Ordinance No. 24 - 4406

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING AND DESIGN SERVICES TO BE PROVIDED TO THE VILLAGE OF BARRINGTON RELATIVE TO PEDESTRIAN CROSSINGS

WHEREAS, pursuant to the statutory authority of the Village of Barrington ("the Village"), the Village wishes to enter into a contact for existing conditions analysis and creation of conceptual pedestrian crossing plans and to authorize and accept the Letter of Agreement dated May 15, 2024 with regard to improvements at a total not-to-exceed cost of $29,500 (the "Kimley-Horn Proposal") received from Kimley-Horn and Associates, Inc., 570 Lake Cook Road, Suite 200, Deerfield, IL 60015 ("Kimley-Horn") attached hereto as part of Group Exhibit A and thereby made a part hereof; and

WHEREAS, the professional services to be provided by Kimley-Horn will include but not be limited to concept plan exhibits, capacity analysis, existing condition reviews and documentation (collectively, the "proposed services"); and

WHEREAS, the Corporate Authorities of the Village find that it is in the best interests of the Village and its residents to authorize the Village to accept and execute the Kimley-Horn Letter of Agreement dated May 15, 2024 for the proposed professional engineering and design services at a not-to-exceed cost of $29,500 and to approve and execute a related Addendum to Letter of Agreement Between the Village of Barrington and Kimley-Horn and Associates, Inc., attached hereto as part of Group Exhibit A and thereby made a part hereof:

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington, Cook and Lake Counties, Illinois, pursuant to the authority of this Village as a Home Rule unit, as follows:

SECTION 1: The Corporate Authorities find that the facts set forth in the preamble to this Ordinance are true and correct and are hereby incorporated by reference as fully as if set forth herein.

SECTION 2: The Kimley-Horn Letter of Agreement dated May 15, 2024 as well as the related Addendum to Letter of Agreement Between the Village of Barrington and Kimley-Horn and Associates, Inc attached hereto as Group Exhibit A and thereby expressly made a part hereof, are hereby accepted and approved by the Corporate Authorities of the Village and a contract is hereby awarded to Kimley-Horn and Associates, Inc to provide to the Village the aforesaid professional engineering and design services at a total not-to-exceed cost of $29,500, and pursuant to Section 1-6A-6 of the Barrington Village Code, the Corporate Authorities hereby waive any and all requirements for competitive bidding or alternative proposals which might otherwise be required by law or by ordinance with respect to the aforesaid contract with Kimley-Horn and Associates, Inc.

SECTION 3: The Village President, or her designee, is hereby authorized on behalf of the Village to accept and execute and the Village Clerk is authorized to attest and deliver to Kimley-Horn and Associates, Inc. executed originals of both the Kimley-Horn Letter of Agreement dated May 15, 2024 and the related Addendum to Letter of Agreement Between the Village of Barrington and Kimley-Horn and Associates, Inc. attached hereto as Group Exhibit A and thereby made a part hereof, which collectively constitute and are referred to herein as "the Contract" and which are all attached hereto as Group Exhibit A and expressly made a part hereof, and to take all other necessary and appropriate actions to accomplish and implement said purchase as herein provided.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage as provided by law.

PASSED THIS 20 DAY OF MAY, 2024, BY ROLL CALL VOTE AS FOLLOWS:

AYES: Trustees Lohmeyer Sherlock Moran Riggs President Darch

NAYS: None

ABSENT: Trustees Wondrasek & Duncan

RECUSE: None

APPROVED THIS 20 DAY OF MAY, 2024

Karen Y. Darch

Karen Darch, Village President

ATTESTED AND FILED THIS 20TH DAY OF MAY, 2024

Tony Ciganek

Tony Ciganek, Village Clerk

Village of Barrington CORPORATE SEAL Cook & Lake Counties, IL

GROUP EXHIBIT A

(1) Kimley-Horn and Associates, Inc. Proposal dated May 15, 2024 at a not-to-exceed cost of $29,500,
and
(2) Addendum to Letter of Agreement Between the Village of Barrington
and Kimley-Horn and Associates, Inc

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ADDENDUM TO LETTER OF AGREEMENT BETWEEN THE VILLAGE OF BARRINGTON AND KIMLEY-HORN AND ASSOCIATES, INC. FOR ENGINEERING AND DESIGN SERVICES

