



August 31, 2022

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

Re: ***Proposal for Professional Services – Notification: 22-023***  
Traffic Signal and Sidewalk Modification  
Gooch Lane and Wall Triana Highway  
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 traffic engineering services at the intersection of Gooch Lane and Wall Triana Highway located in the City of Madison, Alabama.

## **PROJECT UNDERSTANDING**

The Client desires to modify the existing traffic signal at the intersection of Gooch Lane and Wall Triana Highway. The Client is also looking to extend the sidewalk along Gooch Lane from Wall Triana Highway to Eastfield Drive. As part of this, the drainage along Gooch Lane will have to be analyzed with the sidewalk installation. Additionally, the Client would like to extend the sidewalk along Wall Triana Highway from Gooch Lane to Pebblebrook Circle. As part of this, the drainage (including creek ditch and culvert) will have to be analyzed with the sidewalk installation in order to make the connection. As a result, the Client would like to retain Kimley-Horn to provide engineering services as described in the scope of services below. Kimley-Horn will partner with Morell Engineering, Inc.

## **SCOPE OF SERVICES**

### **Task 1 – Traffic Signal Design**

**\$15,000**

Using the digital base mapping in AutoCAD format provided by the Client, Kimley-Horn will prepare plans for a full traffic signal design at the intersection of Gooch Lane and Wall Triana Highway. The existing signal will be fully replaced. The design will be based on the existing intersection geometrics with additional sidewalk improvements being made under this project. The proposed signal design will include the following: proposed mast arm pole and signal head locations, proposed cabinet location, proposed controller input file assignments, proposed phasing diagram, proposed vehicle detection locations using video detection cameras, proposed dual pre-emption using AI and Opticom, 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 construction plans consisting of the following sheets:

- Title Sheet
- Index
- Traffic Signal Legend
- Traffic Signal General Notes
- Summary of Quantities
- Traffic Signal Layout
- Traffic Control Plans
- Special Project Details (if applicable)

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 60% and 90% plans. Kimley-Horn will respond to and address up to two (2) rounds of comments from the Client at each stage of review. Kimley-Horn will attend up to two (2) meetings with the Client during the design phase to discuss review comments.

Kimley-Horn will provide one (1) Opinion of Probable Construction Cost with the 90% plans and will address and incorporate one (1) round of comments from the City.

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 2 – Geotechnical Drilling**

**\$4,450**

Kimley-Horn's geotechnical subconsultant, Morell Engineering, Inc., will perform geotechnical drilling services for the planned traffic signal poles.

**Geotechnical Field Services:** Since it is not yet known how many new traffic signal poles will be constructed at the intersection, Morell Engineering will drill four (4) total borings, with one (1) boring being placed at each corner of the intersection. Each boring will be drilled to a depth of twenty-five (25) feet. However, 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.

The boring locations will be located in the field by a member of Morell Engineering staff in the available space at each corner of the intersection so that overhead and underground utilities can be avoided. During drilling, Standard Penetration Tests (SPT) will be performed at standard sample intervals for each boring. Each of the samples will be visually classified by a member of the Morell Engineering staff in general accordance with ASTM D2488, *Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)*.

**Underground Utilities:** Morell Engineering will contact the Alabama One Call service to locate public utilities within the project site prior to beginning any soil boring activities. While Morell Engineering will exercise standard care to avoid underground utilities, the project team will not be liable for damage to any unmarked or erroneously marked utilities. We note that Alabama One Call utility locators typically will mark utilities that are located within roadways and the roadway's right-of-way.

**Site Restoration:** To minimize hazardous conditions to others, each bore hole will be backfilled upon completion using the auger cuttings, and the top approximately 24 inches of each bore hole will be grouted.

**Report:** The results of the geotechnical field exploration will be documented in a written report that will include a description of the subsurface conditions encountered at the soil test boring locations, including groundwater conditions observed in the bore holes during drilling. ***Long-term groundwater monitoring is not included in this proposal.***

Passive pressure diagrams will also be provided, based on the data obtained from each boring.

### **Task 3 – 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 Morell Engineering. 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 two (2) rounds of comments from the Client.

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 7) and will work with the designer to adjust pole locations based on those findings such as to avoid any underground conflicts. If determined to be necessary, hydro excavation should be authorized by the Client (as part of Task 7) and performed by the project team prior to finalizing pole locations and pole foundation design. 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 4 – Sidewalk and Drainage Design****\$32,000**

Kimley-Horn will prepare full roadway construction plans for sidewalk and drainage improvements on Gooch Lane between Eastfield Drive and Wall Triana Highway, as well as on Wall Triana Highway from Gooch Lane to Pebblebrook Circle. Sidewalk is anticipated to be installed along the north side of Gooch Lane and the east side of Wall Triana Highway. Kimley-Horn will evaluate the need for curb and gutter and a closed drainage system along Gooch Lane. If it is determined that curb and gutter and a closed drainage system is needed, the design can be performed by Kimley-Horn as an additional service; the design of curb and gutter and a closed drainage system is not included in Task 4. Kimley-Horn will utilize the existing culvert along Wall Triana Highway, located approximately 350' north of Pebblebrook Circle, when installing the sidewalk along the east side of Wall Triana Highway. As part of the design, Kimley-Horn will verify there is still adequate separation between the sidewalk and the edge of pavement. If it is determined that a culvert extension is needed, Kimley-Horn can perform the design of the culvert extension as an additional service; the design of the culvert extension is not included in Task 4.

