308 Fountain Circle
Huntsville, AL 35801

Huntsville, Alabama

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 5/11/2023 **File ID:** TMP-2928

Department: Planning

Subject: **Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Kimley-Horn and Associates, Inc., for the Long-Term Planning and Envisioning Work of the West Huntsville Annexed Property along I-65 Corridor Huntsville, Limestone County, Alabama.

Resolution No.

Does this item need to be published? **No**

If yes, please list preferred date(s) of publication: _____

Finance Information:

Account Number: TBD

City Cost Amount: $ 249,500

Total Cost: $ 249,500

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location:

Address: N/A
District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 23-

BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement between Kimley-Horn and Associates, Inc., and the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Long-Term Planning and Envisioning Work for West Huntsville Annexed Property along I-65 Corridor Huntsville, Limestone County, Alabama" consisting of thirteen (13) pages, and the date of May 11, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 11th day of May, 2023.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 11th day of May, 2022.

_____
Mayor of the City of Huntsville,
Alabama

Kimley»Horn

April 18, 2023

Mr. Dennis Madsen
Manager of Urban & Long Range Planning
City of Huntsville, Alabama
City of Huntsville Planning Department
308 Fountain Circle, 2nd Floor
Huntsville, AL 35801
dennis.madsen@huntsvilleal.gov

Re: Letter Agreement for Professional Services for
Long-Term Planning and Envisioning Work for West Huntsville Annexed Property along I-65 Corridor, Huntsville, Limestone County, Alabama

Dear Mr. Madsen:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement (the "Agreement") to the City of Huntsville, Alabama ("Client") for assisting the City in a planning study for the above-mentioned project assignment.

PROJECT UNDERSTANDING

It is our understanding that the Client has engaged Kimley-Horn and RCLCO ("Subconsultant") to conduct a Comprehensive Market Analysis and Envisioning for future development of West Huntsville Annexed property along the Interstate 65 corridor. The Client would like Kimley-Horn to prepare a multi-use Concept Plan based on our assessment of the regional context, the site (multiple sites), characteristics, transportation, RCLCO's proposed Development Program and Market Analysis, framework, and other infrastructure requirements.

Kimley-Horn will apply over 40 years of master planning and regional/area wide comprehensive planning to this assignment with the most current "smart growth" knowledge that we have developed and employed successfully throughout the United States and other venues internationally.

A particular focus will be on developing a sustainable plan both environmentally and relative to the most positive impact on the lives of those that will live, work, and play in this new environment. Our emphasis on planning and designing "great people places" will inform much of our work.

SCOPE OF SERVICES

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

Task 1 – Assemble Project Data, Site Reconnaissance and Kick-off Meeting

In preparation for this task Kimley-Horn will gather important general base information to fully inform our team about the regional context, property ownership, land use, physical characteristics, and other

PRESIDENT OR PRESIDENT
PRO TEM OF THE CITY COUNCIL
OF HUNTSVILLE, ALABAMA
5/11/2023
DATE

important factors. We anticipate four (4) Kimley-Horn team members will attend an on-site meeting with the Client and other team members to validate the project objectives and the Client's goals associated with the significant growth potential in the area (this meeting will be billed under Task 6). The results of this meeting will be summarized in a memorandum and will inform our next step in the overall work plan.

Task 2 – Opportunities and Constraints Analysis

Kimley-Horn will conduct a site opportunities and constraints analysis to further evaluate factors that will be important in developing the Conceptual Master Plan. The work will be based on the areas delineated in the attached exhibit we have received from the Client. (See attached Exhibit A).

Important elements in this exercise will be the overall transportation framework and the key environmental systems in the area as well as other physical site characteristics readily available via GIS and open-source data, and the relationship to existing development.

Task 3 – Preliminary Development Program

During this task we will prepare the necessary base maps to allow our design team to explore potential land use relationships and community organization patterns that are informed by RCLCO's preliminary work. We see this initial concept planning step as interactive with the Client and RCLCO prior to proceeding to developing a Preliminary Concept Plan.

Task 4 – Prepare Preliminary Concept Plan and Presentation to Leadership

Based on the work accomplished in Tasks 2 and 3, Kimley-Horn will prepare a Preliminary Concept Plan. We anticipate four (4) Kimley-Horn team members and RCLCO team members will participate in an on-site or virtual meeting with the Client during which the full team will present and review the Preliminary Concept Plan and receive feedback and direction on all important aspects and features of the plan and the program prior to proceeding further (this meeting will be billed under Task 6).

