

VILLAGE OF BRADLEY

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**RESOLUTION NO. R-08-23-02**

AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE  
MECHANICAL, ELECTRICAL, AND PLUMBING PERMIT DRAWINGS FOR THE LIL'S  
PARK SPLASHPAD

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ADOPTED BY THE  
BOARD OF TRUSTEES OF THE  
VILLAGE OF BRADLEY

THIS 14<sup>th</sup> DAY OF August, 2023

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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 14 day of August, 2023.

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MECHANICAL, ELECTRICAL, AND PLUMBING PERMIT DRAWINGS FOR THE LIL'S  
PARK SPLASHPAD

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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 \$27,000 with Kimley-Horn and Associates, Inc. to provide mechanical, electrical and plumbing permit drawings for the Lil's Park splashpad; and

**WHEREAS**, the Village Board finds that this Resolution protects and promotes the 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. PERMIT DRAWINGS AUTHORIZED**

The Village President is authorized and directed to execute an agreement with Kimley-Horn and Associates, Inc. to provide mechanical, electrical and plumbing permit drawings for the Lil's Park splashpad 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 \$27,000.

**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 14 day of August, 2023.

**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 checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input 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 type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input checked="" type="checkbox"/>

**VILLAGE PRESIDENT:**

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

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

**ATTEST:**

  
JULIE TAMBLING,  
VILLAGE CLERK

**APPROVED** this 14 day of August, 2023.

*Michael Watson*  
MICHAEL WATSON,  
VILLAGE PRESIDENT

ATTEST:  
*Julie Tambling*  
JULIE TAMBLING,  
VILLAGE CLERK

STATE OF ILLINOIS            )  
  )  
COUNTY OF KANKAKEE    )

§§

I, JULIE TAMBLING, 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 B-082302 "AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE MECHANICAL, ELECTRICAL, AND PLUMBING PERMIT DRAWINGS FOR THE LIL'S PARK SPLASHPAD" which was adopted by the Village President and Board of Trustees at a meeting held on the 14 day of August, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand in the Village of Bradley, County of Kankakee and State of Illinois, on this 14 day of August, 2023.

  
\_\_\_\_\_  
JULIE TAMBLING,  
VILLAGE CLERK

(SEAL)



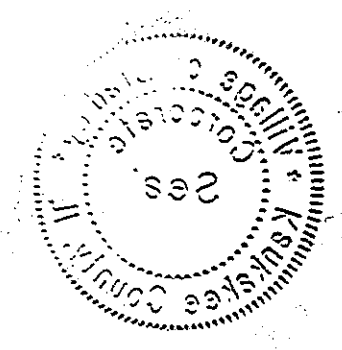
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# EXHIBT A



August 10, 2023

Rob Romo, CPA  
Village of Bradley  
147 S. Michigan Avenue  
Bradley, IL 60915

Re: Professional Services Agreement  
Lil's Park – Bradley, IL

Dear Mr. Romo,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") the Village of Bradley ("Client") for providing Mechanical, Electrical and Plumbing Permit Drawings for a park development project located in Bradley (Kankakee County), IL.

### **Project Understanding**

It is Kimley-Horn's understanding that the Village of Bradley will be developing a new splashpad building to be located in Lil's Park – the building will house 4 restrooms, 2 showers, a mechanical room and a splash pad equipment room. There will be a site development adjacent to the new building which will contain the splashpad, a reservoir and a parking lot with 88 spaces. The Client provided Kimley-Horn with the following plans: architectural and aquatic drawings for splashpad building issued for review, dated 7/11/23, civil drawings issued for permit, dated 6/1/23, landscape architecture drawings issued for permit, dated 6/1/23, aquatic drawings issued for permit 6/1/23. The Client also provided Kimley-Horn with comments from a preliminary code review dated 7/19/23.

### **Scope of Services**

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

#### **Task 1: Mechanical, Electrical, Plumbing Permit Drawings**

Kimley-Horn will prepare a set of mechanical, electrical, and plumbing permit drawings for the project indicated in Project Understanding above. It is Kimley-Horn's understanding that the Client will provide Kimley-Horn with the mechanical, electrical, and plumbing requirements for the splashpad, site and reservoir equipment. It is expected provisions for equipment will terminate inside of the splashpad building. Power for parking lot and site lighting is part of this task. The Client will provide Kimley-Horn with the lighting fixture selections and locations; there will be lighting fixtures in the splashpad building as well as decorative site and parking lot lighting. Sheet type specifications are a part of this task. This task includes up to two (2) total rounds of revisions based on permit comments from the Village/IDPH (Illinois Department of Public Health).

### **Services Not Included**

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

- Cost estimate/analysis
- Design/specification of splashpad equipment





- Specification of splashpad heater
- Design of reservoir and associated equipment (sump pump)
- Sizing of water lines to reservoir and splashpad

#### **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:

- Record drawings
- Construction administration services
- Utility company coordination
- Site visits
- Low voltage design (telecommunication/data, security, audio visual)
- Demolition drawings
- Utility services beyond 5' of the building
- Photometrics
- Lighting design
- Structural drawings/pole foundation design
- Plumbing provisions to site water fountain (assumed to be done by civil engineer)

#### **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:

- Relevant surveys, studies, reports or data in the Client's possession
- Site backgrounds in CAD which include equipment and lighting fixture locations
- Mechanical, electrical, and plumbing information for equipment in scope
- Coordination with/input from designers of splashpad and reservoir
- Executed copy of this Agreement

#### **Schedule**

We will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed to schedule; exact schedule will be discussed upon acceptance of this agreement.

#### **Fee and Expenses**

Kimley-Horn will perform the services in Task 1 for the total lump sum labor fee below. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1 Mechanical, Electrical, Plumbing Permit Drawings	\$27,000
Total Lump Sum Labor Fee	\$27,000



An estimated additional reimbursable expenses budget of approximately \$500 will be used to cover travel, printing and reproduction, courier and overnight delivery services, etc. Kimley-Horn will keep the Client updated, via monthly invoices on the expenses incurred and the possible need for additional expense in the 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 30 days.

**Closure**

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

DocuSigned by:  
*Jennifer Kuether*  
DEA1D73A9C8E4FC...  
Jennifer Kuether, P.E.  
Senior Project Manager

DocuSigned by:  
*Drew Walker*  
BCD20AF5AA9349D...  
Drew Walker, P.E. (IL)  
Associate

Attachment – Standard Provisions

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2023

***Village of Bradley***

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

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

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

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
  - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
  - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
  - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
  - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
  - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
  - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
  - b. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
  - c. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
  - d. If Kimley-Horn initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the

Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by Kimley-Horn, the hardcopy shall govern.

- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate

to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.

- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
  - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
  - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
  - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.