



November 13, 2025

Tim Gropp
Town of McCordsville
6280 Vail Road
McCordsville, IN 46055

Re: Agreement for Professional Consulting Services
McCord Square Central Green – Overall Site Design and Phase 1 Implementation Plans

Dear Mr. Gropp:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "the Consultant") is pleased to submit this Agreement (the "Agreement") to the Town of McCordsville ("the Client") for professional consulting services for the proposed improvements required for the development located in McCordsville (Hancock County), Indiana.

Project Understanding

Kimley-Horn understands that the Client intends to develop an approximate 3.7-acre property into a central green park with three zones. The northern zone is expected to contain pathways, landscaping, a water feature, and children's play area. The central zone is expected to be a hardscape plaza with lighting, plantings, and may contain a future restroom building. The southern zone is expected to contain an outdoor amphitheater for community events.

At this time, the Town would like to design Phase 1 Area of the McCord Square Central Green as shown in Exhibit A. Phase 1 location is primarily the central zone and also includes the following items:

- Perimeter sidewalk and rough grading for the entire McCord Square Central Green
- Hardscape for the central zone with utility stubs for a future restroom building
- Site furnishings, lighting, and plantings for the central zone
- Identification of future signage locations for the central zone

It is assumed that no variances will be required for the proposed development. If variances are required, it is assumed that the Client's land use attorney will complete and lead public hearing applications, public noticing and presentations. Kimley-Horn will provide technical assistance as an Additional Service if required.

It is assumed that no roadway improvements or utility main extensions for the proposed park will be required. If additional roadway or utility main improvements are required, the effort will be completed as an Additional Service.

Storm water detention and water quality facilities have been master planned and will not need to be provided as a part of this project.

We have assumed that we can use an ATV to obtain the topographic information on the site. Kimley-Horn is not responsible for plant damage due to the use of the ATV. If an ATV cannot be used, we would need to revise our fee based on the additional time to complete the survey on foot.

It is assumed that the Client's contractor will prepare, submit, and coordinate the approval of the required as-built survey drawings with the authorities having jurisdiction (AHJ). This scope of services does not include any effort for survey data collection, preparation, submittal or coordination with the

AHJ for as-built survey drawings, but they will be required to close out the project with the AHJ.

It is assumed that no public engagement efforts are required for the design of the Central Green and Kimley-Horn will be working directly with the Town of McCordsville to update the previously completed Concept Plan.

It is understood the project will require entitlement and permit approvals from:

- Town of McCordsville TAC
- Hancock County MS4 Approval
- Town of McCordsville Sanitary Sewer Lateral Approval
- Citizens Energy Group Water Lateral Approval
- Indiana Department of Environmental Management – Stormwater Construction Permit

Scope of Services

Task 1 - Preliminary Geotechnical Investigation

Kimley-Horn will engage and coordinate the efforts of a qualified geotechnical engineer to drill five (5) borings to a depth of 15-20 feet at locations to be selected by the team. The locations will be based on the updated masterplan for the park and the intended uses. In total, up to 100 lineal feet of drilling will be completed.

The geotechnical engineer will visit the project site prior to drilling to observe and note ground cover, existing structures, pavement, site access and topographic conditions. During this visit, we will locate and mark boring locations. If site conditions require that borings be relocated from previous agreed-upon locations, the Client will be advised.

The geotechnical engineer will be responsible for “clearing utilities” within the public domain prior to the start of any subsurface exploration. The “clearing of utilities” outside of the public domain shall be the responsibility of the property owner or manager and coordinated with the geotechnical engineer. If necessary, we can employ the use of a private utility locator to “clear” the boring locations prior to drilling for an additional cost.

The typical drilling method will utilize hollow-stem augers to advance the borings to the required depths. Split-spoon samples and Standard Penetration Tests values (commonly referred to as the blow-count or N-value) will be obtained in advance of the augers at 2.5-foot intervals to a depth of 15 feet, and 5-foot intervals thereafter per ASTM Method D-1586.

Shelby tube samples may be obtained in cohesive soil strata-of-interest. Each boring will be monitored for the presence of ground water during and immediately following the completion of the boring.

Upon completion of the borings, the boreholes will be backfilled with auger cuttings prior to demobilization for safety considerations. It should be noted that it is standard practice in drilling test borings to backfill with the auger cuttings. However, sometimes the backfill will settle after the borings have been completed, requiring a return trip to backfill again. If this takes place, an additional fee will be charged for the return trip. As an alternative, for an additional fee, the holes can be backfilled with bentonite or grout to reduce potential settlement.

