

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., TO DESIGN A PLAY SPACE IN BLESER PARK, KNOWN AS “RENEW AVON LAKE PLAY SPACE” (ALPS), AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to retain the personal services of Kimley-Horn and Associates, Inc., of Akron, Ohio, for professional design and implementation services of a play space in Bleser Park, known as Renew ALPS.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized to execute a personal services agreement with Kimley-Horn and Associates, Inc., of Akron, Ohio, that includes completing a topographic survey, schematic and final design, permitting, and administering ALPS’ construction and closeout. The agreement (Exhibit A) shall state in its terms that the cost of said personal services shall not exceed \$165,105.

Section No. 2: Upon completion of said design and implementation services for Renew ALPS, the Director of Finance is hereby directed to deliver to Kimley-Horn and Associates, Inc., the warrant for this City, in an amount not to exceed \$165,105, and to cause said warrant to be paid.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of designing and constructing a new playground in Bleser Park that has been long awaited by residents, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 5/13/2024

/s/ Martin E. O'Donnell
President of Council

POSTED: 5/17/2024

APPROVED: 5/14/2024

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Mark A. Spaetzel
Mayor



April 18, 2024

Erin Fach, Recreation Director at the
City of Avon Lake
150 Avon Belden Rd
Avon Lake, Ohio 44012

Re: Letter Agreement for Professional Services for
Avon Lake Play Space (ALPS), Rev 1
32800 Electric Blvd, Avon Lake, OH 44012

Dear Erin:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this Letter Agreement (the “Agreement”) to City of Avon Lake (“Client”) for providing professional design services for the new play space in Bleser Park.

Project Understanding

The ALPS is located at Bleser Park (32800 Electric Blvd, Avon Lake, OH 44012) and was constructed by resident volunteers in the mid-1990s. The Client has performed public surveys with the Design Criteria firm Sixmo Architects and is now looking for a design team to complete topographic survey, schematic and final design (80%, 100%), permitting, and project administration during construction with project closeout. The towers of the ALPS and the donor pavers will be incorporated into the final design, along with the earthen mounding. Programmatic items included in the Criteria Design are the desire for ADA surfacing, a variety of active play areas (zipline, ninja warrior, sensory, and music, etc.), site lighting, and landscaping. The project area is approximately 2.55 acres, which will require the inclusion of post construction stormwater control measures and permitting with the Ohio EPA. Cost estimates during all phases of the design process will assist the Client with funding and phasing of the project.

Scope of Services

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

TASK 1: GENERAL PROJECT MANAGEMENT

The following section includes the day-to-day project coordination and support tasks needed to successfully implement the ALPS project. Effective project management efforts require time to send emails, conduct research and prepare for meetings. This project management sub-task includes internal teamwork sessions and meetings, team meetings, approvals, quotes, schedule management, ongoing project oversight, emails, and client communication. Kimley-Horn will:

- Provide ongoing communication among all project team members by leading bi-weekly, or as-needed progress meetings throughout Tasks 1-4, preparing agendas, notices, and

meeting minutes for meetings with the input of Client's project manager. Meetings are assumed to be mainly via Teams, with key meetings in person. Meetings will be coordinated with Task deliverables.

- Coordinate an internal kick-off meeting with the project team to clearly define the scope, outline subtask responsibilities and budgets, establish schedules, and identify project milestones and goals.
- Develop a work plan that establishes major tasks, identifies project team members to complete the tasks, and determines how much time the tasks will take. We will provide this work plan (schedule) via PDF.
- Provide work plan updates to Client and the project team monthly via PDF.

TASK 1: DELIVERABLES:

- Project Meetings: 3 via teams, 3 in person. Each meeting 2 hours or less.
- Monthly work plan PDF.
- Coordination with internal team members.

TASK 2: DATA COLLECTION AND DOCUMENT REVIEW

The Kimley-Horn team will continue to develop our comprehensive understanding of the project site and its context. We will generate documentation of existing conditions and site information to design the playscape and related park features in compliance with local/state/federal guidelines.

TASK 2.1: FIELD REVIEW

We will collect existing data from NearMap, GIS, and other publicly available sources to create a preliminary basemap. We will perform an on-site field walk to assess the site for incorporation of post construction stormwater control measures, review pedestrian connections to other park elements, and visually examine the integration of the proposed playground elements with existing drainage patterns leading to Heider Ditch. We will also walk the site to understand potential views to Lake Erie.

