

CITY OF HIGH POINT

AGENDA ITEM



Title: Agreement with Kimley-Horn and Associates for Transportation Study for City of Lexington

From: Mark McDonald, Transportation Director

Meeting Date: Monday August 19, 2019

Public Hearing: No

Advertising Date: NA

Advertised By: NA

Attachments: Agreement with Scope of Work and Fee Estimate

PURPOSE

The High Point Metropolitan Planning Organization (High Point MPO) on behalf of the City of Lexington is requesting consideration of a contract for professional consulting services with Kimley-Horn and Associates for a transportation study for the area generally located at the Interstate 85/NC 8 interchange in Lexington.

BACKGROUND

This study will produce selected transportation improvements that can be submitted to the North Carolina Department of Transportation (NCDOT) for possible inclusion in future Transportation Improvement Programs.

The High Point MPO has worked with the City of Lexington and NCDOT staff to prepare a scope of work for this study. The project will collect new traffic counts and analyze operational conditions at key intersections along the corridor. Crash data, access management strategies, and mobility will also be evaluated. Findings of the study will be presented to Lexington City Council and High Point MPO Technical Advisory Committee.

BUDGET IMPACT

Kimley-Horn and Associates will provide the described services for a lump-sum fee of **\$105,000**. Funding is available through the High Point MPO will be used for this study. A City of Lexington match of 20% is required and will be reimbursed to the MPO. No City of High Point funds will be used for this study.

RECOMMENDATION / ACTION REQUESTED

Kimley-Horn and Associates is pre-qualified by NCDOT for professional transportation planning and engineering services. The High Point MPO requests City Council's consideration and approval of a Supplemental Agreement with Kimley-Horn and Associates for the proposed transportation study.

July 31, 2019

Mr. John Hanes, AICP
Transportation Planner
High Point Metropolitan Planning Organization
211 S. Hamilton Street
High Point, NC 27261

RE: *Lexington Transportation Study (RFQ# 48-042619)*

Dear Mr. Hanes:

Kimley-Horn and Associates, Inc. ("Kimley-Horn", "KHA", or "the Consultant") is pleased to submit this letter agreement ("the Agreement") to the High Point Metropolitan Planning Organization ("the Client" or "the HPMPO") for providing corridor transportation engineering and planning services for NC 8 corridor within Lexington, North Carolina. Our project understanding, scope of services, schedule and fee are listed below.

PROJECT UNDERSTANDING

The approach outlined below focuses on developing a comprehensive strategy for the NC 8 corridor between the I-85 interchange ramps and the intersection with Albemarle Street/Lowes Boulevard utilizing traffic forecasting, operations analysis, land use, concept design alternatives, stakeholder collaboration and public involvement. This corridor study is another example of the commitment to proactive planning and will allow the City of Lexington to take advantage of opportunities that will create a future plan for sustainability and vitality. Due to the many complexities of this corridor, successful solutions will only come through a comprehensive approach that includes analysis, concept design, context-sensitive solutions and innovative transportation planning alternatives.

SCOPE ASSUMPTIONS

The following assumptions are made in preparing this scope of services:

- This study will be managed by the HPMPO. Kimley-Horn understands work on this study will be directed by the HPMPO. The HPMPO will work in collaboration with representatives from the City of Lexington and the North Carolina Department of Transportation (NCDOT).
- The study area for the study is identified in Figure 1, attached.
- The current HPMPO travel demand model will be provided to Kimley-Horn. Model parameters including model stream, TAZ zone structure, socioeconomic/land use parameters will be included in the dataset.
- All documents prepared by Kimley-Horn will be delivered to the Client in print and electronic formats (.pdf file format). Key mapping products will be delivered in ArcView format with the associated shapefiles produced and edited to produce the maps. Four (4) copies of the draft summary workbook will be delivered and five (5) color copies of the final summary workbook.

