ms. Dunson:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the **City of Madison** (“City” or “Client”) for professional engineering services at the intersection of Sullivan Street and Mill Road located in the City of Madison, Alabama.

## **PROJECT UNDERSTANDING**

The Client desires to modify the existing traffic signal at the intersection of Sullivan Street and Mill Road in the City of Madison, Alabama. As part of these improvements, the Client is also looking to install right-turn lanes for the eastbound and westbound Mill Road approaches and for the northbound Sullivan Street approach as well as install new sidewalk along the west side of Sullivan Street from Mill Road to tie in with existing sidewalk at Stewart Street, approximately 940’ south of Mill Road. As a result, the Client would like to retain Kimley-Horn to provide professional engineering services as described in the scope of services below. Kimley-Horn will partner with All Traffic Data Services, Building and Earth Sciences, and Morell Engineering as part of this project.

## **SCOPE OF SERVICES**

### **Task 1 – Traffic Engineering Analysis \$7,500**

Kimley-Horn’s traffic count data subconsultant, All Traffic Data Services, will perform traffic counts of the Sullivan Street and Mill Road intersection. Turning movement counts (TMC) will be performed for the AM and PM peak periods for one weekday on either a Tuesday, Wednesday, or Thursday. Due to the close proximity of Madison Elementary School to the study intersection, Kimley-Horn will ensure that traffic counts are collected on a typical school day to appropriately capture school traffic volumes.

Kimley-Horn will utilize the traffic count data collected in Task 1 to perform a traffic engineering analysis for the existing signalized intersection of Sullivan Street and Mill Road in the City of Madison, Alabama. Kimley-Horn will note the speed limits and intersection geometry as well as the existing traffic signal timings and phasing. The Consultant will create a Synchro model of the study intersection to model existing conditions and up to three (3) alternative conditions. The alternative conditions are anticipated to primarily evaluate potential right-turn lanes and recommended storage lengths. Analysis will be performed to determine level-of-service (LOS) and delay as well as queuing for the intersection and

approaches. Analysis will be performed on existing traffic conditions only; no growth projections are anticipated for this analysis.

Kimley-Horn will summarize our findings in a technical memorandum and will address and incorporate one (1) round of comments from the City as part of this task.

## Task 2 – Field Survey

**\$32,500**

Kimley-Horn's surveying subconsultant, Morell Engineering, will perform field surveying services for this project. Morell Engineering will provide surveying services for the following project limits:

- Mill Road, just east of Westminster Way (approximately 500' west of the eastbound stop bar) to the Madison Elementary Exit Lane (approximately 400' east of the westbound stop bar);
- Sullivan Street, just south of Stewart Street (approximately 990' south of the northbound stop bar with Mill Road) to the first driveway north of the intersection with Mill Road (approximately 125' north of the southbound stop bar)

Specific services to be performed by Morell Engineering include:

- Survey shall be referenced to Alabama State Plane Coordinates System, NAD83 East Zone, and NAVD88 Elevations;
- Temporary benchmarks shall be established for project control;
- Within the project limits, as stated above, Morell Engineering will locate all topographical features (building structures, roadways, driveways, sidewalks, paths, fences, roadway signs, guardrail, residential/commercial signage, traffic signals, pavement markings, retaining walls, etc.) and all existing drainage/storm flumes, pipes, inlets, and structures (including sizes, materials, and flow line elevations);
- Within the project limits, as stated above, Morell Engineering will obtain the location of all utilities, underground and overhead, including invert elevations and pipe materials at sanitary manholes;
- The Boundary Survey shall include location of present right-of-way, right-of-way monuments, permanent benchmarks (if present), property corners and property lines along the rights-of-way of Sullivan Street and Mill Road within the indicated project limits, as stated above; tie property lines to section corner(s), quarter corner(s), or quarter-quarter corner(s) for use during right-of-way acquisition;
- As part of the Boundary Survey, Morell Engineering will work to establish easements. Without benefit of title, we cannot ensure that all easements will be located;
- In addition to using the Alabama 811 service to locate utilities, Morell Engineering will utilize the services of a private utilities locator service. This will be beneficial to locate utilities that may not be part of the 811 service call and to locate utilities outside the right-of-way that may lie within right-of-way acquisition areas.

Morell Engineering will provide CAD data files as follows:

- A detailed survey base map in OpenRoads (.DGN format) for use in developing Roadway Design and Traffic Signal Design plans;
- An OpenRoads Designer Terrain model of the collected topography, including contours in 1' intervals.

