

VILLAGE OF BRADLEY

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RESOLUTION NO. R-10-24-02

AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE DESIGN  
ENGINEERING FOR EDGEBROOK PARK

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ADOPTED BY THE  
BOARD OF TRUSTEES OF THE  
VILLAGE OF BRADLEY

THIS 14th DAY OF October, 2024

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Published in pamphlet form by the authority of the Board of Trustees of the Village of Bradley,  
Kankakee County, Illinois this 14th day of October, 2024.

RESOLUTION NO. R-10-24-02

AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE DESIGN  
ENGINEERING FOR EDGEBROOK PARK

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**WHEREAS**, the Village of Bradley is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 et seq.; and,

**WHEREAS**, Village Staff reviewed qualifications of Kimley-Horn and Associates, Inc. and

**WHEREAS**, Kimley-Horn and Associates, Inc. has specialized experience working on municipal projects; and

**WHEREAS**, the Corporate Authorities of the Village have determined that the Village has an existing and satisfactory relationship with Kimley-Horn and Associates, Inc.; and

**WHEREAS**, the Village Board has determined that it is in the best public interest to enter into a contract not to exceed \$44,000.00 with Kimley-Horn and Associates, Inc. to provide design engineering for Edgebrook Park; and

**WHEREAS**, the Village Board finds that this Resolution protects and promotes public welfare, safety, health and morals.

**NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BRADLEY, KANKAKEE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AUTHORITY, AS FOLLOWS:**

**SECTION 1.** DESIGN ENGINEERING AUTHORIZED

The Village President is authorized and directed to execute an agreement with Kimley-Horn and Associates, Inc. to provide design engineering for Edgebrook Park in accordance with the scope of services as Exhibit A, subject to such modifications as shall be acceptable to him. The Village President shall further be authorized and directed to execute any related or supplemental documents, including approval of scopes of work, project timelines or revisions thereto, or related documents. The Village President shall further be authorized to execute agreements relating to supplemental work from Kimley-Horn and Associates, Inc. provided that the total cost authorized for project purchase and implementation shall not exceed \$44,000.00.

**SECTION 2.** The Corporate Authorities hereby find that all of the recitals contained in the preamble to this Resolution are true, correct, and complete and are hereby incorporated by reference hereto and made a part hereof.

**SECTION 3.** The Corporate Authorities of the Village hereby declare that the terms and provisions of the Agreement, attached hereto as Exhibit A and fully incorporated herein, are

reasonable and acceptable to the Village and that said Agreement is hereby approved in form and substance.

**SECTION 4.** In the event that any provision or provisions, portion or portions, or clause or clauses of this Resolution shall be declared to be invalid or unenforceable by a Court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions, portions, or clauses of this Resolution that may be given effect without such invalid or unenforceable provision or provisions, portion or portions, or clause or clauses.

**SECTION 5.** All ordinances, resolutions, motions, or parts thereof, conflicting with any of the provisions of this Resolution, are hereby repealed to the extent of the conflict.

**SECTION 6.** The Village Clerk is hereby directed to publish this Resolution in pamphlet form.

**SECTION 7.** This Resolution shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

**PASSED** by the Board of Trustees on a roll call vote on the 14th day of October, 2024.

**TRUSTEES:**

RYAN LEBRAN	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
BRIAN BILLINGSLEY	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
DARREN WESTPHAL	Aye - <input type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input checked="" type="checkbox"/>
BRIAN TIERI	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
GRANT D. VANDENHOUT	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
GENE JORDAN	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>

**VILLAGE PRESIDENT:**

MICHAEL WATSON      Aye -       Nay -       Absent -       Non-voting X

**TOTALS:**      Aye - 5      Nay - 0      Absent - 1

**APPROVED** this 14th day of October, 2024.

Michael Watson  
MICHAEL WATSON,  
VILLAGE PRESIDENT

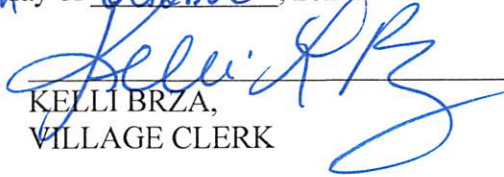
**ATTEST:**  
Kelli Brza  
KELLI BRZA,  
VILLAGE CLERK