THIS ADDENDUM TO LETTER OF AGREEMENT (hereinafter, the "Addendum") is made this _____ day of _____, 2024, by and between the VILLAGE OF BARRINGTON (hereinafter referred to as "Village") and KIMLEY-HORN AND ASSOCIATES, INC., 570 Lake-Cook Road, Suite 200, Deerfield, IL 60015 (hereinafter referred to as "Consultant") (the Village and the Consultant are sometimes referred to herein as the "Parties") for the performance of certain professional engineering and design services for the Village's Pedestrian Improvements at Union Pacific Railroad Project (collectively referred to herein as the "Project", the "Work", or the "Services") pursuant to and as more specifically set forth in the Consultant's Letter of Agreement dated May 15, 2024 at a not-to-exceed cost of $29,500.00 (hereinafter referred to as the "Consultant's Letter of Agreement"), a copy of which is attached hereto as Exhibit A and thereby made a part hereof. This Addendum and the Consultant's Letter of Agreement shall constitute the Contract Documents (sometimes collectively referred to herein as the "Contract" or the "Contract Documents"). In the event of any conflict between the Consultant's Letter of Agreement and this Addendum, the provisions of this Addendum shall supersede, prevail, and control.

WITNESSETH:

In consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. Scope of Services: The Consultant agrees to and shall timely perform and fully complete all of the Services relative to the Project as set forth in the Consultant's Letter of Agreement dated May 15, 2024 attached hereto and made a part of this Addendum as Exhibit A (the "Services").

2. Payment:
   A. Not to Exceed Payment: The Village agrees to pay the Consultant, and the Consultant agrees to accept as compensation for all Services required by this Addendum the amount(s) set forth as follows:
      ☒ the amount(s) set forth in the Consultant's Letter of Agreement; and
      ☒ subject to a not-to-exceed amount of $29,500.00 ("Contract Price")

   B. Invoices for Payments: The Consultant agrees to and shall prepare and submit:
      ☐ an invoice to the Village which the Village shall pay upon completion and approval of the Services; or
      ☒ invoices for progress payments to the Village as hereinafter set forth for Services completed to date. Invoices shall be prepared monthly and shall document the time/hours expended as the Services are completed to date by the Consultant.

   C. Village's Compliance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, et seq.) (the "Act). The Consultant and the Village both acknowledge and agree that the Village complies with the Act, which states that any bills approved for payment shall be paid within thirty (30) days after date of approval of the Consultant's invoice by the Corporate Authorities of the Village, and the parties both also agree that any payment(s) due to the Consultant for Services rendered or to be rendered to the Village shall be paid by the Village pursuant to the provisions of the Act. Notwithstanding any other provisions of any Contract Document, the Village shall not, in any manner, be considered to have accepted the Services, or any part thereof, or to have waived any claim related to such Services by making a final payment or by making any progress payment of any amount, where the Village determines that such Services, or part thereof, are defective, deficient, or not in conformance with the Contract Documents.

3. Contract Documents: The term "Contract" or "Contract Documents" means and includes, but is not limited to, the following, which are each attached hereto and thereby made a part hereof:
   A. This Addendum
   B. The Consultant's Letter of Agreement dated May 15, 2024

   In the event of any conflict between this Addendum and any other Contract Document, this Addendum shall prevail and control over the terms and conditions set forth in such other Contract Documents.

4. Time is of the Essence; Dates of Commencement and Completion: Time is of the essence in this Contract. The Services to be performed by the Consultant under the Contract Documents shall commence no later than _____, 2024 (hereinafter the "Commencement Date"), and will be completed based on a mutually agreeable schedule as outlined in the "Schedule" section of the Consultant's Letter of Agreement (hereinafter the "Completion Date"), Notwithstanding any other provision of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the Village, third parties, or governmental agencies, due to which the Completion Date may be modified in writing with the prior approval of the Village. If the Consultant fails to complete the Services by the Completion Date, the Village shall thereafter have the right to have the Services completed by another independent contractor, and in such event, the Village shall have the right to deduct the cost of such completion so incurred by the Village from payments otherwise due to the Consultant for the Services and/or the right to recover any excess cost of completion from the Consultant to the extent that the total cost incurred by the Village for the completion of the Services which are the subject of the Contract Documents exceeds the Contract Price.