Task 1 – Project Management

a) Project Work Plan and Schedule

Kimley-Horn shall prepare a draft Project Work Plan, which will identify and provide a schedule for specific work tasks, interim and final deliverables, and quality control reviews. The draft shall

be presented for discussion at the project kick-off meeting. Based on this discussion, Kimley-Horn will make revisions and submit a final Project Work Plan.

b) Project Kick-Off Meeting & Project Steering Team

Kimley-Horn will schedule, prepare for, and attend one (1) project kick-off meeting with the Client, NCDOT, City of Lexington and others deemed appropriate by the client to allow for discussion of the project history, study protocols, project approach, schedule and deliverables. Kimley-Horn shall record the minutes of the kick-off meeting to be distributed to the meeting attendees in a timely manner following the meeting. [This meeting was held at the City of Lexington offices on July 17, 2019.]

c) Project Progress Meeting

Kimley-Horn shall prepare for, and attend, one (1) project progress meeting for coordination and review of the project's status once preliminary recommendations have been developed. Kimley-Horn shall record the minutes of the project progress meeting and prepare meeting summary to be distributed to the attendees. Additional coordination, if necessary, will occur via conference calls.

Task 2 – Data Collection

Kimley-Horn will conduct a field visit (one day) to view observable conditions in the study area, conduct field measurements, take pictures and collect information including the location of obstructions and design features of existing corridors – ultimately to develop base mapping for the project. Kimley-Horn will document the existing lane geometry, intersection control, and speed limits as well as other pertinent data. Existing conditions will be documented by using still photography and field notes.

For use in the analysis of the existing conditions, we will obtain available signal timing information from NCDOT for the existing signal operating conditions. If that data is unavailable, the traffic analysis will be based on phasing information obtained during the field visit.

The following information will be provided by the Client, NCDOT, or City:

- Current site development plans (as of 2019) including TIA work for the study area – (Client, City, and NCDOT)
- Most current base mapping for the study area in GIS format (including roadways, parcels, wetlands, floodplain, streams/buffers, sidewalks, major utilities, if available) – (Client or County)
- Available Comprehensive Plans, Land Use Plans, capital improvement projects, transit system improvements/expansion plans and bike/pedestrian plans for study area – (Client and City)
- Existing signal timings for the studied peak hour periods – (NCDOT)
- Local committed roadway projects– (Client, City, and NCDOT)
- Aerial photography for study area – (Client)
- Topographic mapping – (Client)
- Land use inventory using the following categories — single-family, multi-family, school, retail, office, industrial, activity centers, recreational areas, vacant land, other – (Client or City)
- Recent (2016 or later) 24-hour traffic counts at locations within the study area and other associated cross-streets, if available – (Client or NCDOT)

Utilizing existing GIS information and field reconnaissance, Kimley-Horn will develop base mapping (ArcView format) for the project.

Traffic information—such as the latest traffic volumes, historical annual average daily traffic (AADT), turning movement counts, and crash data—will be reviewed to 1) determine existing conditions and 2) begin to identify impediments/constraints within the study area. If turning movement counts from the past year are not available, we will collect weekday AM (7-9), noon (11-2), and PM (4-6) and Saturday (11am – 2 pm) peak hour turning movement counts at the following study area intersections:

- Cotton Grove Road at Albemarle Street/Lowes Blvd
- Cotton Grove Road at Fairview Drive
- Cotton Grove Road at Brown Street/Plaza Pkwy
- Cotton Grove Road at I-85 SB Ramps
- Cotton Grove Road at I-85 NB Ramps
- Fairview Drive at Lowes Blvd

Weekday peak hour counts will be performed when Davidson County schools are in session, but Saturday peak hour counts will be performed during the summer to capture traffic to and from the lake. Turning movement counts, intersection geometrics, and signal phasing information will be used to code the Synchro computer model. Travel speed information will be obtained from speed limits and field observations to determine appropriate speeds. All analyses for this project will be performed in accordance with the NCDOT policies and guidelines.

Task 3: Existing Conditions and Safety Analysis

Using the data collected in the previous tasks, we will evaluate existing conditions within the study area, including transportation, land use (planned uses, intensities, and mix of uses) and utilities. The following subtasks describe our approach for each component of the transportation system.

Congestion – Kimley-Horn will analyze existing traffic and congestion conditions along the study corridor and major routes throughout the study area. The study area will consist of the following study area intersections:

- Cotton Grove Road at Albemarle Street/Lowes Blvd
- Cotton Grove Road at Fairview Drive
- Cotton Grove Road at Brown Street/Plaza Pkwy
- Cotton Grove Road at I-85 SB Ramps
- Cotton Grove Road at I-85 NB Ramps
- Fairview Drive at Lowes Blvd

A summary of findings—including system performance measures of effectiveness (MOEs)—will be documented in the final summary workbook. Turning movement counts, intersection geometrics, and signal phasing information obtained in Task 2 will be used to code the Synchro computer model for the study area intersections. Analyses will be performed for the weekday AM, noon, and PM peak hours and the Saturday peak hour.

