



## COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. The first meeting of every month is at 9:30AM while the second meeting of every month takes place at 5:30PM. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 3/27/2024 Meeting Date: 4/4/2024

Department: Purchasing

### 1. Nature and purpose of agenda item:

The Board authorized contract negotiations with Kimley Horn 3/07/2024 for Transportation Consulting

### 2. Recommended Motion/Action:

Approve and execute contract with Kimley Horn

### 3. Fiscal impact on current budget.

This item is currently budgeted. The account number to be charged is 302-5429-541.30-31

District No. 1 - Ronald Williams  
District No. 2 - Rocky Ford  
District No. 3 - Robby Hollingsworth  
District No. 4 - Everett Phillips  
District No. 5 - Tim Murphy



## BOARD OF COUNTY COMMISSIONERS • COLUMBIA COUNTY

### MEMORANDUM

DATE: March 26, 2024  
TO: Board of County Commissioners  
FROM: Erica Jones, Purchasing Officer  
RE: Agenda item for April 4, 2024  
RFQ 2024-B Transportation Consulting

The United States Department of Transportation (USDOT) published a Notice of Funding Opportunity (NOFO) in May 2022 for the Safe Streets and Roads for All (SS4A) discretionary grant program. The program requires the County to contract for Transportation Consulting to develop a Safety Action Plan improving roadway safety.

RFQ 2043-B was issued on 12/13/2023. Three (3) responses were timely received:

- North Florida Professional Services
- Kimley Horn
- EXP, Inc.

The Evaluation Committee consisted of Chad Williams, Staz Guntek, and Joseph Crackel to evaluate the responses. On March 7<sup>th</sup>, the Board authorized staff to negotiate with the highest ranked firm, **Kimley Horn**. Staff is recommending the Board to approve the negotiated contract.

BOARD MEETS FIRST THURSDAY AT 9:30 A.M. AND THIRD THURSDAY AT 5:30 P.M.

P.O. BOX 1529

LAKE CITY, FLORIDA 32056-1529

PHONE (386) 755-4100

March 14, 2024

Mr. Chad Williams, County Engineer  
Columbia County  
607 NW Quinten St.  
Lake City, FL 32055

Re: **Professional Services for Agreement; Comprehensive Safety Action Plan  
Columbia County, Florida**

Dear Mr. Williams:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement (the "Agreement") to Columbia County, Florida ("County") for providing professional transportation consulting services for a Comprehensive Safety Action Plan ("the Project") in Columbia County, Florida.

### **Project Understanding**

The United States Department of Transportation (USDOT) published a Notice of Funding Opportunity (NOFO) in May 2022 for the Safe Streets and Roads for All (SS4A) discretionary grant program. The purpose of SS4A grants is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development. Columbia County was awarded a SS4A grant in the amount of \$280,000 by USDOT (to be matched with \$70,000 in local funds) in order to develop a Comprehensive Safety Action Plan.

Columbia County advertised Request for Qualifications (RFQ) 2023-B on December 13, 2023 to develop a Comprehensive Safety Action Plan implementing the eight tasks identified in the NOFO to develop a holistic, well-defined strategy to prevent roadway fatalities and serious injuries in Columbia County. Kimley-Horn was the highest ranked firm that responded to RFQ 2023-B, and the County Commission voted on March 7, 2024 to authorize staff to negotiate a contract with Kimley-Horn to prepare the CSAP.

### **Scope of Services**

The SS4A Grant NOFO outlines the components of a comprehensive safety action plan ("Action Plan") aimed at preventing roadway fatalities and serious injuries in a locality. Each of Tasks 1 through 8, below, begins with the description (signified by *italics*) provided by USDOT for the eight major components of the Action Plan.

#### **Task 1 – Leadership Commitment and Goal Setting**

*An official public commitment (e.g., resolution, policy, ordinance, or other) by a high-ranking official and/or governing body (e.g., Mayor, Board of County Commissioners, Tribal Council, MPO Policy Board, or other.) to an eventual goal of zero roadway fatalities and serious injuries. The commitment must include a goal and timeline for eliminating roadway fatalities and serious injuries achieved through one, or both, of the following:*

- (1) the target date for achieving zero roadway fatalities and serious injuries, OR*
- (2) an ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and serious injuries.*

As part of this task, Kimley-Horn will undertake the following:

- A. Coordinate with County staff to formalize the goals and objectives of the Action Plan, with a focus on promoting safe, equitable, and cost-effective tools to help strengthen the County's approach to roadway safety.
- B. Draft a Resolution that can be adopted by the Board of County Commissioners publicly committing to a long-term safety goal of eliminating fatal and serious injury crashes and setting timeline targets.