5. Venue and Choice of Law: The Consultant and the Village agree that the venue for any and all disputes shall solely be in Cook County, Illinois, in which the Village's Village Hall is located. This Addendum and all other Contract Documents shall be construed and interpreted in accordance with the laws of the State of Illinois.

6. Nonassignability. The Consultant shall not assign this Contract, or any part thereof, to any other person, firm, or corporation without the prior written consent of the Village, which shall not be unreasonable withheld, and in no case shall such consent relieve the Consultant or its surety from the obligations herein entered into by the same or change the terms of this Contract.

7. Notices. All notices required by the Contract Documents shall be given in writing and shall be served by one party to the other party via email (effective when transmitted), facsimile (effective when transmitted), personal delivery (effective when delivered), commercial overnight delivery (effective when delivered), or by mail (effective when mailed).

8. Right to Alter Scope of Services Reserved: The Village reserves the right to alter the plans, extend or reduce the Scope of Services, add to the Scope of Services as may be necessary, and increase or decrease the scope and/or quantity of the Services, including the deduction or cancellation of any one or more of the unit price items, or to cancel the Contract and the Services in their entirety for any reason. If any Services are extended or increased, Consultant will have the right to additional compensation for the performance of these Services.

9. Control and Review of Services: Unless otherwise specified in the Contract Documents, review, acceptance or rejection of Services shall be made after delivery thereof. Final review, acceptance and/or rejection of the Services shall not impose liability on the Village for Services not in compliance with the Contract Documents as determined solely by the Village. Payment to the Consultant shall not be due on rejected Services until and unless fully corrected and/or replaced by the Consultant as determined by the Village. All Services provided by the Consultant shall be performed in compliance with this Addendum and the other Contract Documents as determined solely by the Village, and this Addendum shall control.

10. Timely Written Response and Written Report(s) of Resolution Relative to Certain Incident(s), Claim(s) and/or Complaint(s):

    A. All alleged incident(s), claim(s), or complaint(s) related to any alleged death, injury and/or damage to persons and/or to public or private property related to the Consultant's work or Services provided pursuant to this Contract shall be reported to the Village and resolved by the Consultant and/or its agent in a timely manner.

B. Within three (3) business days after receipt by Consultant of an initial written or verbal notice of any such incident, claim, or complaint, the Consultant shall also provide to the Village, and to any third-party making such claim or complaint, the name, telephone number, and cellular number of the Consultant's officer or employee who will be responsible for managing the resolution thereof until its final resolution by the Consultant and/or by the Consultant's insurer or agent.

C. Within ten (10) business days after the Consultant's receipt of the first notice of an alleged incident, claim, or complaint related to any alleged death, injury, and/or damage to persons and/or to public or private property (the "incident, claim, or complaint"), the Consultant or its agent(s) shall provide to the Village and to any third-party person making such claim or complaint an initial written response relative to such incident, claim or complaint, and the efforts and current progress of the Consultant and/or its agents to date toward the resolution of such incident, claim or complaint.

D. If complete resolution of the incident, claim, or complaint has not been reached within the aforesaid ten (10) business day period, the Consultant or its agent shall continue to use all reasonable efforts to fully resolve the incident, claim, or complaint, and to that end, further updated written status reports of resolution, or progress toward resolution, as the case may be, of such incident, claim, or complaint shall be provided to the Village by the Consultant not less than monthly until such incident, claim, or complaint is fully resolved.

E. The Consultant or its agents will be expected to fully resolve or at least begin the cure process of most incident(s), claim(s), or complaint(s) involving minor damage to public or private property within said initial ten (10) business day period after the Consultant receives its initial verbal or written notice of such incident, claim, or complaint.

11. Insurance:

A. Prior to Commencement of Work and/or Services:

(i) Prior to commencement of providing any Services under the Contract Documents, Consultant shall supply to the Village certificates of insurance as specified below, provided, however, these insurance requirements shall not be applicable to any Contract which is only for the purchase of goods by the Village. Consultant shall not start the Services contemplated by the Contract until Consultant has obtained all insurance required under this Paragraph 11, and all such insurance coverage has been obtained and approved by the Village Manager, or his designee.

