

September 29, 2023

Mr. David Bradley  
Public Works Director – Town of Southern Shores, NC  
5375 N. Virginia Dare Trail  
Southern Shores, North Carolina 27949

Re: Structure Replacement of Trinitie Trail Culvert  
Professional Services Agreement – Task Order #2

Dear Mr. Bradley

Kimley-Horn and Associates, Inc. (“Kimley-Horn”) is pleased to submit this letter agreement (the “Agreement”) to the Town of Southern Shores, NC (“Client” or “Town”) to provide construction documents concerning the replacement of the aluminum pipe culvert on Trinitie Trail in Southern Shores, North Carolina.

## **Project Understanding**

Based on information (Request for Proposals, conceptual design plans, and additional correspondence) provided by the Client, the aluminum pipe arch culvert over Canvas Back Canal on Trinitie Trail in Southern Shores, NC has experienced significant settlement on the sides of the culvert leading to an uneven roadway surface and ponding water during rain events on the roadway above. Additionally, the current vertical grade of the roadway does not meet current design code for safe stopping sight distance, leading to an unsafe “blind” crest going over the structure.

The Client has requested that Kimley-Horn develop construction documents for the selected alternative to replace the existing pipe arch culvert. The selected alternative is a cored slab bridge and will require that Trinitie Trail Road be closed to traffic during construction as the proposed structure will replace the existing structure at its current location. In an effort to minimize the project's impacts to the surrounding natural landscape and trees, Kimley-Horn will work with the Client to evaluate reasonable options to mitigate these impacts.

Kimley-Horn understands that the Client intends to provide the necessary reviews throughout the design process and that the plans and specifications are to meet NCDOT standard. It has been understood that no federal or state money will be used for design or construction, therefore the design/permitting will be performed to meet the criteria as required for projects not receiving any federal or state funding, as indicated below.

As the previously scoped and contracted Task Order #1 is winding down, and the necessary design information has been acquired, Kimley-Horn has been authorized by the Town to move forward with Final Design elements as indicated in the tasks described below. This scope assumes that none of the previously scoped tasks will be impacted by this task order, nor will any effort yet to be completed in TO#1 will impact Kimley-Horn proceeding with final design efforts as described in this scope.

Based on information gathered during TO#1 from coordination with the US Coast Guard, it has been determined that the proposed bridge's low chord (low steel) elevation does not need to be any higher than the 100-year flood elevation. It was determined that this elevation for this location is 4.0'. Because

this elevation was much lower than anticipated and, in an effort, to provide a more resilient structure, Kimley-Horn and the Town determined that the vertical opening of the canal should not be less than 8.5' based on the observed high-water mark at elevation 2.2' as shown in the sealed survey form Rivers and Associates, Inc. dated 6/16/2023.

## **Scope of Services**

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

### **Task 1 – Hydraulic Design**

In accordance with NCDOT requirements, the Consultant will develop the hydraulic analysis for the replacement of the Trinitie Trail / Juniper Trail culvert. The analysis will include bridge sizing for the proposed 2-lane pavement with 5' wide sidewalk typical section. The sizing will be based on maintaining hydraulic opening area. An extended bridge length will be used to develop the full impacts to streams and wetlands. The overriding design criteria will be the published FEMA 100-yr water surface elevation for which there is no existing hydraulic model and is based on Atlantic Ocean backwater. A scour analysis will be performed as necessary using coastal methods. Hydraulic modeling (tidal or riverine) via HEC-RAS (1D or 2D) or similar software will not be performed due to the coastal nature of the project. A NCDOT Bridge Survey Report (BSR) is not required and will not be created since the project will not be administered by NCDOT.

As described in the *Project Understanding*, it has been determined that the current low steel elevation does not need to be maintained and that the proposed structure can be lowered based on guidance provided by the US Coast Guard, and the bridge will be longer than the existing culvert opening. In addition to the bridge hydraulic analysis, the Consultant will also perform drainage studies, designs and ground surveys required to properly accommodate the bridge and roadway runoff. All drainage designs will be in accordance with the requirements of the Town and the latest revision of "Guidelines for Drainage Study and Hydraulic Design" by NCDOT.

The drainage designs will be submitted in accordance with the various roadway design submittals to the Town for review (35%, 65%, 90%, and 100%).

### **Task 2 – Roadway Design**

Kimley-Horn will prepare roadway plans for the Trinitie Trail Culvert Replacement Project. Kimley-Horn anticipates 35%, 65%, 90%, and 100% plan submittals to the Town.

35% Construction Drawings will include the following:

- Title sheet
- Plan/profile sheets
- Roadway/Multi-Use Path (MUP) horizontal alignments
- Proposed and existing profiles
- Typical sections
- Cross-sections
- Limits of construction

- Superelevation on plans and cross sections
- Preliminary right-of-way and easements (if needed)
- Preliminary earthwork summary

65% Construction Drawings will include the following:

- Incorporated geotechnical recommendations
- Incorporated drainage
- Construction details
- Final ROW/easements
- Retaining wall envelopes (if needed)
- Addressed 35% comments
- Storm drainage plans
- Traffic management plans
- Utilities by others (UBO) plans (if needed)

90% Construction Drawings will include the following:

- Index of sheets, general notes, and construction details
- Addressed 65% comments
- ROW revisions (if needed)
- Pavement marking plans
- Signing plans
- Final earthwork summary
- Final guardrail summary
- Final pavement removal summary

100% Construction Drawings will include the following:

- Addressed 90% comments
- Signed and sealed plans

All plans and specifications shall conform to the latest AASHTO, NCDOT, and Town design standards. Kimley-Horn will provide a Quality Control/Quality Assurance review prior to each submittal.

