



MARBLE FALLS

Independent School District

Meeting Date:

Meeting Type:

How will you present this item to the Board?

Does this item require any documents to be signed by the Board?

LOVE & INSPIRE

Marble Falls ISD has an unyielding commitment to love every child and inspire them to achieve their fullest potential.

July 21, 2026

Mr. Mackie Price
Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654

**Re: Agreement for Professional Services - Site Civil Engineering
Spicewood Elementary School Site Improvements
1005 Spur 191, Spicewood, Burnet County, TX 78669**

Dear Mr. Price,

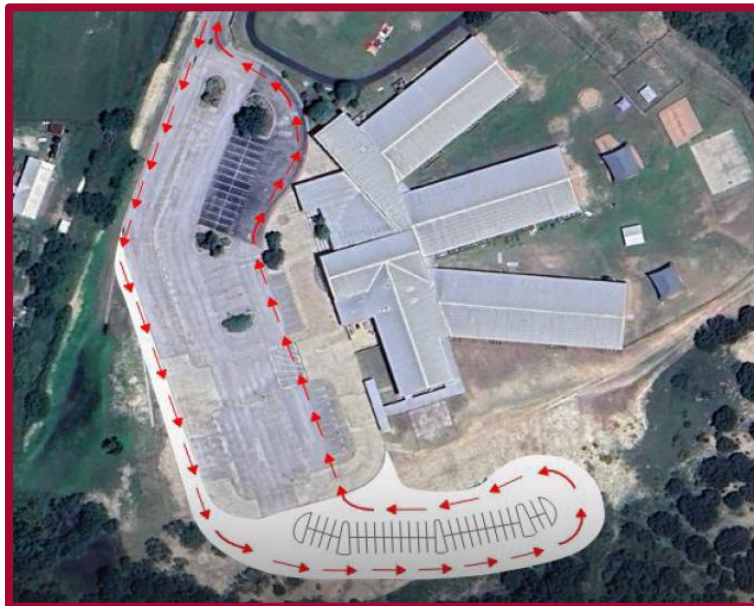
Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant"), is pleased to submit this letter agreement (the "Agreement") to Marble Falls Independent School District ("the Client") for certain professional services. This agreement may be signed in the section entitled "Authorization".

Project Understanding

Kimley-Horn understands that the Client is interested in the development of a queuing lane and additional parking on the existing ± 33.6 -acre Spicewood Elementary School campus located at 1005 Spur 191 in Spicewood, Burnet County, Texas (the "City").

A table summarizing our proposed scope of services, by task, is provided in the Task and Fee Summary section below. The table includes projected fees, fee type, and in-house expenses. Only tasks with accompanying fees are included in our proposed scope of services, though we are available to provide other tasks upon request. The tasks are organized in the order they are typically performed. Detailed descriptions of each task are also provided below, as are the notes and assumptions upon which our scope and fee are based.