Kimley-Horn will develop roadway construction plans consisting of the following sheets (in addition to those listed in Task 1):

- General Notes
- Typical Sections
- Summary of Quantities
- Mainline Plans
- Driveway Profiles
- Cross Sections
- Utility Plans
- Signing and Marking Plans
- Special Project Details (if applicable)
- Erosion Control Standard Details

Kimley-Horn will coordinate with and distribute plans to affected utility owners for their review and verification of existing facilities identified through the provided topographic survey. Kimley-Horn will incorporate any utility owner markups received into the construction plans and redistribute to the utility owners for final verification.

Roadway construction plans will be submitted to the City for review at the completion of the 60% and 90% plans. Kimley-Horn will respond to and address up to two (2) rounds of comments from the Client at each stage of review. Kimley-Horn will attend up to two (2) meetings with the Client during the design phase to discuss review comments.

Kimley-Horn will provide one (1) Opinion of Probable Construction Cost with 90% plans and will address and incorporate one (1) round of comments from the City.

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.

It is not anticipated that Offsite Detour plans will be needed as part of this Task. If it is determined during design that the Offsite Detour plans are in fact needed, Kimley-Horn can complete the Offsite Detour plans as an additional service.

**Task 5 – Right-of-Way Plats (as-needed, hourly) \$5,000**

Kimley-Horn can provide right-of-way plats as needed following the development of the roadway construction plans. It is anticipated that right-of-way and easements will be required for the construction of the proposed sidewalk and drainage improvements on up to ten (10) parcels.

Kimley-Horn will develop right-of-way plats as needed for submission to the City and will incorporate and address up to two (2) rounds of comments.

**Task 6 – ADEM NDPES Permitting (as-needed, hourly) \$5,000**

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 Client 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 permitting necessary for this project will be considered an additional service.

**Task 7 – Hydro Excavation (as-needed, per day rate of) \$3,081.81**

As an optional services, Morell Engineering can provide hydro excavation services for the planned intersection and/or sidewalk installation route. If this is requested, Morell Engineering will subcontract a contractor to perform the hydro excavation services in order to expose utilities that are present at the intersection or along the sidewalk installation route.

## **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 (as necessary and as authorized by the Client on an hourly basis)
- Additional permitting (as necessary and as authorized by the Client on an hourly basis)
- Traffic signal timing
- Interconnect design
- Additional traffic signal designs
- Construction phase services
- Signal warrant analysis
- Vehicular, bicycle, or pedestrian data collection
- Offsite detour plans
- Offsite road improvements
- Utility 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 retaining wall design, culvert design, foundation design, or evaluation of existing structures for additional loading.
- 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:

- Topographic survey including Right-of-Way and Utilities for the following location:
  - Gooch Lane and Wall Triana Highway
- Signal timing database for the following location:
  - Gooch Lane and Wall Triana Highway



**FEE SUMMARY**

Kimley-Horn will accomplish the services outlined in **Tasks 1-4** for the total lump sum fee shown below. Individual task amounts are informational only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

<b>Task 1</b>	Traffic Signal Design	\$15,000
<b>Task 2</b>	Geotechnical Drilling (Morell Engineering, Inc.)	\$4,450
<b>Task 3</b>	Mast Arm Pole Foundation Design	\$13,500
<b>Task 4</b>	Sidewalk and Drainage Design	\$32,000
<b>Total Lump Sum Fee</b>		<b><u>\$64,950</u></b>

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Kimley-Horn will perform the services outlined in **Tasks 5-6** on an hourly labor fee plus expense basis with the maximum labor fee shown below.

<b>Task 5</b>	Right-of-Way Plats	\$5,000
<b>Task 6</b>	ADEM NDPES Permitting	\$5,000

Kimley-Horn will not exceed the total maximum labor fee shown without prior authorization from the Client. Labor fee will be billed on an hourly basis according to our then-current rates.

The project team will perform the services outlined in **Task 7** for a daily labor fee plus expense basis shown below.

<b>Task 7</b>	Hydro Excavation	\$3,081.81
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Kimley-Horn will not perform the services listed in Task 7 without prior authorization from the Client.

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 205-598-4164 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., PTOE, IMSA TS II  
Project Manager



Kenn Fink, P.E.  
Authorized Signer

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2022.



**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: Request for Information  
Standard Provisions

## Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

### Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

### Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

### Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

### Project Funding Identification – List Funding Sources for the Project


Attach additional sheets if there are more than 4 parcels or more than 4 owners

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

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
  - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
  - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
  - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
  - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
  - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
  - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
  - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
  - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
  - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an

electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant 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 Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 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. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 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 the Consultant.
- 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 the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 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.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
  - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
  - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 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 the Consultant. If Client requires Consultant 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 Consultant 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.