#### Task 2 – Planning Structure (and Task Force Coordination)

*A committee, task force, implementation group, or similar body charged with oversight of the Action Plan development, implementation, and monitoring.*

As part of this task, Kimley-Horn will undertake the following:

- A. Identify a team of key stakeholders in the community to form an Action Plan task force, ensuring that some representatives are selected from low-income and otherwise underserved communities within the County.
- B. Meet with the Action Plan task force at the outset of the Action Plan development to outline the goals and objectives of the Action Plan and the role of the task force in providing oversight for the development, implementation, and monitoring of the Action Plan.
- C. Establish policies and procedures to guide the Action Plan task force oversight activities.
- D. Meet with the Action Plan task force up to three times during the development of the Action Plan to provide preliminary analysis results, obtain input from task force representatives, and build consensus on the direction of the Action Plan.
- E. Meet with the Action Plan task force upon completion of the Action Plan document to summarize the results and outline the role of the task force in overseeing implementation and monitoring of the Action Plan.

#### Task 3 – Safety Analysis

*Analysis of existing conditions and historical trends that provides a baseline level of crashes involving fatalities and serious injuries across a jurisdiction, locality, Tribe, or region. Includes an analysis of locations where there are crashes and the severity of the crashes, as well as contributing factors and crash types by relevant road users (motorists, people walking, transit users, and others.). Analysis of systemic and specific safety needs is also performed, as needed (e.g., high-risk road features, specific safety needs of relevant road users, public health approaches, analysis of the built environment, demographic, and structural issues, and others.). To the extent practical, the analysis should include all roadways within the jurisdiction, without regard for ownership. Based on the analysis performed, a geospatial identification of higher-risk locations is developed (a High-Injury Network or equivalent).*

As part of this task, Kimley-Horn will undertake the following:

- A. Obtain crash information from the latest five years of available data from Signal Four Analytics.

- B. Review and categorize the crash reports according to crash severity, crash location, crash type, contributing factors, driver characteristics, and other notable characteristics identified during the review of the crashes.
- C. Create map(s) illustrating the locations of fatal crashes and map(s) illustrating the locations of serious injury crashes that were reported during the five-year analysis period.
- D. Create tables and/or graphics summarizing other trends in the fatal and serious injury crash history.
- E. Review the geographical distribution of crashes as it compares to the areas within the County identified as underserved communities and identify systemic safety concerns associated specifically with those areas.

#### Task 4 – Engagement and Collaboration

*Robust engagement with the public and relevant stakeholders, including the private sector and community groups, that allows for both community representation and feedback. Information received from engagement and collaboration is analyzed and incorporated into the Action Plan. Overlapping jurisdictions are included in the process. Plans and processes are coordinated and aligned with other governmental plans and planning processes to the extent practical.*

As part of this task, Kimley-Horn will undertake the following:

- A. Identify public sector and private sector stakeholders that are representative of the community, with the intent to include that underserved communities and advocates for multimodal road users in outreach efforts. Directed outreach to the stakeholders identified in this Task will be undertaken to encourage participation in community workshops.
- B. Partner with the County to host up to two community workshops in the County to provide opportunities for citizens, stakeholders, and community organizations to share concerns about existing safety issues and offer feedback on the proposed strategies and goals of the Action Plan. Kimley-Horn will prepare a brief presentation that will summarize the Action Plan goals and objectives, display crash maps and graphics prepared in Task 3, and discuss the role of the Action Plan for Columbia County. This scope of services assumes that the County will coordinate the location of these meetings, be responsible for reservation fees, and publish necessary public noticing along with payment of advertisement fees.
- C. In addition to the community workshops, Kimley-Horn will attend up to three community events and provide exhibits and information about the project to provide additional opportunity for public input in the development of the Action Plan.
- D. Create an online portal for the Action Plan. The online portal will include the goals and objectives of the Action Plan, a project schedule including dates and locations for the community workshops, a map illustrating the crash history reviewed in Task 3, and an interactive feature for citizens to provide input specific to locations of safety concern within the County.
- E. Coordinate with overlapping jurisdictions, including the City of Lake City, the Town of Fort White, and the Florida Department of Transportation (FDOT) District Two to strive for consistency between plans, programs, and projects identified in the Action Plan and other planning documents and planned infrastructure improvements in the area.

### Task 5 – Equity Considerations

*Plan development using inclusive and representative processes. Underserved communities are identified through data and other analyses in collaboration with appropriate partners. Analysis includes both population characteristics and initial equity impact assessments of the proposed projects and strategies.*

As part of this task, Kimley-Horn will undertake the following:

- A. Utilize the most recent American Community Survey (ACS), Justice 40 resources, and other federally published equity data to identify census tracts representing underserved communities within the County.
- B. Direct outreach for the Action Plan task force and for general public engagement opportunities to residents and citizen groups representing these underserved communities to increase engagement and solicit input in development and implementation of the Action Plan.
- C. Assess the distribution of fatal and serious injury crash locations as they relate to the census tracts identified and identify trends in the crash data specific to these locations.
- D. Identify evidence-based safety strategies specifically relevant to these underserved communities within the broader catalogue of policy, process, and project recommendations identified in the Action Plan.