All plan submittals will be subject to Town review. Kimley-Horn will facilitate virtual plan review meetings with the Town following the 35%, 65%, and 90% submittals. In lieu of revised 35%, 65%, and 90% submittals, all comments received will be incorporated into the following submittals.

Kimley-Horn will prepare plans on separate plan and profile sheets at a scale of 1"=20' horizontal and 1"=2' vertical on 22" x 34" plan sheets using MicroStation V8i and GEOPAK software. The Engineer will submit electronic PDF copies of the plans to the City of Raleigh and Developer.

Kimley-Horn will provide opinions of probable construction costs (OPCCs) with each submittal. Quantities will be measured consistent with NCDOT standard pay items. The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's means and methods of determining prices. Nor does the Engineer have control over competitive bidding or market conditions. All opinions of probable construction costs are based on the information known to the Engineer at the time provided and represent only the Engineer's judgement as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from their opinions of probable construction costs.

### **Task 3 – Structural Design**

#### **Task 3.1 – Preliminary Bridge and Wall Plans**

After completion of the 25% roadway plans and hydraulic analysis, Kimley-Horn will prepare Preliminary Bridge and Wall envelopes (as needed) showing the plan and elevation, and a typical section for the cored slab bridge over Canvas Back Canal on Trinitie Trail Road. The Preliminary Bridge and Wall envelopes will be prepared consistent with NCDOT standards and specifications as well as plan assembly and standard practices. The Preliminary Bridge and Wall envelopes will be submitted to the Town for review and comment. The Preliminary Bridge and Wall envelopes will be based on the span arrangement, structure type, and wall type established during the concept level plan phase. Kimley-Horn understands that the structure concepts currently include the following:

- The proposed structure will be a single-span bridge made up of 11-36"x15" precast cored slab units (30 foot +/- span length).
- The bridge vertical clearance over the canal will be lowered as discussed in the *Project Understanding*. Additionally, the canal's horizontal opening will have to be maintained or widened.
- The NCDOT standard 3-Bar Metal Rail will be utilized on the East side of the bridge along with the sidewalk to comply with the aesthetic requirements at the project site. The rail on the West side will be of open design but must meet the appropriate MASH crash test rating. KH will work with the Town to determine the appropriate rail type.
- Sheet pile walls will be used to maintain the roadway fill with a minimal footprint at the canal crossing, as shown in the Conceptual Plans submitted on 9/15/22.
- Where necessary, segmental gravity walls will be constructed to mitigate the impacts to adjacent property and protected vegetation; wall type is based on a preliminary assumption and subject to change based on proposed roadway geometry and final geotechnical recommendations. KH has assumed two (2) such walls will be required as a part of the final roadway design.
- Bridge aesthetics will be incorporated into the final design package as determined from coordination with the Client and other local stakeholders.
- Structure foundation type will be a pile end bent located behind the sheet pile wall with concrete coping.

#### **Task 3.2 – Final Construction Documents**

Kimley-Horn will coordinate our efforts with the Geotechnical Engineer. Kimley-Horn will provide design loads, structural geometrics and settlement requirements, as needed by the Geotechnical Engineer. The Geotechnical Engineer will submit the geotechnical report and foundation recommendations to NCDOT for review and approval.

Following the approval of the Preliminary Bridge and Wall Plans and the geotechnical report, Final Construction Documents will be prepared for the bridge. NCDOT standards will be used as appropriate to develop the plan set. Kimley-Horn will submit Final Construction Documents to the Client for review at the 90% plan phase.

Kimley-Horn will incorporate Client review comments and finalize the Final Construction Documents and specifications, and calculations.

All submittal documents will be virtual through email unless explicitly requested otherwise.

#### **Task 4 – Erosion Control Plans**

As part of the 65% plans, the Consultant will design large erosion control measures that will require additional right-of-way or easements during construction. Primarily these measures will consist of sediment dams and sediment basins if required for the project.

Following approval of the 65% plans, the Consultant will finalize the erosion control plan by specifying erosion control measures, which minimize erosion and limit off-site sedimentation during construction of the Project. The design will be in accordance with the requirements of the North Carolina Department of Environmental Quality (NCDEQ).

The Consultant will show erosion control measures and special details as part of the construction plan set. Following an initial review by the Town, The Consultant will submit erosion control plans to the Regional Office of NCDEQ for review and approval prior to approval of the final roadway plans by the Town. All application fees will be the responsibility of the Town.