After the fieldwork is completed, we will return samples to the soils laboratory to perform the appropriate laboratory testing. The laboratory testing may include unconfined compressive strengths, natural

moisture contents, Atterberg Limits and grain size determinations and other tests as requested and applicable. All laboratory testing will be performed in accordance with applicable ASTM methods.

Based on the results of the fieldwork and laboratory testing, we will prepare a Preliminary Geotechnical Engineering Report. The report will present all field, test boring logs and laboratory test data. The report will include preliminary geotechnical recommendations pertinent to the site development.

Task 2 - Limited Boundary and Topographic Survey

Kimley-Horn will engage and coordinate the efforts of a licensed surveyor to prepare a limited boundary survey with topographic information. The boundary portion of the survey will show the property lines and any easements that were created by plat.

Limits of the topographic survey include the entire subject property and the areas highlighted in red below.



Task 3 - Schematic Master Planning and Programming Assistance

Kimley-Horn will assist the Client by preparing a final Schematic Master Plan for the entire square. We anticipate starting with the previously completed Concept Plan sent to us by the Client and making updates based on discussions with the Client. Kimley-Horn does not expect this task to be a complete re-envisioning of the current plan, but an update based on the final material/program selections. Our assumption is the Client has the full authority to use the previously prepared Concept Plan.

Kimley-Horn will schedule and lead a meeting with the Client to gather a comprehensive list of adjustments that the Client is looking to make to the existing McCord Square Central Green Concept Plan. Kimley-Horn will then create a revised Schematic Plan of the entire square based on this feedback. The Schematic Plan will be accompanied with character images that display design intent regarding style, form and materials. Kimley-Horn will revise the Schematic Plan up to three (3) times based on Client comments to create a Final Schematic Plan. Kimley-Horn will prepare preliminary opinion of probable construction costs for the Final Schematic Plan.

Per programming discussions with the Client, our team will provide a schematic level footprint and floorplan for the proposed future restroom building within the Phase 1 Area. Conceptual per square foot costs for this facility will be added to the preliminary opinion of probable construction cost.

Kimley-Horn will transition the Client approved Final Schematic Plan for use in the Construction Documents phase by drafting the horizontal geometry of the Phase 1 Area into the proposed site base plan. We will work internally to understand design grades and elevations as well as various site coordination issues.

Task Deliverables:

- *One (1) color rendered Schematic Plan of the entire McCord Square Central Green accompanied by character imagery, revised up to three (3) times*
- *One (1) preliminary opinion of probable construction cost*
- *One (1) color rendered Final Schematic Plan based Client comments, accompanied by character imagery*

Task 4 - Construction Documents

Kimley-Horn will prepare one set of on-site civil and landscape architectural design drawings for the Phase 1 Area based on the approved Final Schematic Plan in Task 3. The plans shall be at an appropriate engineering scale to depict the proposed site improvements in sufficient detail. The drawings will generally consist of the following sheets and their respective contents:

1. *Cover Sheet*
2. *General Notes*

Kimley-Horn will incorporate construction, utility, drainage, or general notes as required by agencies having authority.

3. *Existing Conditions/Demolition Plan*

Kimley-Horn will develop a plan that will show surface and subsurface facilities scheduled for demolition. Kimley-Horn will rely on documents prepared by others to determine the limits of demolition.

4. *Site Layout Plan*

This plan will be based on the master plan approved by the Client in Task 3. The site plan will indicate hardscape improvements, as well as preliminary signage locations and future building locations.

5. *Erosion Control Plan*

Kimley-Horn will prepare an erosion control plan that will show proposed measures (to be installed by the contractor) to impede sediment from being carried to adjacent properties during construction.

6. *Stormwater Pollution Prevention Plan (SWPPP)*

Kimley-Horn will prepare a Stormwater Pollution Prevention Plan in accordance with the municipality requirements.

7. *Grading and Drainage Plan*

Kimley-Horn will prepare a grading and drainage plan that will depict existing and proposed contours, as well as proposed spot grades to aid the contractor in performing on-site earth-moving measures. On-site storm sewer layout, sizing, and specifications will be completed in this task. Kimley-Horn will prepare a plan showing proposed drainage structures and pipes for collecting on-site runoff.

8. *Utility Plan*

Kimley-Horn will prepare a plan showing the future building utilities and their connection points as defined below. Note that some utilities do not allow laterals for future buildings to be designed and constructed. The sanitary sewer, future water, future gas service, future electric service, future telephone, and cable will be shown from the limits of design to 5 feet from the building.