TASK 2.2: SURVEY

Kimley-Horn will engage the services of our subconsultant, DLZ, to provide topographic survey. A topographic survey will be provided according to National Topographic Standards developed by the National Society for Professional Surveyors (NSPS) to provide adequate base survey information for the requested area including the horizontal and vertical location of major features. These features include visible above ground improvements, existing edges of sidewalks, parking lots, manholes, walls, trees, lights, structures, buildings, drive surfaces, access points, utilities (from observation, record information and surface markings provided by OH Utility Protection Service – 811) and ground elevations as well as identify any easements that might impact the work of the project site. Visible and operable stormwater inverts will also be collected. Ground elevations will be measured at a sufficient interval to produce the required one-foot contour intervals and critical high or low points. Topographic features will be located and collected utilizing State Plane Coordinates (NAD83) and NAVD88 Vertical Datum.

TASK 2.3: PERMIT REVIEW

We will list, review, and summarize potential permits required for the project.

TASK 2: DELIVERABLES:

- Summary Report: We will generate a written summary of existing conditions, permit listing, and site information collected.
- Basemap
- Topographic survey

TASK 3: SCHEMATIC PLAN DEVELOPMENT

Kimley-Horn will use the information created by Sixmo Architects and information developed during Task 2 to prepare up to two (2) preliminary schematic plan concepts. We will review these preliminary concepts during a meeting (as defined in Task 1) to develop a preferred Schematic Plan and final Programmatic program for the site. At this meeting, we will conduct a listening session to gain insights into the prioritization of program elements, potential budgets, considerations related to permits, desired aspects of the proposed lighting program, and the project schedule. At this meeting, we will also identify the first bid package play structure piece (assumed to be a singular piece). This meeting is estimated to be approximately two hours in duration where our team will prepare an agenda, questions for the Client and preliminary ranges of costs for program elements to aid in the project budget discussion.

Based on input obtained from this meeting, Kimley-Horn will develop a Preferred Schematic Plan and AACE Class 5 Opinion of Probable Construction Costs (OPCC) and revised project schedule. The Preferred Schematic Plan will be an illustrated site plan and 3-D rendering. We will revise this Preferred Schematic Plan once based on Client comments.

TASK 3: DELIVERABLES

- Two (2) Preliminary schematic plan concepts
- One (1) Preferred Schematic Plan rendering with 3D perspective
- Identification of First Bid Package play structure piece
- OPCC for the preferred Schematic Plan (Class 5 AACE)

TASK 4: PLANS AND SPECIFICATIONS

The Kimley-Horn team will finalize plans, programming needs and features desired for the community playscape. We will develop a singular small bid package containing the singular piece play structure identified in Task 3 and a second design package containing the whole project for public bidding. Drawing reviews are assumed to be completed with the Client during the 80%, and 100% design. Meeting for those Client reviews are outlined in Task 1. Kimley- Horn will update the OPCC through each phase of the design process and adjust proposed improvements to ensure the plans can be constructed within the project budget.

Plan sheets for the second bid package are assumed to consist of:

- Title Sheet
- General Notes Sheet(s)
- Existing Conditions and Demolition Plan
- Site Plan
- Proposed Playscape Plan and Details
- Accessible Features Plans
- Hardscape Plans (trails/ sidewalks)

- Grading and Drainage Plan (s)
- SWPP Plan(s)
- Site Furnishings Plan and Details
- Utilities Plans with Lighting Plan with performance specifications
- Landscape/Planting Plans, Notes, and Details
- Construction Access/ Maintenance of Traffic
- Details, Cut Sheets, and Typical Sections
- Project Technical Specifications (ODOT CMS & Master Spec)

We will also develop:

- An Opinion of Probable Construction Costs (OPCC)
- Bid forms
- Stormwater Management and Drainage Report
- OEPA NOI/NOT Permit

Not all plan sheets will be completed at each milestone. We shall prepare two bid packages. The first bid package will include a singular item of the playground. The second package will be the remaining items. Kimley-Horn will provide written response to comments from the Client and permit agencies at each milestone in the design process. The Client shall prepare the bid manual, prevailing wage rates, advertisement, and procurement of bidders. Plan deliverables will be provided as electronic PDFs. No printed copies will be provided.