Subject Site



Assumptions

- The site is located in unincorporated Burnet County;
- The site is located within the jurisdiction of the Lower Colorado River Authority (LCRA) and is subject to the requirements of the Highland Lakes Watershed Ordinance (HLWO). LCRA approval will be required;
- Kimley-Horn will assist in preliminary site planning coordination under **Task 102**. Any revisions to the final site plan after completion of **Task 102** will be considered an additional service;
- The project will be permitted and developed in one phase;
- No plat will be required;
- No Unified Development Agreement (UDA) will be required;
- No Traffic Impact Analysis (TIA) or off-site roadway improvements will be required;
- No coordination with the Texas Department of Transportation (TXDOT) will be required;
- All internal roadways will be private;
- No water or wastewater utility improvements will be required;
- Detention and water quality will be required for the increase in impervious cover;
- The site is not located in the Edwards Aquifer Recharge or Contributing Zone per the Texas Commission on Environmental Quality (TCEQ). No Water Pollution Abatement Plan (WPAP) or Contributing Zone Plan (CZP) approval will be required;
- No Environmental Resource Inventory (ERI) will be required by the City;
- No structural engineering has been included in this scope of services;
- City required code landscape, lighting plans, retaining or structural wall designs, if required, will be provided by others;
- The required TDLR/TAS submittals for site accessibility requirements will be made by the Client's Project Architect;
- The site is not located within a floodplain, wetlands, or other environmental sensitive area;
- The site development is not anticipated to impact any published FEMA floodplain area. No flood study is included in the Scope of Services;
- The site development is not anticipated to impact United States Army Corps of Engineers (USACE) jurisdictional areas or other Environmentally Sensitive Areas;
- Kimley-Horn will show light pole locations on the site plan for coordination purposes. We will coordinate with the Client's lighting vendor and/or electrical engineer who will provide all site electrical and photometric design;
- Subsurface Utility Exploration (SUE) will be evaluated during preliminary design. If requested by the Client, Kimley-Horn can recommend or facilitate areas of exploration as an additional service;
- The preparation of Contract Documents and/or Technical Specifications is not included in this scope;
- On-site paving design will be based on soil borings and tests by a geotechnical engineer. The Client will contract with a geotechnical engineer for these services. We will coordinate location of the proposed borings and will correspond with the geotechnical engineer with respect to suggested testing and design recommendations. The geotechnical engineer will be responsible for providing pavement design, CBR testing, foundation designs, and special bedding designs for storm pipes greater than 36" in diameter. Boring location stakeout will be done by GPS and final identification of borings will be collected by the project surveyor;
- The Client has retained professional geological and environmental services. The use of the reports, additional exploratory effort, and revisions will be the responsibility of the Client. Kimley-Horn may facilitate such efforts on behalf of the Client as requested;

- Our plans will establish proposed finished grade elevations. The Client understands that there is the potential for vertical movement of flatwork after construction is complete. The amount of vertical movement can be mitigated by preparing the subgrade beneath the flatwork like the subgrade under the building. We recommend that the Client obtain building and flatwork subgrade preparation recommendations from the geotechnical engineer. Our plans will direct the contractor to the Geotechnical Report for subgrade recommendations. The Client understands that even with proper subgrade preparation of the building and the flatwork there is still the potential for vertical movement and finely graded areas, ADA routes, etc. may need to be adjusted and maintained in the future if they move;
- A Traffic Control Plan (TCP) will be the responsibility of the contractor and deferred to the time of construction. If a concurrent TCP is requested by the Client, it can be included as an additional service;
- Inspections and Certifications during construction, if required, will be performed by others and is beyond the scope of this agreement;
- Design of Life Safety lighting and signage is beyond the scope of this agreement;
- Kimley-Horn does not guarantee the issuance of permits or approvals. If permits are issued for this project, the conditions and expiration dates are the sole responsibility of the Client;
- Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of Probable Construction Costs (OPCC) are based on the information known to Kimley-Horn at the time and represent only Kimley-Horn's judgment as a design professional. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC;
- Additional tasks may be necessary to complete the project based on City/Client requirements. If necessary Kimley-Horn will provide the Client with a separate scope and fee for this effort;
- Kimley-Horn shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract Documents. The Client shall not allow the contractor to take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the Client shall direct the contractor to promptly submit the matter to the Client before the improvements are built. The Client shall promptly make a determination and issue the necessary instructions to the contractor in writing. Any adjustment by the contractor without this determination and instructions shall be at the contractor's own risk and expense. The Work is to be made complete as intended by the Contract Documents;
- In the performance of any services during construction, Kimley-Horn shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. Kimley-Horn shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. Kimley-Horn will not be responsible for any inspections or certifications during or after completion of the project;
- Any standard details or specifications provided or referenced on Kimley-Horn plans are for the convenience of the Client only. The Client understands that jurisdictions often mandate use of their standard and that these standards have not been modified or designed by Kimley-Horn. The Client has declined to have these standards updated or made specific to this project and will not hold Kimley-Horn responsible for errors or omissions in these standards should an issue arise from their use;
- Kimley-Horn will have legal access to the property; and
- The Client will assume payment for all review fees.

Task Descriptions**Due Diligence Services****Task 102 - Initial Due Diligence and Concept Plan Design**

Kimley-Horn will assist the Client in reviewing and developing a site layout. We will request and review documentation of existing site, storm drainage, and roadway improvements on or immediately adjacent to the site and incorporate with survey information to develop a preliminary Concept Plan of the project site. This task includes assisting the Client in the preparation of one layout, with two revisions, and the associated correspondence.