Also included as part of this task, Morell Engineering will provide Traffic Control for the scope of services outlined in Task 2.

### **Task 3 – Traffic Signal Design**

**\$15,500**

Kimley-Horn will prepare plans for a full traffic signal design at the intersection of Sullivan Street and Mill Road. The existing signal will be fully replaced. The design will be based on the proposed intersection geometrics with additional turn lane(s) and sidewalk improvements being made under this project. The proposed signal design will include the following: proposed mast arm poles and signal head locations, proposed cabinet location, proposed phasing diagram, proposed vehicle detection locations, proposed pre-emption (as requested by the City), proposed conduit and junction box locations, proposed pedestrian push button and pedestrian displays, proposed sidewalk and ADA pedestrian ramp locations, proposed signage and sign details, proposed overhead street name sign measurements and details, proposed striping, and necessary notes.

Kimley-Horn will develop traffic signal plans to be included in the overall project plans package. Traffic signal plans will consist of the following sheets:

- Traffic Signal Legend
- Traffic Signal General Notes
- Summary of Traffic Signal Quantities
- Traffic Signal Layout

Traffic signal plans will be submitted at a scale of 1"=30'. Plans will be submitted to the City for review at the completion of the 30%, 60%, and 90% plans. Kimley-Horn will respond to and address up to one (1) round of comments from the Client at each stage of review.

Kimley-Horn will provide one (1) Opinion of Probable Construction Cost with each plan submittal and will address and incorporate one (1) round of comments from the City per each plan submittal. Following approval of the 90% plans, Kimley-Horn will complete preparation of final bid documents. A final Opinion of Probable Construction Cost will be submitted with final bid documents.

### **Task 4 – Geotechnical Design Services**

**\$27,500**

Kimley-Horn's geotechnical subconsultant, Building & Earth Sciences, will perform geotechnical design services for this project. The purpose of the geotechnical exploration will be to determine general subsurface conditions at the site and to gather data on which to base a geotechnical evaluation with respect to the proposed construction. The information gathered from the proposed exploration will be evaluated in order to determine LPILE parameters for the signal pole installation and to help determine if any special procedures will be required during the site preparation phase of the project. The work will include location of buried utilities via hydroblasting, soil test borings, asphalt coring, laboratory analysis, and an evaluation appropriate to address the geotechnical aspects of the proposed construction.

Specific services to be performed by Building & Earth Sciences include:

- Utility Clearances: Building & Earth Sciences can provide hydro excavation services for the planned intersection and/or sidewalk installation route. Building & Earth Sciences will subcontract a contractor to perform the hydro excavation services in order to expose utilities that are present at the intersection, along the proposed turn lane locations, or along

the proposed sidewalk installation route. Summary of locations and depths of underground utilities exposed during the hydroblasting process will be provided.

- Drilling and Sampling: Building & Earth Sciences will perform a total of six (6) soil test borings throughout the project area, including:
  - Three (3) borings at the proposed locations of the mast arm signal pole foundations to a depth of 30 feet or auger refusal, whichever occurs first;
  - Three (3) borings at the proposed locations of the new right-turn lanes to a depth of 10 feet or auger refusal, whichever occurs first.

Standard penetration testing (SPT) in accordance with ASTM D1586 will be performed in all borings at 2-½ foot intervals in the upper 10 feet and at 5-foot intervals thereafter. If the sampled soils are identified as fill, sampling will be performed continuously until residual soils are encountered.

Borings may be terminated at shallower depths should auger refusal be encountered during drilling. Exploration of refusal materials, if encountered, is not included in our scope of services.

- Groundwater: After drilling the hollow stem auger borings, Building & Earth Sciences will measure the groundwater level at the end of the day. Once groundwater readings are recorded, borings will be backfilled with auger cuttings.
- Asphalt Coring: Building & Earth Sciences will extract two (2) asphalt cores at the intersection, including one (1) on Sullivan Street and one (1) on Mill Road, to determine existing asphalt and base material build-up. The exact location of the coring will be determined by Building & Earth Sciences personnel in the field based on access and safety.
- Traffic Control: Traffic control will be necessary for performing the scope of work outlined in this task. Building & Earth Sciences will develop a site specific MUTCD traffic control plan and provide traffic control for the work completed in this task. We understand that any lane closures must be set up outside of school arrival and dismissal times.
- Laboratory Testing: The quantity and nature of the laboratory tests to be performed by Building & Earth Sciences will vary depending upon the type of soils encountered. Based on the drilling scope and requested geotechnical evaluations, Building & Earth Sciences anticipates performing the following laboratory tests:
  - Thirty-six (36) tests of *Natural Moisture Content* (ASTM D2216)
  - Four (4) tests of *Atterberg Limits* (ASTM D4318)
  - Four (4) tests of *Material Finer Than No. 200 Sieve by Washing* (ASTM D1140)