STATE OF ILLINOIS        )  
  )        §§  
COUNTY OF KANKAKEE    )

I, KELLI BRZA, Village Clerk for the Village of Bradley, County of Kankakee and State of Illinois, DO HEREBY CERTIFY that the attached is a true, perfect, and complete copy of Resolution number R-10-24-02 "AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE DESIGN ENGINEERING FOR EDGEBROOK PARK" which was adopted by the Village President and Board of Trustees at a meeting held on the 14th day of October, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 14th day of October, 2024.

  
KELLI BRZA,  
VILLAGE CLERK



# EXHIBT A



September 19, 2024

Rob Romo  
Village of Bradley  
147 S. Michigan  
Bradley, Illinois 60915

**Re: Agreement for Professional Consulting Services  
Edgebrook Park Design  
Bradley, Illinois**

Dear Rob:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “the Consultant”) is pleased to submit this Agreement (the “Agreement”) to Village of Bradley (“the Client”) for professional consulting services for the proposed improvements required for the development located in Village of Bradley (Kankakee County), Illinois.

### **PROJECT UNDERSTANDING**

Kimley-Horn understands that the Client intends to develop an approximately 1.2 acre property into a public park located at the northwest corner of Edgebrook Drive and Prince Valiant Lane. The attached aerial site exhibit will serve as the basis of this Agreement.

### **SCOPE OF SERVICES**

#### **Task 1 – Conceptual Landscape Plan**

Kimley-Horn will prepare an initial conceptual landscape plan for the site. This will include the layout of the following:

- Playground elements
- Playground surfacing
- Sidewalks and hardscape
- Benches, trash receptacles, bike racks and other site furniture as appropriate
- Fences
- Landscape improvements including those required by Village of Bradley ordinance

Kimley-Horn will present the Conceptual Landscape Plan along with representative images of the included elements to Village staff and design team. Kimley-Horn will make up to two (2) revisions to the plan based on input from the Client.

#### **Task 2 – Final Landscape Plan**

Following the approval of the Conceptual Plan, Kimley-Horn will advance the site and landscape design into a Final Landscape Plan, acceptable for bidding and construction of the design. This plan will include:

1. Location of existing and proposed improvements

2. Identification of respective plant material locations, species, quantities, and installed sizes
3. Location and treatment of all non-hardscape ground surfaces
4. Landscape materials list
5. Landscape notes
6. Plant material installation details
7. Dimensioned hardscape layout of sidewalks, paved areas, and playgrounds including equipment, curbs and surfacing
8. Hardscape and site furniture materials schedule
9. Hardscape construction and installation details
10. Written specifications

Deliverables include:

1. Final Landscape Plan(s) (black-and-white PDF)

Revise the Final Landscape Plan one (1) time based on Client comment, municipal comment, and/or minor site plan changes. Additional revisions as a result of major site plan changes, revised landscape budgets and/or color renderings will be completed as Additional Services.

This task also includes coordination with the Village's engineer, MG2A, as they provide documenting erosion control, site grading, and drainage.

Attendance at meetings with the Client, project consultant team, jurisdictional review and/or public meetings will be billed at our standard hourly rates.

### **Task 3 - Permit Assistance Phase**

Kimley-Horn will assist the Client with obtaining construction permits from the appropriate permitting agencies that have jurisdiction over the project. This Agreement assumes the Client will pay all required submittal, application, and permit fees. The Client shall provide all requested permitting materials prepared by the Client or others and shall sign or obtain signatures on all permit forms, as requested by Kimley-Horn, in a timely manner.

### **Task 4 - Bid Assistance Phase**

Kimley-Horn will assist the Client in their bidding the project to potential contractors. Kimley-Horn will respond in writing during the bid period to questions raised by the Client. Kimley-Horn shall coordinate with the Client to assemble required copies of the civil design drawings (prepared under a previous task). Kimley-Horn will review proposed material substitutions. Kimley-Horn, in conjunction with the Client, shall review contractor bid submittals.