9. *Storm Sewer Plan and Profile*

Kimley-Horn will prepare a plan and profile drawing depicting the storm sewer depth, pipe size/material and grade.

10. *Details*

Kimley-Horn will prepare details showing the site, hardscape, plaza amenity features, sanitary sewer, storm sewer, and erosion control details required for civil site construction or via references to state, county, or city standard details.

11. *Hardscape Materials Legend / General Notes*

Kimley-Horn will prepare Hardscape Plans showing site related hardscape materials and specifications, as well as dimensional control and layout for proposed site amenities.

12. *Fine Grading*

Kimley-Horn will coordinate between our civil and landscape architecture teams to review and develop fine grading plans showing proposed spot elevations and contours that accommodate the needs of the approved design. The design of structural items are not anticipated for this project and are not included in the scope of this agreement.

13. *Landscape Planting and Seeding Plans*

Kimley-Horn will prepare Landscape Plans adding detail to plant species, sizes, location and associated details for all canopy trees, ornamental trees, shrubs and groundcover, and turf (green roofs and amenity areas are excluded from this scope of work). This work will be based upon the approved Final Schematic Plan.

14. Irrigation Plan

Per preliminary discussions with the Client, irrigation shall be designed for the Phase 1 Area and the southern portion of McCord Square Central Green, and shall include the following:

- i. Sprinkler head / pipe routing
- ii. Pipe sizing
- iii. Sleeve sizing and locations
- iv. Controller sequencing
- v. Project installation details and other related drawings
- vi. Specifications manual

The system will be designed to accommodate bidding more than one product. If the Client directs Kimley-Horn to specify only one product, we will need this direction as to which product that may be prior to beginning final design. Final product selections, controllers and levels of control sophistication will be identified during this design process.

Significant site plan changes will be considered an Additional Service.

Revisions to the Civil Engineering and Landscape Architectural documents prepared in the aforementioned tasks will be based on Client staff review comments. It is assumed that the documents will be revised no more than two (2) times before the completion of the services outlined in this Agreement.

Kimley-Horn will prepare preliminary opinion of probable construction costs at each of the 60% and 100% Construction Document deliverables.

All analysis, design, and coordination within this task is for on-site infrastructure only and does not include any analysis, design, and/or approvals for off-site improvements that may be required for this project. For the purpose of this task, it is assumed that all utility and road infrastructure, sufficient for the project, is available for connection at the project boundary.

Task Deliverables:

- *One (1) draft 60% complete Construction Documents*
- *One (1) final 100% complete Construction Documents*

Task 5 - Permit Assistance Phase

Kimley-Horn will assist the Client in obtaining approvals from the permitting agencies having jurisdiction over the project as specifically detailed below. This Agreement assumes the Client will pay all required submittal, application, and permit fees. The Client shall provide all requested permitting materials prepared by the Client or others and shall sign or obtain signatures on all permit forms, as requested by Kimley-Horn, in a timely manner. We anticipate up to 45 hours of effort for this Task. Should additional effort be required, Consultant will provide this effort as an Additional Service.

Kimley-Horn shall assist with the following:

1. Prepare applications and submit for review to the municipality for Site Plan Review application.
2. Applications and submit for review to sanitary sewer utility for sanitary sewer lateral service approval
3. Applications and submit for review to the County Surveyor's Office for review and approval.

4. Prepare applications and submit for review to the State Pollutant Discharge Elimination System (NPDES) Notice of Intent Construction General Permit ("NOI") for erosion and sedimentation control.
5. Prepare applications and submit for review to municipal staff for Civil Engineering Plan review.

Task 6 - Meeting Phase

Kimley-Horn will attend up to 20 meetings with the design team and municipality and up to 10 conference calls with the project team. This task also includes minimal project coordination not requiring a separate agreement. Efforts in addition to the estimated 40 hours of meetings will be completed as an Additional Service.

Task 7 - Bid Phase

This effort includes preparing the contract documents for bidding purposes using standard public bidding boilerplate documents as provided by the Client. It also includes attendance at a pre-bid meeting, preparation of addenda, review of bids, preparation of a bid tab and certification of bid results and recommendations. We anticipate up to 45 hours of effort for this Task. Should additional effort be required, Consultant will provide this effort as Additional Services.

Task 8 - Construction Administration Services

Kimley-Horn will attend up to twelve (12) bi-weekly progress meetings during the construction phase. The meetings are anticipated to be held onsite and Kimley-Horn will observe the progress of the Work while present for the meetings. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Kimley-Horn's exercise of professional judgment. Based on information obtained during such visits and such observations, we will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep Client informed of the general progress of the Work.