### Task 6 – Policy and Process Changes

*Assessment of current policies, plans, guidelines, and/or standards (e.g., manuals) to identify opportunities to improve how processes prioritize transportation safety. The Action Plan discusses implementation through the adoption of revised or new policies, guidelines, and/or standards, as appropriate.*

As part of this task, Kimley-Horn will undertake the following:

- A. Review current policies, plans, guidelines, and manuals published by Columbia County and the local municipalities (as applicable) to identify existing processes and standards that directly or indirectly impact the safety conditions of the roadway network within the County.
- B. Review best practices and guidance from the Federal Highway Administration and USDOT for policy recommendations to promote safety in local policies, plans, guidelines, and manuals.
- C. Recommend systemic improvements to existing policies, plans, guidelines, and manuals to prioritize transportation safety within existing documents published by the County.
- D. Review planned and programmed infrastructure improvements from the County, the local municipalities, and FDOT District Two which could be revised to incorporate evidence-based safety strategies in conjunction with the planned improvements to the roadway network.

### Task 7 – Strategy and Project Selections

*Identification of a comprehensive set of projects and strategies, shaped by data, the best available evidence and noteworthy practices, as well as stakeholder input and equity considerations, that will address the safety problems described in the Action Plan. These strategies and countermeasures focus on a Safe System Approach, effective interventions, and consider multidisciplinary activities. To the extent practical, data limitations are identified and mitigated.*

Once identified, the list of projects and strategies is prioritized in a list that provides time ranges for when the strategies and countermeasures will be deployed (e.g., short-, mid-, and long-term timeframes). The list should include specific projects and strategies, or descriptions of programs of projects and strategies, and explains prioritization criteria used. The list should contain interventions focused on infrastructure, behavioral, and/or operational safety.

As part of this task, Kimley-Horn will undertake the following:

- A. Analyze the historical crash data to identify specific emphasis areas to guide the determination of crash reduction strategies. Identify countermeasures to address the emphasis areas, with particular focus on emphasis areas that were identified within or by members of underserved communities within the County.
- B. Develop a menu of systemic countermeasures that may be applicable in multiple locations on the County roadway network at varying levels of effectiveness. Countermeasures should be tailored to site-specific conditions to optimize effectiveness.
- C. Analyze the historical crash data to identify up to 20 high-priority segments and 20 high-priority intersections with a history of fatal and severe injury crashes.
- D. Coordinate with the County to assess the high-priority segments and high-priority intersections and select up to 12 locations for further review.
- E. Conduct site reviews at up to 12 high-priority locations to review existing conditions and identify site-specific improvements to enhance safety. A two-page summary will be developed for each location, identifying the fatal and severe crash history at that location, patterns identified in the crash data, and observations noted during the site reviews.
- F. Identify site-specific improvements at up to 12 high-priority locations. Improvements may vary in cost and complexity with some intended for short-term implementation and others requiring further study or additional funding for implementation. Kimley-Horn will evaluate the potential effectiveness of each recommended improvement and note opportunities for funding, as appropriate.
- G. Develop preliminary concept plans for site-specific improvements at up to 12 high-priority locations. Concept plans will be developed to sufficient detail to estimate project costs. Kimley-Horn will utilize the cost estimates to conduct cost-benefit analyses for the recommended improvements to determine which projects would provide the best return on investment for the County.

Kimley-Horn has no control over the cost of labor, materials, equipment, over the methods of determining prices, over competitive bidding, or market conditions. Opinions of probable costs provided in accordance with this Agreement are based on the information known at the time the opinions of cost are developed and represent only Kimley-Horn's judgment as a design professional familiar with the construction industry. Actual costs for proposals, bids, or actual construction costs will be different.

- H. Develop a master list of countermeasures to help prioritize implementation, assuming that some project elements will be complementary and that applying them to multiple locations at once could lead to cost savings.