*Falling Weight Deflectometer* (FWD) testing and *Resilient Modulus* (Mr) testing are not included in our scope of services.

- Engineering Analysis and Reporting: The results of the investigation will be documented in a written report that will address the following items:
  - Site geology and potential impact on site development;
  - Summary of existing surface conditions;
  - Summary of the locations and depths of underground utilities exposed during the hydroblasting process;
  - A description of the subsurface conditions encountered at the soil test boring locations including a description of the groundwater conditions observed in the boreholes during drilling;
  - A layout of the soil test boring locations, as well as nothings/eastings referenced to the Alabama State Plane Coordinates System, elevations referenced to NAVD88 elevations, and GPS coordinates referenced to WGS 84, based on the results of the Field Survey completed as part of Task 2. The actual surveying of exact boring locations is not included in our scope of services;
  - Presentation of laboratory test results;
  - Site preparation considerations including material types to be expected at the site and treatment of unsuitable soils, if encountered;
  - Compaction requirements and recommended criteria to establish suitable material for structural backfill;
  - LPILE parameters for the signal pole foundations, including cohesion/undrained shear strength of soil layers throughout the soil profile, soil modulus parameter  $k$ , and soil strain factor  $E_{50}$ , based on SPT data and lab scope defined above;
  - Anticipated pay items including a new asphaltic concrete buildup for the proposed turn lanes. If it appears that the existing pavement is performing satisfactorily, the pavement buildup for the widening will be equivalent to the existing pavement buildup.

Building & Earth Sciences will provide a Boring Location Plan, Profile Plan, and each Soil Boring Log. Due to the nature of this project, cross-section sheets are not included in our scope of services.

The cost of services outlined in this Task 4 are based on the amount of work necessary to evaluate the geotechnical conditions for planning and design purposes. If conditions are encountered that require additional analysis, we will discuss a modified work scope with the City.

Our team will not be held responsible for damage to any unmarked utility lines or buried utility lines marked erroneously by others. Regrading and revegetation of areas disturbed by our drilling equipment is not included in our scope of services. Borings will be backfilled with auger cuttings upon completion of drilling.

## Task 5 – Mast Arm Pole Foundation Design

**\$13,500**

Kimley-Horn will provide structural design and construction details for the proposed mast arm foundation to be incorporated in the Traffic Signal Construction Plans. One (1) foundation detail will be prepared for the project utilizing current AASHTO *LRFD Signs & Luminaires Design Criteria* and the geotechnical information prepared by Building and Earth Sciences. It is assumed that the foundation will be a single drilled caisson or spread footing based on the site conditions encountered. Kimley-Horn will respond to and address up to one (1) round of comments from the City.

Kimley-Horn will provide limited structural construction phase services related to the mast arm and foundation shop drawings, up to three (3) shop drawing submittals have been assumed. Kimley-Horn will review and take appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Potential underground conflicts such as utilities, if encountered, will be avoided to facilitate foundation construction. In locations where underground conflicts appear to be a constraint, the project team will perform hydro excavation during the design phase (as part of Task 4) and will work with the designer to adjust pole locations based on those findings such as to avoid any underground conflicts. In the event unforeseen underground conflicts such as boulders are discovered during construction, the project team can provide revised plans with new pole locations and foundation design as an additional service.

## Task 6 – Roadway Design

**\$112,500**

Generally, the development of roadway plans will follow the procedure as shown in the Alabama Department of Transportation's (ALDOT) *Plans Preparation Manual*, *ALDOT Guide for Developing Construction Plans (GDGP)*, *ALDOT Hydraulic Manual*, *ALDOT Guidelines for Operation* and applicable City of Madison design checklists.