The purpose of Kimley-Horn's site visits will be to enable us to better carry out the duties and responsibilities specifically assigned in this Agreement to Kimley-Horn, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Kimley-Horn shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall we have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

Kimley-Horn will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Kimley-Horn will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

Drawings do not indicate temporary requirements. Need for temporary shoring and bracing, temporary dewatering, temporary earth retention, temporary water cutoff or other temporary measures may be indicated on drawings at selected areas as suggestions for the contractor's convenience. The drawings do not identify all areas or conditions requiring temporary measures. It is the contractor's responsibility to confirm temporary measures indicated on the drawings, identify other areas or conditions requiring temporary measures, determine most efficient temporary systems, and design and construct required temporary systems. All temporary systems shall be designed by a licensed engineer in the state in which the project is located.

Any orders authorizing variations from the Contract Documents will be made by the Client. Kimley-Horn will review the As-Built documents at the end of the project. We anticipate up to 145 hours of effort for this Task. Should additional effort be required, Consultant will provide this effort as Additional Services.

Additional Services

Any services not specifically provided for herein, as well as changes in the scope of proposed services and revisions requested by the Client after substantial completion of the proposed services, will be considered Additional Services and will be performed at our hourly rates. Potential services not addressed in this Agreement, but which may be required include, but are not limited to:

1. Environmental Engineering Services
2. Storm Water Management Design
3. Operation and Maintenance Plan for Proposed BMP's
4. Easement Documents and/or Coordination
5. Platting, Construction Staking or Survey Services beyond those mentioned above
6. Tree Survey and/or Tree Protection Plan
7. Dry Utility Design
8. Sanitary Pump Station or Water Booster Pump Design
9. SWPPP Monitoring and/or Observation Logs
10. Off-site Improvements beyond those mentioned above
11. State Department of Transportation coordination beyond those mentioned above
12. Traffic and/or Parking Study
13. Pad Certification Assistance
14. Pump Station or Retaining Wall Design
15. Any services not specifically mentioned in the Scope of Services above



Information Provided By Client

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

1. Preliminary Project Schedule
2. Relevant surveys, studies, reports, or data in the Client's possession
3. Site Plan and all building plans (in AutoCAD format)
4. Complete site design requirements for programming activities
5. Full access to the site
6. Executed copy of this Agreement



Fees and Invoicing

Tasks identified in the table below as “Lump Sum” shall be completed for the sum of the lump sum fees listed below. The “Hourly” tasks, as indicated in the table, will be completed on an hourly basis, using our hourly rates in effect at the time the services are provided with the initial maximum budget estimates shown below. In addition, other direct expenses and reimbursable expenses will be billed at 1.15 times actual cost. Kimley-Horn will keep the Client apprised of the budget status on hourly tasks with monthly invoices so that appropriate decisions can be made by the Client with regard to scope, schedule, and budget.

Task	Task Description	Fee	Fee Type
1	Preliminary Geotechnical Investigation	\$ 16,500	Lump Sum
2	Limited Boundary and Topographic Survey	\$ 8,900	Lump Sum
3	Park Master Planning and Programming Assistance	\$ 42,000	Lump Sum
4	Construction Documents	\$ 111,700	Lump Sum
5	Permit Assistance Phase	\$ 9,200	Lump Sum
6	Meeting Phase	\$ 10,000	Hourly
7	Bid Phase	\$ 8,500	Lump Sum
8	Construction Administration Services	\$ 27,500	Hourly
	Estimated Total (w/o expenses)	\$ 234,300	

An estimated additional reimbursable expenses budget of approximately \$4,500 will be used to cover travel, printing and reproduction, courier and overnight delivery services, etc. Kimley-Horn will keep the Client updated, via monthly invoices, on the expenses incurred and the possible need for additional expense budget. Client is responsible for paying all application, review, submittal, impact and other fees required by the municipality and utility companies directly. Fees will be invoiced monthly based on the percentage completed for each of the major lump sum elements plus reimbursable expenses or for services actually accomplished under the cost-plus elements. Invoicing will be due and payable within 30 days.



Closure

In addition to the matters set forth herein, our agreement shall include, and shall be subject to the Standard Provisions attached hereto and hereby incorporated herein. As used in the Standard Provisions, the term "the Consultant" refers to Kimley-Horn and Associates, Inc. The term "the Client" shall refer to the Town of McCordsville.

