



May 17, 2024

Abraham Farias  
City of Mt. Juliet, TN  
115 Clemmons Rd.  
Mt. Juliet, TN 37122

Re: Letter Agreement for Professional Services for  
Safe Streets and Roads for All (SS4A) Action Plan  
Mt. Juliet, Tennessee

Dear Abraham:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement (the "Agreement") to **City of Mt. Juliet, Tennessee** ("Client") for providing professional engineering and planning services pertaining to the Safe Streets and Roads for All (SS4A) Action Plan.

### **Project Understanding**

Consultant understands the following:

- Client received a FY23 SS4A Action Plan award from the United States Department of Transportation (USDOT).
- Client has selected Consultant to prepare the Action Plan.
- The USDOT identifies SS4A Action Plan components through the following webpage: (<https://www.transportation.gov/grants/ss4a/action-plan-components>)
  - **Leadership Commitment and Goal Setting** - create a goal timeline for eliminating roadway fatalities and serious injuries.
  - **Planning Structure** – form a committee, task force, implementation group, or similar body charged with oversight of the Action Plan development, implementation, and monitoring.
  - **Safety Analysis** – review of existing conditions and historical trends that provides a baseline level of crashes involving fatalities and serious injuries across a jurisdiction.
  - **Engagement and Collaboration** – work with public and relevant stakeholders, including the private sector and community groups, that allows for both community representation and feedback.
  - **Equity Considerations** - develop a plan through inclusive and representative processes, data, and other analyses.
  - **Policy and Process Changes** - assess the current policies, plans, guidelines, and/or standards to identify opportunities to improve how processes prioritize transportation safety.
  - **Strategy and Project Selections** - identify 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.
  - **Progress and Transparency** - measure progress over time after an Action Plan is developed or updated, including outcome data.

## Scope of Services

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

### TASK 1 – PROJECT MANAGEMENT

Consultant will perform the following:

- Facilitate one (1) kick-off meeting with Client. Consultant will coordinate with Client to schedule the kick-off meeting, prepare agenda topics for discussion, facilitate the kick-off meeting, and summarize the kick-off meeting with minutes.
- Develop a project schedule and provide to Client.
- Facilitate (monthly or bimonthly) progress meetings with Client, up to ten (10) total.
- Provide monthly invoices with the description of work performed.
- Coordinate with Client regarding the requirement of Leadership Commitment and Goal Setting.
- Coordinate with Client regarding the need for a Planning Structure that would establish a committee, task force, implementation group, or similar body charged with oversight of the Action Plan development, implementation, and monitoring.
- Provide Client with guidance and support regarding the SS4A grant administration and requirements.
- Per FHWA requirements, provide client a summary of work performed each quarter, so that the client can submit a quarterly report to FHWA

### TASK 2 – SAFETY ANALYSIS

#### Task 2.1 – Data Collection

Consultant will obtain readily available geographic information systems (GIS) data:

- Crash data from a previous 5-year timeframe
- Average Daily Traffic (ADT) and/or Annualized Average Daily Traffic (AADT)
- Roadway features (i.e., number of travel lanes, posted speed limits, functional classification, sidewalk and bicycle infrastructure)

Consultant will consider the following sources to obtain GIS data:

- The Enhanced Tennessee Roadway Information Management System (E-TRIMS) provided by the Tennessee Department of Transportation (TDOT)
- The AASHTOWare Safety Software as a Service platform
- Client-provided GIS data
- Replica, a web-based application that Consultant may use to develop additional ADT and/or AADT

#### Task 2.2 – Safety Analysis

Consultant will perform the following:

- Analyze existing conditions and historical trends that provides a baseline level of crashes involving fatalities and serious injuries.
- Develop graphics that illustrate:
  - Locations of crashes
  - Severity of crashes
  - Crash types by relevant road users (e.g., motorists, pedestrians, bicyclists)

- Prepare geospatial identification of higher-risk locations to establish the High-Injury Network.