Kimley-Horn will perform the following scope of services for roadway and sidewalk plans, designed in accordance with current ALDOT Standard Specifications:

1. Facilitate and attend a Project Kickoff Meeting prior to initiating design activities.
2. Prepare a roadway plans assembly (1:20 horizontal scale, preferred; 1:5 vertical scale) for the proposed improvements. Where the Bentley OpenRoads Designer seed files limit, the horizontal scale will be adjusted as needed, but not to exceed 1:50. The roadway plan assembly will be completed using Bentley OpenRoads Designer and will generally include:
  - Title Sheet
  - Indices
  - Geometric Layout
  - Typical Sections & Details
  - Quantities & Box Sheets
  - Plan & Profile Sheets
  - Retaining Wall Plan, Profile & Detail Sheets
  - Signing, Striping, & Paving Layout Sheets



- Utility Sheet
  - Erosion & Sediment Control
  - Sequence of Construction
  - Traffic Control Typical Sections
  - Traffic Phasing Layout Sheets
  - Earthwork Cross Sections (on 50' intervals)
  - Earthwork Summary Sheet
3. Develop mainline plan and profile, displayed on split sheets, with complimentary side road and driveway profiles.
  4. Based on visual observation, Kimley-Horn anticipates the need for a short (<4') retaining wall adjacent to Madison Elementary School, southeast of the primary intersection. Retaining wall design will rely upon ALDOT standard drawings and will include plan, profile, and applicable details for backfill and facing the façade as requested by the City.
  5. Kimley-Horn will analyze existing inlets impacted by proposed construction as well as the need for additional drainage structures. Closed system stormwater conveyance and design will analyze structure capacity and stormwater spread within the project limits. Final construction plans will include new stormwater structures designed to meet stormwater design criteria, a drainage basin delineation map, and drainage structure cross sections.
  6. The erosion and sediment control plans, including devices and/or designs for structural control, will conform to published ADEM Best Management Practices (BMPs) and will be suitable for the application of a construction stormwater permit, including clearly indicating stormwater discharge points.
  7. Site-specific traffic control layout sheets and typical sections will detail traffic shifts or unique traffic control requirements. It is not anticipated that offsite detour plans will be needed as part of this project. If it is determined during design that offsite detour plans are in fact needed, Kimley-Horn can complete the offsite detour plans as an additional service.
  8. Conduct internal quality control reviews prior to all submittals to the City. Kimley-Horn's three-tier review process will include a senior level review, peer review, and project manager review prior to each submittal to the City.
  9. Develop base utility sheets for use in coordination with affected owners for utility relocation.
  10. Conduct utility coordination with utility owners located in the project limits. Coordination includes:
    - Identification of utilities in conflict with proposed improvements;
    - Development of utility conflict matrix in Microsoft Excel format used to track progress on utility relocation efforts;
    - Communication with utility owners to facilitate either a Letter of No Conflict or Relocation Plans to eliminate the conflict
  11. Prepare intermediate plan assemblies and complimentary documentation and submit to the City in accordance with appropriate ALDOT *GDCP* steps at the 30%, 60%, and 90% milestones. All submittals are proposed as digital PDF-format delivery.
  12. Attend one (1) in-person review meeting at the City of Madison's office to discuss and address comments issued as part of the 30%, 60%, and 90% milestones. Plan assemblies will be revised once (1) per each review and resubmitted with a disposition of comments back to the City. Additional revision cycles per submittal shall be considered additional services.

13. Opinions of Probable Construction Cost shall accompany each plan submittal using unit prices derived from ALDOT Estimator software and available bid tabulations of comparable work in the general area of the project. As part of each submittal, Kimley-Horn will provide the excel file of quantities and unit prices used in determining the overall project construction costs.
14. Consultant will assist the City in the development of construction contract documents and specifications, including development of bid proposal quantities and identification of required ALDOT special provisions (as needed).
15. Final deliverable for the Roadway Plans phase is a full set of stamped construction plans suitable for distribution for construction bidding, including both a half-size (11"x17") and full-size (22"x34") PDF of the final stamped construction plans. The plans for the Traffic Signal Design (Task 3) and Mast Arm Pole Foundation Design (Task 5) will also be included in this overall set of stamped construction plans.
16. The final deliverable will also include all of the Bentley OpenRoads Designer .dgn files to the City.

## **Task 7 – Right-of-Way Plats**

**\$32,500**

Kimley-Horn will provide right-of-way plats as needed following the development of the roadway construction plans. It is anticipated that right-of-way and/or easements will be required for the construction of the proposed sidewalk, turn lanes, and traffic signal on up to thirteen (13) parcels.