Task 5 – Finalize Plan and Development Program

This task will involve a synthesis of all the previous work efforts by Kimley-Horn and RCLCO team members and the direction received by the team from the Client in the previous tasks. At the present time it appears that there could be four (4) separate design study areas. (See attached Exhibit B).

The plan will highlight important environmental and natural systems that can be integrated as open space and recreation features together with biking and walking trails, and various types of park spaces ranging from active sports facilities to more passive nature oriented gathering places. The plan will anticipate creating complete walkable/bike friendly residential communities with a full complement of supporting uses such as schools, neighborhood parks, community centers, amenities and small neighborhood services like retail, coffee shops, dance/yoga studios, neighborhood office space, places of worship and other supporting uses all arranged in 5–10-minute pedestrian walking sheds. These neighborhoods will be designed with 2-lane pedestrian friendly slow speed roadways that are well amenitized with street trees to create high value walkable and interactive places for the future residents.

Land uses that are more intense in their development format will include multifamily residential, mixed use, office, and hospitality sites. These uses will likely be arranged in various forms of activity centers with favorable public spaces that add value and can have a twenty-four (24) hour life cycle with

residents living close to where they work, play, and gather.
We also anticipate other workplace districts that are more industrial/office in nature and function. These districts could have security requirements that facilitate high level Research and Development operations as well as other uses. It is possible that warehouse facilities will also need to be accommodated adjacent to or with access to roadway networks with higher capacity. These networks, and corresponding traffic capacities and volumes, would be developed in a manner that would not impact the more residential/place-based neighborhoods.

This task will conclude with a meeting (on-site or virtual) attended by two (2) Kimley-Horn team members during which the final findings will be presented (this meeting will be billed under Task 6). Our work will be developed and presented in both hard copy and digital form as required for maps and diagrams based on the previous 2008 plan. Kimley-Horn will work with the team to decide on the level of detail and drawing scales that are appropriate for the plan and various components within the plan.

Task 6 – Presentation Meetings

Kimley- Horn will prepare for and attend the following meetings.

- Site Reconnaissance and Kick-off Meeting (Task 1)
- Presentation of Preliminary Concept Plan (Task 4)
- Presentation of Final Plan (Task 5)

Task 7 – Meetings and Coordination (Hourly)

This task will include any meetings, presentations, preparation for meetings and presentation, and coordination not specified in Tasks 1 – 6.

SUBCONSULTANT TASKS

Kimley-Horn will engage a sub-consultant, RCLCO, to complete the following tasks.

Task 8 – Market Opportunity Assessment

1. Project Kick-Off. Conduct a kick-off meeting either virtually or in-person* with client and relevant project team members to review and refine the assignment objectives and our approach and to obtain a complete debriefing from client about the project and any relevant information from prior work completed relative to the assignment. Prepare a general analysis outlining the strengths, weakness, challenges, and opportunities for each of the candidate land uses above from a market perspective.

2. Assessment of Market-Driven Demand. The objective of this task is to determine the market-driven demand for the desired land uses, recognizing that current market demand is no indication of future demand given the growth trajectory in the area. RCLCO's core methodologies will directly estimate demand for those uses the area analysis and interviews suggest, including land uses not specifically mentioned above should additional opportunities present themselves in the course of our work.

   The analytical tasks required to complete the market analysis will include among other activities: analysis of the sources of demand (current and future) for land uses in the area; an assessment of

potential general market positioning of candidate land uses; and an analysis of projected market demand.

The deliverable will provide an opportunity matrix which details the feasibility of real estate development potential by both product type and location (i.e. specific development parcels), over the near, mid, and long terms.