Basic Site Civil Engineering Services**Task 404 - Final On-Site Civil Engineering**

Kimley-Horn will prepare on-site civil engineering plans for the proposed development. The plan set will consist of the following sheets:

Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.

General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.

Dimension Control Plan: Showing the site layout (provided by Project Architect) and property boundary with dimensional ties for building envelopes, parking, and roadway(s).

Erosion Control Plan: Showing initial erosion control measures to be installed prior to disturbance of the site. The erosion control measures will be maintained and modified throughout site construction by the Contractor, and it is the Contractor's responsibility to modify the plan during construction as necessary to comply with the conditions of their permits. This task does not yield a Storm Water Pollution Prevention Plan (SWPPP) document.

Grading Plan: Showing proposed finished floor elevations and, as applicable, spot elevations and one-foot contours for public sidewalks, drives, and parking areas. Detailed grading of landscape areas will be coordinated with, but designed by, the Landscape Architect. Retaining walls needed to accomplish the grading will be shown with proposed top and toe elevations in a "wall zone". The selection of the wall system and the structural design of the walls is beyond the limited scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client.

Paving and Striping Plan: Showing proposed paving type for parking areas, fire lanes, and drives based upon recommendations in the geotechnical report provided by the Client. This plan will show handicap parking signage.

Drainage Area Map: Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site to be used as the basis for drainage system sizing and layout. Landscaped areas will be shown as individual drainage areas for sizing of a receiving pipe. Small drainage areas for each individual landscape drain will not be shown and will be designed by the Landscape Architect.

Storm Drainage Plan: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan view. The plan will also show private storm drain to collect roof downspouts, for which the pipe size will be determined by the MEP engineer. If provided in a timely manner, Kimley-Horn will coordinate design and location of area drains with the Landscape Architect and design a pipe system to collect the area drains; if not provided in a timely manner, Kimley-Horn will stub out a pipe for the Landscape Architect to connect the drainage system they design.

Construction Details: Typical construction details for proposed site civil engineering improvements will be included by reference to applicable jurisdictional standard details. If deemed necessary by Kimley-Horn, construction details for certain site civil engineering improvements will be included in the plan set.

Task 407 - Meetings and Team Coordination

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders. Because the extent of the effort required is unknown, we have provided a projected budget for these services but actual cost will depend on actual effort required.

Site Specific & Specialty Civil Engineering Services**Task 504 - Queue Analysis**

Kimley-Horn will analyze queuing lane proposed for the student dropoff and pick-up. Kimley-Horn will develop recommendations to promote safety and efficient operations for dropoff and pick-up periods. Depending on observations, these recommendations may include geometric adjustments to the queue process or operational adjustments to the dropoff and pick-up process.

Task 519 - Storm Drainage Analysis / Downstream Assessment

Kimley-Horn will perform a drainage analysis to review the existing drainage system on-site and downstream to the Zone of Influence of the site, as defined by Kimley-Horn. Kimley-Horn will review record plans for the existing storm drain system adjacent and downstream of the site in an effort to understand existing drainage infrastructure capacity. Kimley-Horn will calculate the available capacity and allowable discharge from the proposed project in the City design storm events. The runoff for the proposed project will be analyzed and compared to the allowable discharge. Kimley-Horn will provide an opinion of whether detention will be required. If detention is required, Kimley-Horn will calculate the volume and allowable discharge rate. The results of the analysis will be presented in a memo or on the civil construction plans.

Task 521 - Storm Water Detention and Water Quality Facility Plan

Kimley-Horn will perform design calculations to size one on-site stormwater detention and water quality facility. Facility sizing results, proposed finished grading elevations, and design water surface elevations will be shown on the plans. The facility outfall improvements will be shown on the Storm Drainage Plan. Direction to the Contractor regarding the lining material for a detention pond facility will be obtained by the Client as part of their geotechnical recommendations for the project and are not part of this limited scope.

Task 522 - LCRA HWLO - Development Permit

The site is located within the jurisdiction of the Lower Colorado River Authority (LCRA) and is subject to the Highland Lakes Watershed Ordinance (HLWO); therefore, an LCRA HLWO development application will be required. Kimley-Horn will prepare one (1) application package and submit to LCRA for review and comment. The intent of the application will be to provide the required documentation of the permanent water quality controls and the additional impervious cover associated with the development. This task includes up to two (2) rounds of minor revisions based on LCRA review comments.