(ii) Minimum Scope of Insurance: Coverage shall be at least as broad as Insurance Services Office ("ISO") Commercial General Liability occurrence form CG 00 01 04 13 with the "Village of Barrington and its elected and appointed officers, officials, and employees" named as additional insureds on a primary and non-contributory basis. This primary, non-contributory additional insured coverage shall be confirmed through the following required policy endorsements (or their substantial equivalents): ISO Additional Insured Endorsement CG 20 10 04 13 or CG 20 26 04 13, and CG 20 01 04.

B. Insurance Required: The Consultant shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the Services hereunder by the Consultant, its employees, subconsultants, and other agents, and:

(i) Commercial General Liability:

(a) $1,000,000 combined single limit per occurrence for bodily injury, and property damage and $1,000,000 per occurrence for personal injury. The general aggregate shall be $2,000,000.

(b) The Village of Barrington, and its elected and appointed officers, officials, and employees, are to be named and covered as additional insureds as respects: liability arising out of the Consultant's Services, including activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant, or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Village of Barrington, and its elected and appointed officers, officials, and employees, ,

provided, however, said additional insureds will not be required as to Consultant's Worker's Compensation or Professional Liability coverages.

(c) The Consultant's insurance coverage shall be primary and non-contributory as respects the Village of Barrington, and its elected and appointed officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Village of Barrington, and/or on behalf of its elected and appointed officers, officials, employees, agents and/or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

(d) Any failure to comply with reporting provisions of any applicable insurance policies shall not affect coverage provided to the Village of Barrington, and its elected and appointed officers, officials, employees, agents and/or its volunteers.

(e) The Consultant's insurance shall contain a Severability of Interests/Cross-Liability clause or language stating that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form", then the Consultant shall be required to name the "Village of Barrington, and its elected and appointed officers, officials, and employees" as additional insureds.

(g) All general liability coverages shall be provided on an occurrence policy form. Claims-made general liability policies will not be accepted.

(h) The Consultant and all subconsultants hereby agree to waive any limitation as to the amount of contribution recoverable against them by the Village of Barrington, and/or by its officers, officials, employees, agents and/or its volunteers. This specifically includes any limitation imposed by any state statute, regulation, or case law.

(ii) ISO Business Auto Liability coverage form number CA 00 01, Symbol 01 "Any Auto": $1,000,000 combined single limit per occurrence for bodily injury, and property damage and $1,000,000 per occurrence for personal injury.

(iii) Workers' Compensation Insurance: Such coverage as required by the Workers' Compensation Act of the State of Illinois with coverage of statutory limits and Employers' Liability Insurance with limits of $1,000,000 per accident. The insurer shall agree to waive all rights of subrogation against the "Village of Barrington, its elected and appointed officers, officials, employees, agents and volunteers" for losses arising from the Services provided by the Consultant for the Village.

(iv) Professional Liability:

(a) Professional liability insurance with limits not less than $1,000,000 each claim with respect to negligent acts, errors and omissions in connection with professional services to be provided under the contract, with a deductible not-to-exceed $50,000 without prior written approval.

(b) If the policy is written on a claims-made form, the retroactive date must be equal to or preceding the effective date of the contract. In the event the policy is cancelled, non-renewed or switched to an occurrence form, the Consultant shall be required to purchase supplemental extending reporting period coverage for a period of not less than three (3) years.

(v) Umbrella Policy: If the general aggregate limit for Commercial General Liability coverage provided is less than $2,000,000, pursuant to Section 11(B)(i) above, then a $1,000,000 Umbrella Policy shall also be provided which policy shall follow all required coverages as set forth above, other than Worker's Compensation and Professional Liability coverages.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Village of Barrington, upon request.

D. All Coverages:
   (i) No Waiver. Under no circumstances shall the Village, or its officers, officials, employees, agents or volunteers be deemed to have waived any of the insurance requirements of this Contract by any act or omission, including, but not limited to:
      (a) Allowing work and/or performance of the Services by Consultant or any subconsultant to start before receipt of Certificates of Insurance and Additional Insured Endorsements.
      (b) Failure to examine, or to demand correction of any deficiency, of any Certificate of Insurance and Additional Insured Endorsement received.
   (ii) Each insurance policy required shall have the Village of Barrington, expressly endorsed onto the policy as a Cancellation Notice Recipient. Should any of the policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
   (iii) When requested by the Village Manager, or his designee, Consultant shall promptly provide the respective original insurance policies for review and approval by the Village Manager, or his designee.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and approved to do business in the State of Illinois.