### **TASK 3 – EQUITY ANALYSIS**

Consultant will perform the following:

- Identify underserved communities through data and analyses in collaboration with appropriate stakeholders. Consultant will perform analysis of population characteristics and initial equity impact assessments of proposed projects and strategies.
- Consultant will refer to the following webpage, referenced by the USDOT regarding the preparation of SS4A Action Plans, for the equity analysis:
  - <https://datahub.transportation.gov/stories/s/tsyd-k6ij>
- Consultant will consider Areas of Persistent Poverty Project (APP) and Historically Disadvantaged Community (HDC).
- Consultant will refer to the GIS-based SS4A Underserved Communities Census Tracts (Historically Disadvantaged Communities) data available.

### **TASK 4 – DEVELOPMENT OF RECOMMENDATIONS**

#### **Task 4.1 – Policy and Process Changes**

Consultant will perform the following:

- Consider the Federal Highway Administration (FHWA) Safe System Approach and the six (6) principles that form the basis (source: <https://highways.dot.gov/safety/zero-deaths>)
  - Deaths and serious injuries are unacceptable
  - Humans make mistakes
  - Humans are vulnerable
  - Responsibility is shared
  - Safety is proactive
  - Redundancy is crucial
- Assess the Client's current policies, plans, guidelines, and/or standards (e.g., manuals) to identify opportunities to improve how processes prioritize transportations safety.
- Develop and provide recommendations for the adoption of revised or new policies, guidelines, and/or standards.

#### **Task 4.2 – Strategy and Project Selections**

Consultant will perform the following:

- Consider the FHWA Proven Safety Countermeasures initiative (PSCi), a collection of 28 countermeasures and strategies effective in reducing roadway fatalities and serious injuries.
- Identify a comprehensive set of projects and strategies that consider the safety analysis, equity analysis, and obtained feedback during stakeholder engagement.
- Develop a prioritization of projects and strategies categorized into short-term, mid-term, and long-term implementation timeframes. The prioritized list will contain interventions focused on infrastructure, behavioral, and/or operational safety.
- For up to fifteen (15) projects, Consultant will prepare project descriptions, conceptual layouts, cost estimates, and forecasted benefit-to-cost ratios.

## **TASK 5 – REPORTING AND DOCUMENTATION**

Consultant will perform the following:

- Develop the draft Comprehensive Safety Action Plan that summarizes the work performed in Tasks 1-4.
- Prepare and submit the draft Comprehensive Safety Action Plan to Client in PDF format.
- Receive one (1) iteration of review comments from Client.
- Coordinate with Client to discuss the review comments if necessary.
- Incorporate revisions and develop the final Comprehensive Safety Action Plan.
- Prepare and submit the final Comprehensive Safety Action Plan to Client in PDF format.

## **TASK 6 – STAKEHOLDER AND COMMUNITY ENGAGEMENT**

### **Task 6.1 – Stakeholder Meetings**

Consultant will coordinate with Client to determine the appropriate stakeholders, including but not limited to:

- City of Mt. Juliet Staff
- Fire Department
- Police Department
- City Commission
- TDOT Region 3
- Mt. Juliet BPAC
- Wilson County Schools
- Mt. Juliet Planning Commission

Consultant will facilitate up to six (6) total stakeholder meetings:

- Meeting #1 – Anticipated to occur before Tasks 2-4 have been completed.
  - Consultant proposes two (2) iterations of Meeting #1, which will structurally be the same but will provide alternative date/time options for participants.
- Meeting #2 – Anticipated to occur after Tasks 2-4 have been completed.
  - Consultant proposes two (2) iterations of Meeting #2, which will structurally be the same but will provide alternative date/time options for participants.
- Meeting #3 – Anticipated to occur after Task 5 has been completed.
  - Consultant proposes two (2) iterations of Meeting #3, which will structurally be the same but will provide alternative date/time options for participants.

Consultant will be responsible for scheduling, facilitating, and providing the appropriate materials and content for each stakeholder meeting.

Client will be responsible for providing an appropriately sized venue for in-person meetings.

Additionally, Consultant will provide one (1) presentation to City Commission and one (1) presentation to the Planning Commission to discuss the safety action plan and policy changes after Task 5 has been completed.

### **Task 6.2 – Community Walk Audits**

Consultant will facilitate community walk audits with the intent of assessing existing roadway conditions,

pertaining to safety, and identifying challenges and concerns from stakeholders and community members. The objective of these community walk audits is for Consultant, Client, stakeholders, and community members to better understand site-specific conditions and determine which locations have potential for a future SS4A Implementation Grant application.