The scope of work necessary to accomplish the above includes the following:

a. Site Analysis. Analyze the locational characteristics of the site in order to inform the likely positioning of each portion of the parcel, suitability for various land uses, and inform the creation of an overall opportunity matrix. Visit the site and examine it's surrounding land uses relative to quality, visibility, access, planned developments, views, and other relevant factors.

b. Regional Socioeconomic Analysis. Determine the regional economic development context influencing future residential and commercial development at the property

   i. Characterize regional socioeconomic trends and conditions, which are and will be influencing short- and long-term residential and commercial development in the Huntsville MSA, and specifically Limestone County. Describe future growth patterns in the local area based on local government prepared population and employment forecasts, as well as RCLCO's internal modeling driven by disruptions in how growth will likely be influenced in coming years.

   ii. Comment on the reasonableness of available population and employment projections based on observed local and regional economic patterns; offer alternative projections and explain the rationale for those changes, if appropriate.

c. Supply. Investigation of the existing, planned, and proposed supply characteristics for select competitive properties within the following product types: industrial, R&D/flex, office (traditional Class A, creative), retail, hospitality, entertainment, and rental and for-sale residential. Compare and contrast the property's location strengths versus existing and planned developments in the immediate region. Synthesis of this information and analyses will inform RCLCO's recommendations regarding the depth of support for a variety of land uses within the market.

d. Demand. Calculation of the demand potential for these product types at a high level over near- and long- terms within the Primary Market Area as defined in the research process above, and general potential capture rates on the subject property. Demand projections by land use would be developed from the following considerations: anticipated increases in primary demand sources, local and regional economic development trends, local real estate patterns and market conditions, anticipated levels of competition, and the location strengths of the study area. The demand potential estimates will be grounded in our understanding of the regional, local economic drivers, shifts in development trajectories/directions, as well as RCLCO's experience with large-land development.

Task 9 – Fiscal and Economic Impact Analysis

1. Estimate revenues per new home and square of foot of commercial developed by key revenue source, including sales taxes, property taxes, impact fees, etc.

2. Using information provided in previous studies, estimate the operating costs associated with new home development, including spending for police, fire, general government, etc.

3. Using estimated capital costs evaluated in the 2012 study, estimate the capital costs likely to be incurred as a result of development on the annexed land.

4. Conduct a working session via web meeting or at our office, at which time we will present the findings and conclusions from this analysis. Supporting documentation in the form of exhibits, tables, and charts will be made available at the working session.

5. Economic Impact Analysis: Create an IMPLAN-based model to determine the economic impacts of development at the subject site on the City, including the indirect and induced jobs created, and total economic output as a result of development at the subject site.

6. Prepare an Executive Report summarizing the key findings and conclusions, following any feedback resulting from the working session.

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.

SCHEDULE

We will provide our services as expeditiously as practicable. Our intent is to schedule the Kick-off meeting shortly after receipt of a signed agreement with a goal of delivering the final plan in September 2023.

FEE AND EXPENSES

Kimley-Horn will perform the services in Tasks 1–6 and 8-9 for the total lump sum labor fee below. Individual task amounts are informational only. 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 - Kickoff, Site Reconnaissance and Assembling Project Data	$ 20,000
Task 2 – Opportunities and Constraints Analysis	$ 35,000
Task 3 – Preliminary Development Program	$ 20,000
Task 4 – Prepare Preliminary Concept Plan and Presentation to Leadership	$ 30,000
Task 5 – Finalize Plan and Development Program	$ 30,000
Task 6 – Presentation Meetings	$ 20,000
Task 8 – Market Opportunity Analysis	$ 63,000
Task 9 – Fiscal and Economic Impact Analysis	$ 31,500
Total Lump Sum Labor Fee	**$ 249,500**

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

Task 7 – Meetings and Coordination (hourly)
Kimley-Horn will perform the Services in Task 7 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates. Fees and expenses for Task 7 will be capped at $20,000.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost.

A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client. 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 the **City of Huntsville, Alabama**.

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.

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

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Brian C. Canin, AIA, FAICP
Project Manager

Scott Mingonet, PLA, AICP
Principal

CITY OF HUNTSVILLE, ALABAMA

SIGNED: _____

PRINTED NAME: Tommy Battle

TITLE: Mayor

DATE: 5/11/2023

Client's Federal Tax ID: _____
Client's Business License No.: _____
Client's Street Address: _____
_____

Attachment – Exhibits A and B
Attachment – Request for Information
Attachment – Standard Provisions