F. Verification of Coverage: Consultant shall furnish the Village of Barrington, with certificates of insurance naming the "Village of Barrington, its elected and appointed officers, officials, employees, agents and volunteers", as additional insureds (except on Professional Liability), and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the Village Manager, or his designee, before any work and/or performance of the Services commences. The following additional insured endorsements may be utilized (or their substantial equivalent): ISO Additional Insured Endorsements CG 20 10 04 13 or CG 20 26 04 13, and CG 20 37 04 13 – Completed Operations, where required. In the event a claim is filed, the Village reserves the right to request full certified copies of the insurance policies and endorsements.

G. Subconsultants: All subconsultants shall furnish their own separate Insurance. All coverages for subconsultants shall be subject to all of the requirements stated herein.

H. Intentionally Deleted.

I. Village May Rely on Its Membership in a Self-Insured Risk Pool: Notwithstanding any other provision in any contract document, the undersigned herein agree that the Village, at its own option, may satisfy its obligation to purchase any insurance required of the Village through its membership in a self-insured risk pool. The rights of the Village as a member of a governmental self-insurance pool are intended to and shall constitute full satisfaction for any of the insurance required of Consultant to be maintained by the Village.

J. Insurance Certifications: In addition to providing Certificates of Insurance as required by the Contract Documents, the Consultant shall submit to the Village a signed certification with each Request for Payment, stating that all the insurance required of the Consultant remains in force. Failure to submit such a certification shall be grounds to withhold payment in full or in part.

K. Insurance Requirements Cannot Be Waived by Village: Under no circumstances shall the Village be deemed to have waived any of the insurance requirements of the related Contract by any act or omission, including, but not limited to: (1) allowing the Services to commence by the Consultant or any subconsultant of any tier before receipt of Certificates of Insurance; (2) failing to review any Certificates of Insurance received; (3) failing to advise the Consultant or any subconsultant of any tier that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise

deficient in any manner; or (4) issuing any payment without receipt of a Sworn Statement from the Consultant and all subconsultants of any tier stating that all the required insurance is in force. The Consultant agrees that the obligation to provide the insurance required by this Addendum or any of the contract documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village. Consultant shall also protect the Village by specifically incorporating this Paragraph into every subcontract entered into relative to the Services contemplated herein and also requiring that every subconsultant incorporate this Paragraph into every sub-subcontract it enters into relative to the Services contemplated herein.

L. Liability of Consultant and Subconsultant is Not Limited by Purchase of Insurance: Nothing contained in the insurance requirements of this Addendum or any Contract Documents is to be construed as limiting the liability of the Consultant or the liability of any subconsultant of any tier, or either of their respective insurance carriers. The Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Village, the Consultant, or any subconsultant's interest or liabilities, but are merely required minimums. The obligation of the Consultant and every subconsultant of any tier to purchase insurance shall not, in any way, limit their obligations to the Village in the event that the Village should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the insurance of the Consultant or any subconsultant's insurance.

M. Notice of Bodily Injury or Property Damage: The Consultant shall notify the Village, in writing, of any actual or possible claim for personal injury or property damage relating to the Services, or of any occurrence which might give rise to such claim, promptly upon obtaining first knowledge of same.

N. Updated Proof Required: The Consultant agrees that at any time upon the demand of the Village, updated proof of such insurance coverage will be submitted to the Village. There shall be no additional charge to the Village for said insurance.

O. Higher and More Expansive Standard Applicable: To the extent other insurance requirements of the Contract Documents contradict this Paragraph 11, the more expansive and higher standard, in terms of type and amount of coverage, shall govern.

12. Indemnity:

A. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and hold harmless the Village, its elected and appointed officers, officials, and employees against all injuries, deaths, loss, damages, claims, any claims or amount recovered by reason of any infringement of any patent, trademark or copyright, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the Village, its elected and appointed officers, officials, and employees, but only to the extent caused by the negligent performance of the Services by the Consultant, its employees, or subconsultants, or which may in anywise result therefrom.

B. Consultant expressly understands and agrees that any insurance policies required by this Contract, or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless the Village, its elected and appointed officials, employees or agents as herein provided.

C. Consultant further agrees that to the extent that money is due the Consultant by virtue of this Contract as shall be considered necessary in the judgment of the Village, such funds may be retained by the Village to protect itself against said loss until such claims, suits, or judgments shall have been settled or discharged and/or evidence to that effect shall have been furnished to the satisfaction of the Village.