Construction Phase Services**Task 903 - Construction Phase Services**

Kimley-Horn can provide professional construction phase services as specifically stated below as directed by the Client per the then current hourly rate schedule.

Pre-Construction Conference: Kimley-Horn will attend the pre-construction conference prior to commencement of Work at the Site as requested by the Client.

Site Visits: Kimley-Horn will visit the site to observe construction of improvements designed by Kimley-Horn. Visits will be periodic, and observations will not be exhaustive or extend to every aspect of Contractor's work in progress. Kimley-Horn shall not, during such visits or as a result of such observations supervise, direct, control, influence, or have responsibility over Contractor's work. 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 or permits.

Clarifications and Interpretations: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue clarifications and interpretations of the Contract Documents to Client. Any authorization of variations from the Contract Documents will be made by Client.

Review and Response to Shop Drawings: Kimley-Horn will review and respond to certain Shop Drawings, Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.

Because the extent of construction phase services required for the project is unknown, we have provided a projected budget for these services. Actual cost will depend on actual effort required.

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. Additional services we can provide include, but are not limited to, the following:

- Subdivision platting (Preliminary Plat or Final Plat);
- Construction Staking, As-built Survey, or Post Construction ALTA Survey;
- Traffic control plans;
- Offsite improvements;
- Landscape, tree mitigation, and irrigation plans;
- Design of retaining walls or other structures;
- Environmental engineering or wetland delineation;
- Hydraulic modeling, FEMA CLOMR/LOMR, or flood study;
- Value Engineering (VE) or revisions to plans, based on previously approved criteria;
- License agreements; and
- Any item not specifically noted in this agreement.

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:

- Names of consultants on Project team;
- Geotechnical report, including foundation and paving design recommendations;
- Code landscape architecture and irrigation plans required for site development permitting;
- Executed copy of this Agreement and access to property.

Task and Fee Summary

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Item	Task	Fee	Fee Type
100 Due Diligence Services			
102	Initial Due Diligence and Concept Plan Design	\$5,000	LS
	Subtotal	\$5,000	
200 Surveying Services			
400 Basic Site Civil Engineering Services			
404	Final On-Site Civil Engineering	\$12,000	LS
407	Meetings and Team Coordination	\$2,000	H
	Subtotal	\$14,000	
500 Site Specific & Specialty Civil Engineering Services			
504	Queue Analysis	\$5,000	LS
519	Storm Drainage Analysis / Downstream Assessment	\$6,000	LS
521	Storm Water Detention and Water Quality Facility Plan	\$10,000	LS
522	LCRA HWLO - Development Permit	\$10,000	LS
	Subtotal	\$31,000	
900 Construction Phase Services			
903	Construction Phase Services	\$5,000	H
	Subtotal	\$5,000	
	Subtotal fees	\$55,000	
	In-house expenses estimated at 5.00% of labor fees	\$2,750	
	Grand Total	\$57,750	

Fee Types, Expenses, Billing, Standard Provisions

Lump Sum (LS) tasks will be invoiced based on the percent completion of the tasks.

Hourly (H) tasks will be invoiced according to the hourly rate schedule in effect at the time services are provided. Actual invoiced amounts for Hourly (H) tasks will be based on the effort expended.

In-House Expenses: A percentage of the labor fee, as shown in the Task and Fee Summary Table, will be included in each invoice to cover certain expenses: telecommunications, in-house reproduction, postage, supplies, and local mileage.

Other Reimbursable Expenses: Direct reimbursable expenses such as FedEx, couriers, print-shop reproduction, travel, and other direct expenses will be billed at cost plus 15.00%.

Certain survey services are subject to state sales tax of 8.25%.

All permitting, application, recording, and similar project fees will be paid directly by the Client.

Project billing will be monthly and payment will be due within 25 days.

The Consultant is not a Contingent Partner in this project. As such the Consultant will be paid in full for all Professional Services rendered.

Authorization

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

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____
_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute a copy of this Agreement in the spaces provided below and return a copy to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter."

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Natalia Garau, P.E.
Associate

Agreed to by:

Marble Falls Independent School District

Signature

Title

Date

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 be 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.