#### **Task 5 – Traffic Management Plan**

Kimley-Horn anticipates Trinitie Trail will be closed to thru traffic for the duration of this culvert replacement project. Kimley-Horn will provide a traffic management plan narrative and offsite detour signing plan for the maintenance of local access. Traffic management plans will conform to the latest NCDOT standard drawings and specifications for traffic control.

#### **Task 6 – Pavement Marking and Signing**

Kimley-Horn will develop permanent pavement marking and signing plans and will submit pavement marking and signing plans in conjunction with the 90% and 100% roadway plans submittals. The Engineer will identify existing markings and signage. The Engineer will be responsible for warning and regulatory signs, and the Town will be responsible for street name signs and other decorative signs. Pavement marking and signing plans will conform to the latest NCDOT, MUTCD, and Town design standards.

#### **Task 7 – Utility Coordination**

##### Task 7.1 Utility Coordination

All existing utilities in the project area are underground. Based on preliminary utility coordination, it is assumed that existing potable water distribution mains owned by Dare County will not require relocation. Existing telecommunications (Charter/Spectrum and Brightspeed) and distribution electric (Dominion Energy) were indeterminate during preliminary coordination.

Consultant will contact the utility owners identified by survey and SUE and provide project plans for conflict assessment. Consultant will conduct up to one (1) on-site coordination meeting with utility owners. Consultant will request the utility owners to identify conflicts with the proposed bridge project and to submit utility relocation plans to the Consultant for review. Consultant will provide comments to utility owners and request final relocation plans with cost estimates from utility owners.

## Task 7.2 Wet Utility Design

It is assumed that no relocation of potable water distribution mains will be required, but adjustment or relocation of water meters and service lines may be required. Consultant will show such adjustments or relocations on the Roadway Drawings and will include notation and/or standard details as required by Dare County for any necessary adjustment or relocations.

A water extension permit with NCDEQ Public Water Supply Section is not required for water meter or service line adjustment or relocation.

## **Task 8 – Bid Phase Services**

The Engineer will develop contract front documents and project special provisions for the project in conjunction with the Town. The Engineer will provide the Town with the plan documents and specifications necessary for advertisement. The

The Engineer will prepare the agenda for and conduct a virtual Pre-Bid meeting via Microsoft Teams with the Town's staff. The Engineer will aid during the Pre-Bid meeting by interpreting the plans and specifications and answering Contractor's questions. The Engineer will prepare Pre-Bid meeting minutes.

The Engineer will prepare and issue addenda during the bidding process as needed based on questions submitted by Contractors.

The Engineer will attend the Bid Opening Meeting in person, during which bid packages will be opened. The Engineer will review all bid packages for compliance with contract documents, and tabulate bids. The Engineer will prepare recommendation of award to the Town and certify recommended bids. The Engineer shall be available to assist the City with contract execution and routing of documents for signatures.

## **Services Included in Task Order #1**

These services, some completed and others on-going, were included in the previously negotiated Task Order #1 and are not included in this Agreement:

- Environmental (Ongoing)
- Geotechnical Engineering Services (Ongoing)
- Topographic Survey (Complete)
- SUE Investigation (Complete)
- Document Review & Coordination (Complete)

## **Services Not Included**

Any other services, including but not limited to the following, are not included in this Agreement:

- Public Involvement

- NEPA/SEPA tasks that were not explicitly described in Task Order #1
- Utilities By Others plans, showing dry utility (telecommunications and electric) relocations
- Wet Utility Relocation Design and Permitting
- Wet Utility Final Certification(s) and Record Drawings
- Right of Way Acquisition
- Construction Phase Services

These services and more can be provided if desired by the Client.

### **Information Provided By Client**

None at this time. If needed, Kimley-Horn will coordinate with the Town.

### **Schedule**

Upon receiving Notice to Proceed from the Client, Kimley-Horn, in collaboration with the Town and all disciplines, will develop an overall project schedule. The proposed schedule will set submittal timelines for all major milestones as well as a date that the project should be able/available to be put out for bid. Any necessary site visits will be coordinated separately with the Town.

**Fee and Expenses**

Kimley-Horn will perform the services in Tasks 1 – 8 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.15 times cost.

Task 1 – Hydraulic Design _____	\$41,460
Task 2 – Roadway Design _____	\$76,120
Task 3 – Structure Design _____	\$68,290
Task 4 – Erosion Control Plans _____	\$22,280
Task 5 – Traffic Management Plan _____	\$9,050
Task 6 – Pavement Marking and Signing _____	\$17,810
Task 7 – Utility Coordination _____	\$6,680
Task 8 – Bid Phase Services _____	\$16,230

Total Lump Sum Labor Fee \_\_\_\_\_ \$257,920

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.

**Closure**

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the Town of Southern Shores.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submit 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 want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed 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 provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Seth A. Denney, P.E.

Associate

Andrew L. Phillips, P.E.

Project Manager

Town of Southern Shores

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

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

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

Attachment – Request for Information  
Attachment – 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) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. 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. 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.
  - c. 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.
  - d. If Kimley-Horn 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 Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e. 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 Documents.** All documents and data 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 documents, or any reuse of the documents 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 documents 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. 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 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 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 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 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.