Kimley-Horn will develop right-of-way plats as needed for submission to the City and will incorporate and address up to one (1) round of comments per plat.

No acquisition services, such as appraisals, negotiations, or contracts, are included in this proposal.

## **Task 8 – ADEM NDPES Permitting**

**\$7,500**

If it is determined that the total land disturbance for the project is greater than 1-acre (but less than 5-acres), Kimley-Horn will prepare a site-specific Construction Best Management Practice Plan (CBMPP) and Notice of Intent (NOI) for coverage under the State of Alabama's NPDES Construction General Permit. The CBMPP will include a multi-phase erosion prevention and sediment control plan and other applicable erosion prevention and sediment control Best Management Practices (BMPs) for the site according to the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas. The City will be responsible for paying all necessary permit and application fees. Kimley-Horn will file the Notice-of-Intent (NOI) online to ADEM for review and coverage under the NPDES Construction General Permit. Kimley-Horn will address up to two (2) rounds of comments from ADEM and resubmit plans for approval. Any other ADEM or environmental/regulatory coordination and permitting necessary for this project will be considered an additional service.



## Additional Services (as-needed hourly)

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

- Additional meetings
- Additional permitting
- Traffic signal timing
- Interconnect design
- Offsite detour plans
- Offsite road improvements
- Utility relocation design
- Pavement evaluation and design
- Environmental/wetland mitigation
- Hydraulic calculations/fire flow model
- Design variances and design exceptions to current applicable design criteria
- Closed system drainage design
- Design of roadway or pedestrian lighting
- Design of landscape or special hardscape features
- Structural design or evaluation not explicitly identified in the scope, including but not limited to, any culvert design, additional foundation design, or evaluation of existing structures for additional loading
- Preparations for and/or attendance at Public Involvement Meeting(s)
- Bid phase services
- Construction Administration (CA) and/or Construction Engineering & Inspection (CEI)
- Any additional traffic or civil consulting services

## INFORMATION PROVIDED BY CLIENT

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

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

- Signal timing database for the following intersection:
  - Sullivan Street and Mill Road

## FEE SUMMARY

Kimley-Horn will accomplish the services outlined in **Tasks 1-8** for the total lump sum fee shown below.

<b>Task 1</b>	Traffic Engineering Analysis (All Traffic Data Services)	\$7,500
<b>Task 2</b>	Field Survey (Morell Engineering)	\$32,500
<b>Task 3</b>	Traffic Signal Design	\$15,500
<b>Task 4</b>	Geotechnical Design Services (Building & Earth Sciences)	\$27,500
<b>Task 5</b>	Mast Arm Pole Foundation Design	\$13,500
<b>Task 6</b>	Roadway Design	\$112,500
<b>Task 7</b>	Right-of-Way Plats	\$32,500
<b>Task 8</b>	ADEM NDPES Permitting	\$7,500

Individual task amounts are informational only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number. All permitting, application, and similar project fees will be paid directly by the Client.

## CLOSURE

In addition to the matters set forth herein, our agreement shall include, and shall be subject to, the Standard Provisions hereto and hereby incorporated herein. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the **City of Madison**.

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

\_\_\_\_ Please email all invoices to \_\_\_\_\_

\_\_\_\_ Please copy \_\_\_\_\_

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

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to submit this proposal to you. We look forward to performing these services for you and will begin work immediately upon your notification. Please contact me at 256-344-1149 or at [jenny.brown@kimley-horn.com](mailto:jenny.brown@kimley-horn.com) should you have any questions or requested changes.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Jenny Brown, P.E.  
Project Manager

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**CITY OF MADISON, ALABAMA  
A Municipality**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Email: \_\_\_\_\_

\_\_\_\_\_, Witness

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

Official Seal:

Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_  
\_\_\_\_\_

Attachments:  
Standard Provisions

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

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
  - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
  - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
  - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
  - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
  - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
  - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
  - b. The Client will remit all payments electronically to:
    - Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
    - Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
    - Account Number: 2073089159554
    - ABA#: 121000248
  - c. The Client will send the project number, invoice number and other remittance information by e-mail to [payments@kimley-horn.com](mailto:payments@kimley-horn.com) at the time of payment.
  - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
  - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
  - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.

- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and

specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
  - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
  - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
  - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.