If you concur in the foregoing and wish to direct us to proceed with the aforementioned services, please execute this letter Agreement in the space provided, and return a copy to us. Execution of this Agreement formalizes our working arrangement.

We appreciate the opportunity to provide these services to you.

Sincerely,
Kimley-Horn and Associates, Inc.

DocuSigned by:

8BB0D608732347B...
Brandon Schreeg, PLA

Signed by:

CAE4B286540C42D...
Matt Luce, PLA

Attachments: Standard Provisions

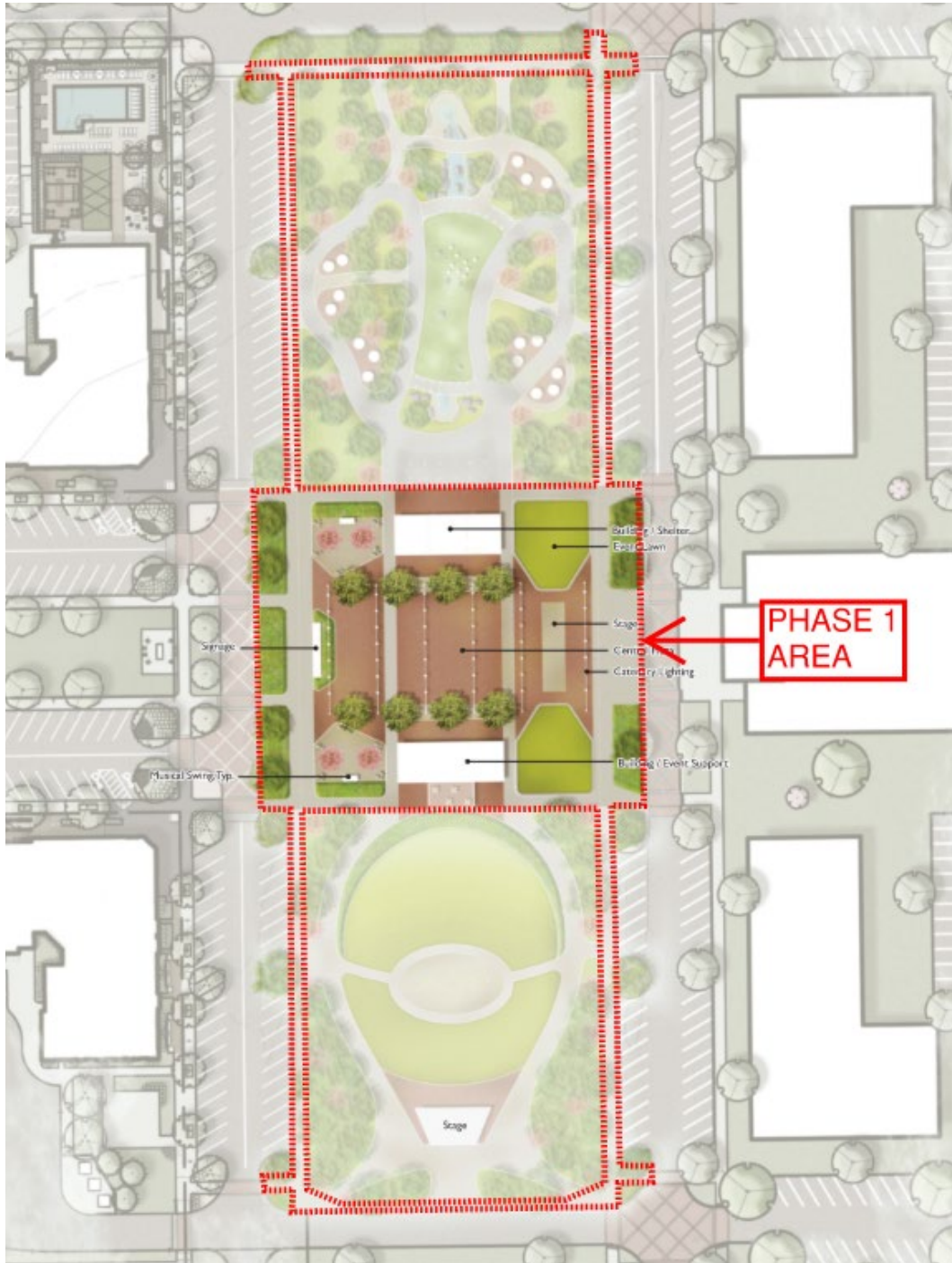
Agreed to: _____

Town of McCordsville

By: _____

Printed Name and Title: _____

Exhibit A:



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 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.