## Task 8 – Progress and Transparency

*Method to measure progress over time after an Action Plan is developed or updated, including outcome data. Means to ensure ongoing transparency is established with residents and other relevant stakeholders. Must include, at a minimum, annual public and accessible reporting on progress toward reducing roadway fatalities and serious injuries, and public posting of the Action Plan online.*

As part of this task, Kimley-Horn will undertake the following:

- A. Develop a data collection reporting template for the Action Plan task force to monitor progress on the Action Plan, including a summary of costs for eligible projects and strategies carried out using SS4A grant funding, data regarding roadway safety outcomes, and documentation of any additional benefits (e.g., increased walking, biking, or use of transit with a commensurate decrease in crash frequency) yielded from Action Plan recommendations.
- B. Provide aggregated annual crash data on fatal crashes and serious injury crashes within the County for the period of performance for which the SS4A grant is awarded. Kimley-Horn will provide guidance to the County on how to continue aggregation of this data beyond the conclusion of this project in order to meet the requirements of the SS4A Action Plan grant.
- C. As noted in Task 9, Kimley-Horn will submit the final Action Plan in a digital format to the County. The County should post the final plan publicly online to provide accessibility to the community and to meet the requirements of the SS4A grant.

## Task 9 – Action Plan Documentation

The Action Plan components outlined in Tasks 1 through 8 will be compiled into a Comprehensive Safety Action Plan for Columbia County. By including all eight components, the Action Plan will be eligible in subsequent rounds of SS4A grant funding for an Implementation Grant that can be directed toward design and construction costs of the recommended safety countermeasures identified in Task 7.

As part of this task, Kimley-Horn will undertake the following:

- A. Prepare a draft Action Plan for review by the County. The draft will include the objectives and goals identified in Task 1 and document the analysis and efforts conducted in Tasks 2 through 7 to pursue those objectives and goals. County staff from the project team as well as staff from the task force and from other municipalities may review and comment on the draft Action Plan.
- B. Address one set of consolidated written comments on the draft Action Plan. Kimley-Horn will coordinate with the County regarding clarifications in the comments before revising the Action Plan to address the comments. A virtual meeting may be conducted to reach consensus with the County and other reviewers, as necessary.
- C. Revise and update the Action Plan to address County comments. Kimley-Horn will submit the final Action Plan in a digital format to the County.

**Task 10 – Project Management and Grant Administration**

Kimley-Horn will assist the County as they aim to produce the Action Plan in a manner such that it meets or exceeds all of the requirements of the SS4A Action Plan grant.

As part of this task, Kimley-Horn will undertake the following:

- A. Manage project staff, quality control, project schedule, and project accounting. Kimley-Horn will provide monthly progress reports to accompany invoices throughout the duration of the project.
- B. Facilitate monthly one-hour coordination calls to discuss project progress and key milestones. Kimley-Horn will prepare meeting agendas for the monthly meetings at least two business days in advance and providing meeting summaries within two business days after the meetings. Meeting summaries will highlight key action items and the parties responsible for completing the action items, as appropriate.
- C. Administer to the requirements of the SS4A grant, including the preparation of quarterly program performance and quarterly financial status reports using the Standard Forms required by USDOT.

***Additional Services***

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

***Information Provided by County***

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the County or the County's consultants or representatives. The County shall provide all information requested by Kimley-Horn during the project.

***Schedule***

Kimley-Horn will provide our services as expeditiously as practicable with the goal of meeting a mutually agreeable schedule.

### Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 – 10 for the total lump sum fee below. Individual task amounts are provided for informational purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Task 1 - Leadership Commitment and Goal Setting	\$10,000
Task 2 - Planning Structure (and Task Force Coordination)	\$25,000
Task 3 - Safety Analysis	\$60,000
Task 4 - Engagement and Collaboration	\$40,000
Task 5 - Equity Considerations	\$25,000
Task 6 - Policy and Process Changes	\$30,000
Task 7 - Strategy and Project Selections	\$80,000
Task 8 - Progress and Transparency	\$10,000
Task 9 - Action Plan Documentation	\$45,000
Task 10 - Project Management and Grant Administration	\$25,000
<b>Total</b>	<b>Lump Sum \$350,000.00</b>

All permitting, application, and similar project fees will be paid directly by the County. Should the County request Kimley-Horn to advance any such project fees on the County's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the County.

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

### CLOSURE

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

To expedite invoices and reduce paper waste, Kimley-Horn submits invoices via email in a PDF. A paper copy can be provided via USPS mail upon request. Please provide the following information:

\_\_\_\_ Please email all invoices to \_\_\_\_\_

\_\_\_\_ Please copy \_\_\_\_\_

To proceed with the services, please have an authorized person sign this Agreement below and return 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.


Please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in a delay in starting work on this project.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

By:   
Vincent Spahr, P.E.  
Project Manager

  
Chris Towne, P.E.  
Associate

Attachments: Standard Provisions

COLUMBIA COUNTY, FLORIDA

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Email)

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**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.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for

isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.

16) **Construction Phase Services.**

- a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
- b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
- c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.

19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Florida. 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.

20) **PURSUANT TO FS 558.0035, EMPLOYEES OF KIMLEY-HORN MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.**