TASK 4: DELIVERABLES

- First Bid Package
- 80% Package for Second Bid
- 100% Bid Package and Technical Specifications for Second Bid
- NOI/NOT permit submittals

TASK 5: BIDDING ASSISTANCE

Kimley-Horn understands the Client will use the online bidding platform Bid-Express for advertisement and bidding of this project. Kimley-Horn has used this free service for multiple park districts and municipal public bid projects. It is assumed there will be two bid packages. Bid Express will provide the bid summary information. Activities during this phase of the project may include:

- Attending one pre-bid meeting with potential bidders for the second bid package. It is assumed no pre-bid meeting will be performed for the first bid package. Assume meeting will be on-site, no more than 2 hours in duration.
- Responding to contractor RFI's. Assume no more than 2 for all bid packages.
- Adjusting plans and issuing addendums as needed. Assume no more than 2 for all bid packages.
- Evaluate compliance of contractor submittals with the bidding documents
- Contractor reference reviews and notification

TASK 5: DELIVERABLES

- One pre-bid meeting attendance
- RFI's
- Addendums
- Review and notification of contractor

TASK 6: CONSTRUCTION PHASE SERVICES

Kimley-Horn will provide construction phase services to the Client during implementation of the proposed improvements. It is assumed construction will be approximately 8 – 12 months in duration starting in late 2024/early 2025. It is assumed the construction will be performed in a continuous manner. Services for this task may include the following:

- Attending a pre-construction conference for the second bid. It is assumed this meeting will be on-site and no more than two hours.
- Regularly scheduled owner/ landscape architect/engineer/contractor meetings during the second bid construction. Assumed no more than 12, 1-hour meetings via Teams.
- Site visits for construction observation. Assumed no more than 14 total visits consisting of no more than 2 hours each visit. It is assumed the first bid will only have one (1) site visit.
- Recommendations with respect to defective work.
- Providing clarifications and interpretations to RFIs
- Shop drawing and product sample reviews
- Review of substitutes and “or-equal”. Assume no more than 5 reviews.
- Change order reviews and recommendations. Assume no more than 3 reviews.
- Adjusting plans/issuing addendum. Assume no more than 2.
- Review Contractor’s applications for payment.
- Substantial completion site visit. Assume one meeting, no more than 6 hours.
- Punch list/close out documents.
- Providing final notice of acceptability of the work and review of construction contractor’s as-built drawings.

Services Not Included

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

- Geotechnical investigation
- As-built drawings
- Ecological and environmental reviews
- Building permitting
- Electrical Design (Performance Specification will be provided instead of full design)
- Building, sanitary sewer or HVAC design
- Record Drawings
- Project website hosting and content management
- Public Outreach

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

Information Provided By Client

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



- Other relevant planning documents, studies, data, and information as available and relevant to the Project

Responsibilities of Client

In addition to other responsibilities set out in this Agreement, the Client shall:

- Perform any public outreach
- Register the City with Bid Express
- Perform any public bid notification

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

May 1, 2024	NTP
June 4, 2024	Schematic Plan
September 24, 2024.....	100% Design – first package
October – December 2024.....	First package bidding & construction
December 3, 2024.....	100% Design- second package
January- September 2025.....	Second package bidding and construction

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 6 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

TASK 1: GENERAL PROJECT MANAGEMENT	\$16,259.00
TASK 2: DATA COLLECTION AND DOCUMENT REVIEW	\$17,099.00
TASK 3: SCHEMATIC PLAN DEVELOPMENT	\$18,057.00
TASK 4: PLANS AND SPECIFICATIONS	\$71,785.00
TASK 5: BIDDING ASSISTANCE	\$4,758.00
TASK 6: CONSTRUCTION PHASE SERVICES	\$27,147.00

Total Lump Sum Fee	\$155,104.00
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Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

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, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Avon Lake.



Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. 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 _____

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 a delay in starting work on this project.

We appreciate the opportunity to provide these services. Please contact me if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

DocuSigned by:

Kevin Clements
D29E8B01D886A7

4/22/2024

CITY OF AVON LAKE

SIGNED: _____

PRINTED NAME: Erin Fach

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
		<input type="checkbox"/>		<input type="checkbox"/>	

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.