Safety – Kimley-Horn will obtain from NCDOT three (3) years of crash data for the corridors. Kimley-Horn will use the evaluation of the NCDOT-reported crash history and input gathered through the initial public involvement process to identify “hot spots” for short-term safety countermeasures.

Task 4 – Traffic Forecasting

If available at project initiation, KHA will use the updated HPMPO Travel Demand Model to develop future year forecasts for two Horizon Year conditions : 2025 and 2045. The 2045 future year scenario model runs will be prepared that consider both and without the NC 8 southwest bypass connector in place. The inclusion of the connector in the analysis will be to measure the impact on NC 8 and Fairview Road as well potential growth in the region.

Those results will be compared with previous forecasts and interpreted to develop a Horizon Year forecast for the study area and nearby facilities. Kimley-Horn will review the HPMPO model for performance and forecasted growth in the study area to identify and address potential issues that will affect model performance. Kimley-Horn will prepare a summary of findings, including forecasted volumes and system performance measures-of-effectiveness (MOE's), to be included in the summary workbook outlined below. This task does not include validation or calibration of the travel demand model.

The Client will provide Kimley-Horn with information regarding the existing and projected future land uses within the study area. Kimley-Horn will review these projections versus the land uses included in the travel demand model. Traffic for specific developments within the study area that are not included in the model will be generated based on ITE trip generation rates and assigned to the study network.

Task 5 – Horizon Year Traffic Analysis

Kimley-Horn will create a roadway network for the study area in Synchro traffic analysis software (version 10) to model and assess future year traffic conditions via intersection capacity analyses for peak travel period conditions for up to three (3) improvement scenarios for the horizon years 2025 and 2045. Analyses of any roundabouts will be performed using SIDRA software. The analyses performed for this project will be in accordance with the “NCDOT Congestion Management Capacity Analysis Guidelines” and include intersection queue analysis.

Kimley-Horn will make recommendations regarding the preferred corridor profiles (typical sections) and intersection configurations based on horizon year traffic. Kimley-Horn will produce a “report card” based on the evaluation of the performance measures. The report card will summarize and present the results of the evaluation.

In addition to traditional traffic analysis, Kimley-Horn will conduct an evaluation of non-traditional travel modes including bicycles and pedestrians.

Task 6 - Development of Transportation Alternatives

Task 6.1 – Development of Alternatives

Based on the information developed in subsequent tasks the project team will work with the HPMPO/City of Lexington to develop a series of transportation design alternatives that will include long-term improvements with mid-term solutions guided by funding options/opportunities, critical congestion areas, traffic operations, and safety. Up to three (3) alternatives will be developed. Other recommendations for connectivity and travel demand management strategies may also be included.

Task 6.2 – Access Management

During development of alternatives, Kimley-Horn will develop access management applications and solutions to address the unique characteristics of the corridors. Generally, these solutions will provide greater “predictability” to the corridor by evaluating the applicability of medians, driveway consolidation, cross access, and/or construction of new streets. The result will be a preferred access strategy for the study area, as well as a recommended policy to potentially improve traffic progression as traffic volumes increase over time.

Task 6.3 – Conceptual Design

Kimley-Horn will prepare conceptual designs of the proposed improvements. The intent of the conceptual designs will be to communicate the intent of the improvements. Known impacts will be identified on the concepts such as utilities, natural and human environment. These conceptual designs will be the basis for the development of the planning level opinion of probable construction costs. Nontraditional travel modes will be included in the conceptual designs such as bicycle and pedestrian.

Task 7 – Public Involvement

To accommodate the needs of this project and based on client direction, we will apply a two-stage public involvement strategy for this project. Kimley-Horn will provide concise documentation of public involvement efforts, including summaries of meetings, contacts made, and input received during stakeholder discussions or public meetings.

Task 7.1 – Public Information Session

As a part of this project Kimley-Horn will conduct an information meeting with the public. The intent of this meeting will be to present the study purpose, analysis results, and recommended improvement alternatives to the public and allow them to provide input on the concepts.