Consultant will facilitate up to two (2) community walk audits with stakeholders:

- Community Walk Audit #1 – Will occur either immediately before or immediately after Stakeholder Meeting #1.
- Community Walk Audit #2 – Will occur either immediately before or immediately after Stakeholder Meeting #2.

Consultant will be responsible for scheduling, facilitating, and providing the appropriate materials and content for each community walk audit.

### **Task 6.3 – Community Outreach**

Consultant will attend one (1) community event (such as Celebrate Mt. Juliet on September 7, 2024) and interact with the public to raise awareness of the development of safety action plan. Consultant will develop materials that may include flyers and posters and set up a booth. Consultant will engage with festival attendees to gather input on safety within the study areas and inform them of the SS4A program and the plan development process. Consultant will be present at one (1) event for up to four (4) hours.

### **Task 6.4 – Digital Outreach**

Consultant will perform the following:

- Coordinate with Client to develop a dedicated public-facing webpage for the Comprehensive Safety Action Plan.
- Develop an online interactive mapping tool that can be used for stakeholder engagement and hosted on the Client's public-facing website. Consultant anticipates results from the Safety Analysis, including establishment of the High-Injury Network, will be included in this online interactive mapping tool.
- Develop an online dashboard that summarizes the Comprehensive Safety Action Plan and can be updated in the future as Client maintains and updates crash data and safety analysis.

### **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 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.

### **Schedule**

We will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed

upon schedule.

## Fee and Expenses

Kimley-Horn will perform the services in Tasks 1-6 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1 Project Management	\$36,370
Task 2 Safety Analysis	\$97,400
Task 3 Equity Analysis	\$23,010
Task 4 Development of Recommendations	\$62,720
Task 5 Reporting and Documentation	\$79,400
Task 6 Stakeholder Engagement	\$109,400
Total Lump Sum Fee	\$408,400

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 "Client" shall refer to **City of Mt. Juliet, Tennessee**.

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

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

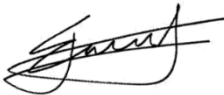
\_\_\_\_ Please copy \_\_\_\_\_

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.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



By: Leonardo Espelet, P.E.  
Vice President



Terrance Q. Hill, P.E.  
Project Manager

CITY OF MT. JULIET, TENNESSEE

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_

\_\_\_\_\_

Attachment – Standard Provisions

**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 ~~44~~ 21 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. In the event of any litigation or disputes regarding this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and all costs at all trial and appellate levels and in any mediation.~~
  - 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 Engineer shall not be responsible for claims, damages, losses,



~~and expenses arising out of or resulting from unauthorized use, 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 to cure within a ten-day timeframe of notification of default~~ 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. As of the effective date of termination, Kimley-Horn shall deliver all deliverables, work-product, reports, data, etc., whether in electronic or hardcopy format, to Client.
- 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, 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. The parties shall not assign or transfer any rights under or interest in this Agreement without the prior written consent of the other party.~~ 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.

- 20) **Insurance.** Kimley-Horn shall secure and maintain insurance that will protect Kimley-Horn from claims of negligence, bodily injury, death, property damage, or errors/omissions that may arise ~~from services performed under this Agreement~~ from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or warrant, express or implied, of Kimley-Horn's officers, directors, employees, agents, and subconsultants performed under this Agreement. Kimley-Horn shall provide certificates of insurance to Client indicating the name of the insurance companies and naming the Client as an additional insured on Kimley-Horn's liability policy for claims arising out of any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or warrant of Kimley-Horn's or its sub-consultant's operations or made by Kimley-Horn's or sub-consultant's employees, agents, guests, customers, invitees or sub-consultants/subcontractors. Kimley-Horn must verify its liability insurance policy is primary in the event of a covered claim or cause of action against Client. Insurance coverage shall not be altered or cancelled without ten (10) days prior written notice to the Client.
- 21) **Venue/Jurisdiction.** The venue of any action deemed necessary by either party hereto and in construction, interpretation or enforcement of this Agreement shall be a court of competent jurisdiction in Wilson County, Tennessee.