EXHIBIT A

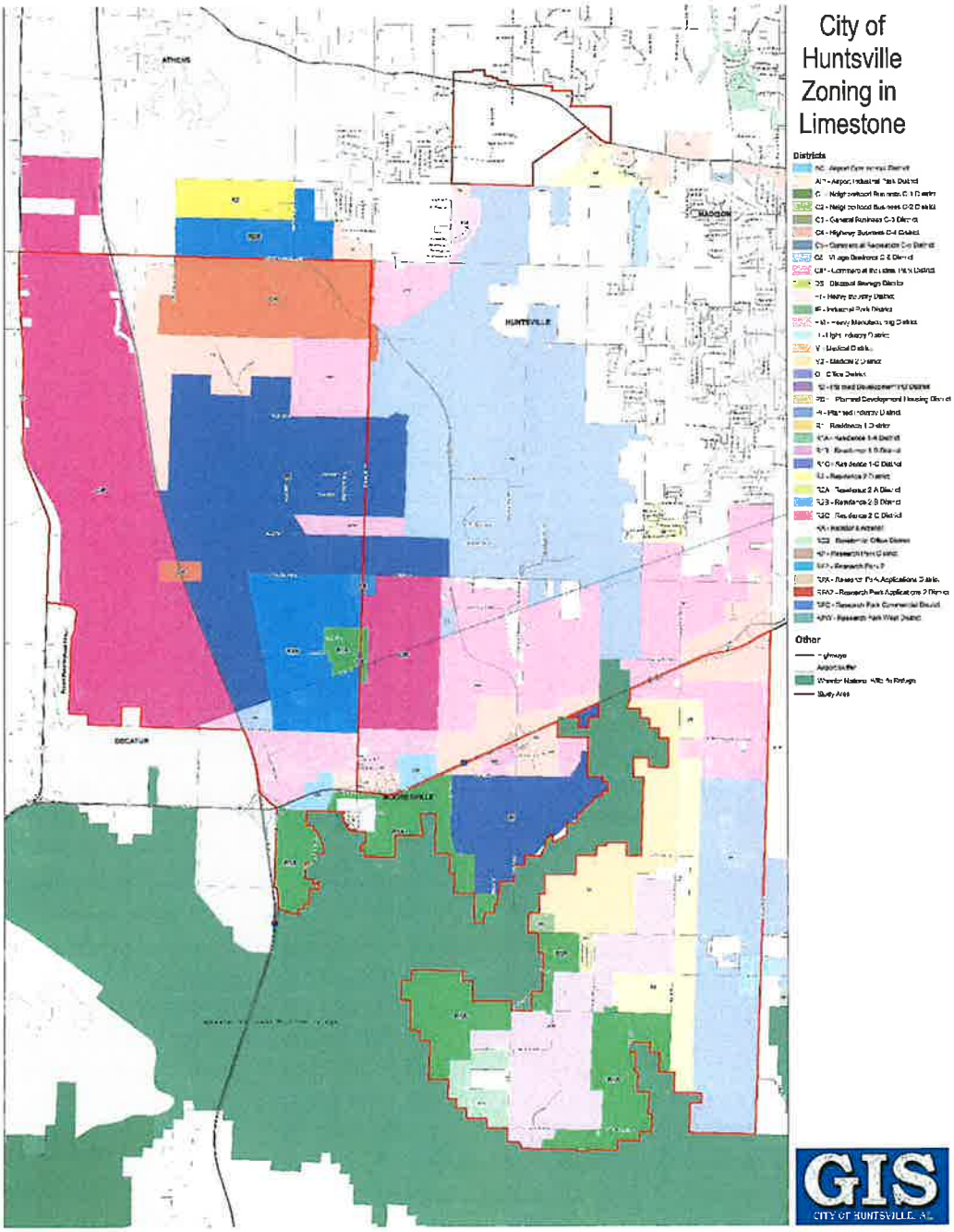
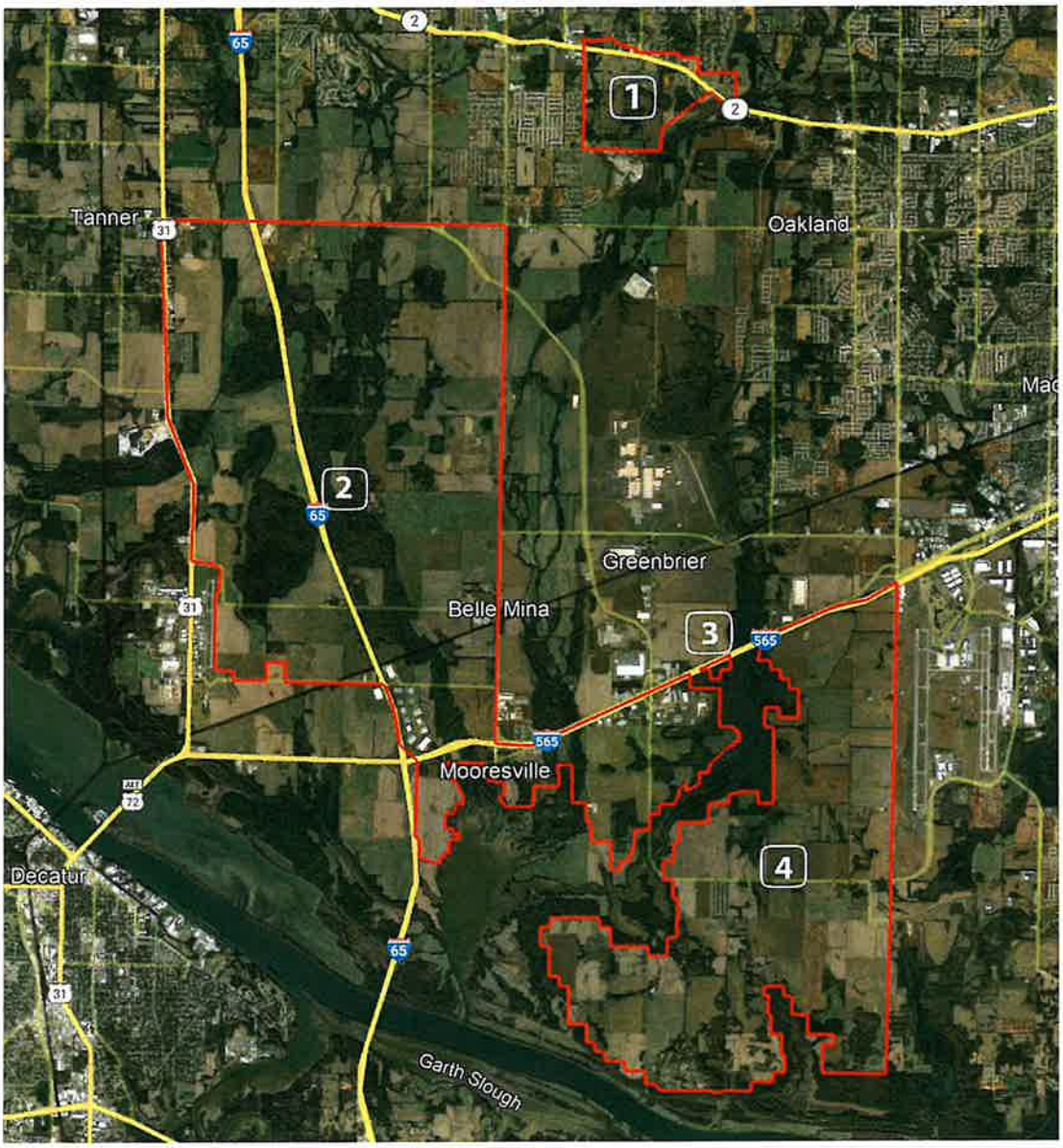

City of Huntsville Zoning in Limestone
Districts
Other
GIS
CITY OF HUNTSVILLE, AL

EXHIBIT B


1
2
3
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Tanner
Oakland
Greenbrier
Belle Mina
Mooresville
Decatur
Garth Slough

Kimley»Horn

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, 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.

Kimley»Horn

Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	*Rate*
Analyst I	$125 - $165
Analyst II	$165 - $210
Professional	$210 - $240
Senior Professional I	$250 - $310
Senior Professional II	$330 - $390
Senior Technical Support	$110 - $275
Technical Support	$100 - $160
Support Staff	$85 - $140

Effective through June 30, 2023

Subject to annual adjustment thereafter

Internal Reimbursable Expenses will be charged at 5% of Labor Billings

External Reimbursable Expenses will be charged at 15% mark-up, or per the Contract

Sub-Consultants will be billed per the Contract