Task 7.2 – MPO TAC and City of Lexington Council Presentations

Working with HPMPO staff Kimley-Horn will conduct a project presentation/workshop for both the Lexington City Council and the HPMPO TAC. The intent of the meeting will be to present the findings of the study, answer questions and provide direction for the next steps in moving the project forward.

Task 8 – Final Reporting

Following completion of Tasks 1-7, Kimley-Horn will produce a recommended Corridor Access and Alternative Development Plan Workbook summarizing the public process and outcomes, issues and concerns, trends, description of scenarios evaluated, preferred scenario concepts and diagnostic reporting. The draft Workbook will include graphic maps representing the recommendations of the study, including access management, development and redevelopment opportunities, and design alternatives. The Workbook may include photos, hand sketches, computer generated images, typical cross sections, and a plan view image of certain corridor segments showing specific design treatments to be considered during subsequent studies. Kimley-Horn will submit two (2) copies of the draft report to the client as well as an electronic copy for distribution and review by others.

Following a thorough review of the draft Workbook by the Client, Kimley-Horn will develop a final version of both documents. Kimley-Horn will submit five (5) copies of the final Workbook to the Client. The

Client will be responsible for reproduction and distribution cost of all additional printed reports. Kimley-Horn will also prepare an Adobe Portable Document Format (PDF) version of the Workbook for posting on the project website and electronic distribution.

Supplemental Task 9 – Access Management Study: I-85 to NC 47

We understand that NCDOT desires to perform an access management study on the approximately 1.5 mile section of NC 8 from I-85 to NC 47.

If recent data is not already available, we will collect weekday AM (7-9) and PM (4-6) and Saturday (11am – 2 pm) peak hour turning movement counts at the following study area intersections:

- Cotton Grove Road at Cedar Lane Drive
- Cotton Grove Road at Fuller Road
- Cotton Grove Road at Mayfair Road
- Cotton Grove Road at S. Avondale Road
- Cotton Grove Road at Glendale Road
- Cotton Grove Road at Oakdale Road
- Cotton Grove Road at Rogers Road
- Cotton Grove Road at Bill Lohr Road
- Cotton Grove Road at Owens Road
- Cotton Grove Road at Albert Drive
- Cotton Grove Road at NC 47

Weekday peak hour counts will be performed when Davidson County schools are in session, but Saturday peak hour counts will be performed during the summer to capture traffic to and from the lake. Turning movement counts, intersection geometrics, and signal phasing information will be used to code the Synchro computer model. Analyses will be performed for the weekday AM and PM peak hours and the Saturday peak hour.

Kimley-Horn will obtain from NCDOT three (3) years of crash data for the corridors. Kimley-Horn will use the evaluation of the NCDOT-reported crash history and input gathered through the initial public involvement process to identify “hot spots” for short-term safety countermeasures.

If available at project initiation, KHA will use the updated HPMPO Travel Demand Model to develop future year forecasts for the 2045 Horizon Year condition. Those results will be compared with previous forecasts and interpreted to develop a Horizon Year forecast for the study area and nearby facilities. The Client will provide Kimley-Horn with information regarding the existing and projected future land uses within the study area. Kimley-Horn will review these projections versus the land uses included in the travel demand model. Traffic for specific developments within the study area that are not included in the model will be generated based on ITE trip generation rates and assigned to the study network.

Kimley-Horn will create a roadway network for the study area in Synchro traffic analysis software (version 10) to model and assess future year traffic conditions via intersection capacity analyses for peak travel period conditions with a median in place. Analyses of any roundabouts will be performed using SIDRA software. The analyses performed for this project will be in accordance with the “NCDOT Congestion Management Capacity Analysis Guidelines” and include intersection queue analysis.

Kimley-Horn will make recommendations regarding median break locations and intersection configurations based on horizon year traffic. Results of the analysis will be submitted in a technical memorandum for submittal to the Client. We will revise and resubmit the report based on one (1) round of Client comments.

Services Not Included

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

- Right-of-way abandonment coordination
- Roadway design
- Utility relocation design
- Construction management
- Right-of-way cost estimates

Additional Services

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

- Additional traffic analysis
- Land use ordinance and code writing
- Full roadway design services
- Construction phase services
- Water and wastewater design
- Landscape planning
- Additional meetings not already identified in this scope of services

Both parties must agree in writing prior to any additional services or work is begun.