### **Task 5 - Meeting Phase**

Kimley-Horn will attend up to three (3) meetings with the design team and municipality and up to three (3) conference calls with the project team. This task also includes minimal project

coordination not requiring a separate agreement. Efforts in addition to the estimated meetings will be completed as an Additional Service.

**Task 6 - Limited Construction Administration Services**

Kimley-Horn will review Shop Drawings, Submittals, Samples and other data which the Contractor is required to submit, for conformance with the information given in the Contract Documents as it related to the Final Site Development Plans. Such review will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to the Client as appropriate to the orderly completion of the Contractor's work. Any orders authorizing variations from the Contract Documents will be made by the Client. Kimley-Horn will review the As-Built documents at the end of the project.

**ADDITIONAL SERVICES**

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

1. Civil Engineering Services
2. Irrigation Design Services
3. Environmental Engineering Services
4. Geotechnical Engineering Services
5. Storm Water Management Design
6. Easement Documents and/or Coordination
7. Platting, Construction Staking or Survey Services beyond those mentioned above
8. Tree Survey and/or Tree Protection Plan
9. Dry Utility Design
10. Any services not specifically mentioned in the Scope of Services above

**INFORMATION PROVIDED BY CLIENT**

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

1. Relevant surveys, studies, reports, or data in the Client's possession
2. Site plan/base file (in AutoCAD format)
3. Full access to the site



4. Executed copy of this Agreement

**FEES AND INVOICING**

Kimley-Horn will perform the “Lump Sum” services listed in the table below for the total lump sum labor fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client’s behalf, an invoice for such fees, with a fifteen (15%) markup, will be immediately issued to and paid by the Client.

The “Budget” task, as indicated in the table, will be completed and processed as a passthrough expense. In addition, other direct expenses and reimbursable expenses will be billed at 1.15 times actual cost. Kimley-Horn will keep the Client apprised of the budget status on hourly tasks with monthly invoices so that appropriate decisions can be made by the Client with regard to scope, schedule, and budget.

Kimley-Horn will perform the “Hourly” services listed in the table below on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates.

Task	BASE SERVICES	Fee	Fee Type
1	Conceptual Landscape Plan	\$10,500	Lump Sum
2	Final Landscape Plan	\$20,000	Lump Sum
3	Permitting Assistance Phase	\$3,000	Lump Sum
4	Bid Assistance Phase	\$4,500	Lump Sum
5	Meetings Phase	\$6,000	Lump Sum
	<b>Estimated Total (w/o expenses)</b>	<b>\$44,000</b>	
6	Limited Construction Administration Services		<b>Hourly</b>

An estimated additional reimbursable expenses budget of approximately \$300 will be used to cover travel, printing and reproduction, courier and overnight delivery services, etc. Kimley-Horn will keep the Client updated, via monthly invoices, on the expenses incurred and the possible need for additional expense budget. Fees will be invoiced monthly based on the percentage completed for each of the major lump sum elements plus reimbursable

expenses or for services actually accomplished under the cost-plus elements. Invoices will be due and payable within 25 days of the Client 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 shall be subject to the Standard Provisions attached hereto and hereby incorporated herein. As used in the Standard Provisions, the term "the Consultant" refers to Kimley-Horn and Associates, Inc. The term "the Client" shall refer to Village of Bradley.

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

We appreciate the opportunity to provide these services to you.

Sincerely,

**Kimley-Horn and Associates, Inc.**



Daniel Grove, PLA, AICP, LEED AP Associate



Andrew N. Heinen, P.E Vice President

Attachments: Exhibit A – Study Area Standard Provisions

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**Village of Bradley**

By: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

**EXHIBIT A – STUDY AREA**



**KIMLEY-HORN AND ASSOCIATES, INC.  
STANDARD PROVISIONS**

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
  - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
  - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
  - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
  - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
  - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
  - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
  - b. The Client will remit all payments electronically to:  
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.  
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104  
Account Number: 2073089159554  
ABA#: 121000248
  - c. The Client will send the project number, invoice number and other remittance information by e-mail to [payments@kimley-horn.com](mailto: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.