Information Provided By Client

We 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 KHA during the project as outlined in the tasks described above in the Scope of Services.

Schedule

We will provide our services as expeditiously as practicable to meet the project schedule. The five-month production time described in this agreement is dependent upon the Client to ensure meeting availability and review/comments on the deliverables.

Fee and Billing

Kimley-Horn will perform the Scope of Services in Tasks 1-8 for a lump sum fee of \$80,000. If desired, services in Supplemental Task 9 will be performed for the lump sum fee of \$25,000. All permitting, application, and similar project fees will be paid directly by the Client.

Fees will be invoiced monthly based upon the percentage of services performed as of the invoice date, and will include a letter outlining of project progress by task. Payment will be due within 30 days of your receipt of the invoice. Please inform us if you have preferred invoicing format.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to the High Point Metropolitan Planning Organization (HPMPO).

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, offers its clients the option to receive electronic invoices. These invoices come via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please select a billing method from the choices below:

- Please email all invoices to: _____
- Please email all invoices to _____
AND provide a hard copy to the address listed above (please note below if it should be to someone else's attention or an alternative address).
- Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to someone else's attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions at 704-333-5131.

Sincerely,
KIMLEY-HORN AND ASSOCIATES, INC.

By 

Jonathan Guy, PE, AICP, PTOE
Vice President



Travis Fluitt, PE
Project Manager

HIGH POINT METROPOLITAN PLANNING ORGANIZATION

(Print or Type Name and Title)

(Email Address)

_____, Witness

(Print or Type Name)

This instrument has been pre-audited in a manner required by applicable law.

_____, Finance Officer

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) **Consultant's Scope of Services and Additional Services.** Kimley-Horn's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, 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 described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as its representative with respect to this Agreement, 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 including all numerical criteria that are to be met and all standards of development, design, or construction.

(c) Provide to Kimley-Horn all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in Kimley-Horn's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which Kimley-Horn may rely.

(d) Arrange for access to the site and other private or public property as required for Kimley-Horn to provide its services.

(e) Review all documents or oral reports presented by Kimley-Horn and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of 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 for completion of Kimley-Horn's services.

(g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.

(h) Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects the scope, timing, or payment of Kimley-Horn's services or any defect or noncompliance in any aspect of the project.

(i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of 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 (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to Kimley-Horn in accordance with the following provisions:

Compensation shall be paid to Kimley-Horn in accordance with the following provisions:

(a) Invoices will be submitted periodically for services performed and expenses incurred. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn for the duration of the project and applied against the final invoice. If the Client fails to make any payment due to Kimley-Horn 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 in full and may commence proceedings to secure its right to payment under this Agreement.

(b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.

(c) If the Client objects to an invoice, it must advise 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 within 30 days of receipt.

(d) 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, including but not limited to drawings, specifications, reports, and data or programs stored electronically, 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, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of Kimley-Horn's documents, or any use, partial use or reuse of the documents without written authorization or adaptation 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 developed in the development of application 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. Because data stored in electronic media format can deteriorate or be modified without Kimley-Horn's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified 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. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **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 through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, Kimley-Horn shall have the right to immediately terminate this Agreement. In the event of any termination, 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. If Kimley-Horn's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by Kimley-Horn, to the total amount of services which were to have been performed.

(8) **Insurance.** Kimley-Horn carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs Kimley-Horn to obtain increased insurance coverage, Kimley-Horn will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's undertaking

herein or its 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 have been allocated such that the Client agrees, to the fullest extent of the 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, resulting from or in any way related to the services under this Agreement from any cause or 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 the limits of Kimley-Horn's professional liability insurance. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 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) **Certifications.** Kimley-Horn shall not be required to execute certifications 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.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which Kimley-Horn actually becomes aware. Upon such notice by Kimley-Horn, Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If Kimley-Horn's services include the preparation of documents to be used for construction 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) If Kimley-Horn provides construction phase services, Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. 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. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) Kimley-Horn is not responsible for any duties assigned to the design professional 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 for 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.

(16) **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 Consultant, 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.

(17) **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.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of North Carolina. 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. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. 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.