D. In the event that the Village is not immune from liability under any applicable law, and only in such event, the Village hereby agrees to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the Village's negligent acts in connection with the Project and the acts of the Village, and/or any of its officers, trustees and/or employees.

E. Neither the Village nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence, or for the willful misconduct of their respective officers, trustees, employees and/or agents.
F. The provisions of this Paragraph 12 shall survive any termination of the Contract.

13. Village Confidential Information:
A. Consultant represents that it shall not disclose, use, sell, rent, trade, or otherwise provide Village Confidential Information to any person, firm, or entity for any purpose outside of the specific purposes of the Contract Documents, except as necessary to comply with applicable State or Federal laws. Notwithstanding the foregoing, this shall not apply to any portion of the Information which was in the public domain prior to Consultant's receipt, or which subsequently becomes part of the public domain by publication or otherwise without Consultant's wrongful act or any Information that may need to be disclosed pursuant to governmental or judicial requirement or subpoena, provided Consultant has given Village reasonable prior notice of the proposed disclosure and an opportunity to secure a protective order thereon.
B. The provisions of this Paragraph 13 shall survive any termination of the Contract.

14. No Conflicts of Interest: The Consultant represents that to the best or their knowledge it has no conflict of interest and has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift(s), or any other consideration, contingent upon or resulting from the award or the making of this Contract.

15. Compliance with Laws: Consultant shall comply with all published applicable federal, state, and local laws, ordinances, rules and regulations, and any and all orders and decrees of any court, administrative body or tribunal applicable to the performance of the Contract. Included within the scope of the laws, ordinances, rules and regulations referred to in this paragraph, but in no way to operate as a limitation, are: Occupational Safety & Health Act ("OSHA"); Illinois Department of Labor ("IDOL"), Department of Transportation, and all forms of traffic regulations; public utility, Intrastate and Interstate Commerce Commission regulations; Workers' Compensation Laws, the Social Security Act of the Federal Government and any of its titles, the Illinois Human Rights Act, and EEOC statutory provisions and rules and regulations. Evidence of specific regulatory compliance will be provided by the Consultant if requested by the Village.

16. Equal Employment Opportunity: The Consultant shall be an "equal opportunity employer" as defined in the United States Code Annotated. The Consultant shall be required to comply with the President's Executive Order No. 11246, as amended, and the requirements for Bidders and Consultants under this order are explained in 41 CFR 60-4. The Consultant shall fully comply with all applicable provisions of the Illinois Human Rights Act.

17. Certifications: By the execution of this Addendum, the Consultant certifies that: (1) the Consultant is not delinquent in the payment of any tax administered by the Illinois Department of Revenue as required by 65 ILCS 5/11-42.1-1; (2) the Consultant has a written sexual harassment policy as required by and shall otherwise comply in all respects with the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)); (3) the Consultant will provide a drug-free workplace as required by and shall otherwise comply with the Illinois Drug-Free Workplace Act (30 ILCS 580/1, et seq.); (4) the Consultant has in place a written policy as required by and that it does and shall otherwise comply with the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1, et seq.); and (5) the Consultant is not and/or was not barred from bidding on this Contract pursuant to Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 5/33E-4).

18. Project Documentation: Upon execution of this Addendum relative to the Project, notwithstanding anything contained in any other Contract Documents to the contrary, the Consultant and its subconsultants agree to and shall release to the Village any and all right, title, and interest in and to any and all Project

Documentation depicting, documenting, or recording the Services, and/or the Work, and/or the Project which is the subject of the Contract Documents, prepared or created by the Consultant and/or its subconsultants, including but not limited to any and all drawings, plans, specifications, photos, reports, videos, and/or other recordings on any electronic media (sometimes collectively referred to as "Project Documentation"), and any and all of such Project Documentation shall become the property of the Village. The Consultant and its subconsultants further warrant to the Village that they have the legal right to convey said Project Documentation to the Village. The Services contemplated by the Contract Documents shall not be considered complete until and unless legible and complete physical and electronic copies of all such Project Documentation have been delivered to the Village. The Village may reuse Project Documentation without the prior written authorization of the Consultant, but the Village agrees to waive any claim against the Consultant arising from any unauthorized reuse or modification of the Project Documentation.

19. Illinois Freedom of Information Act (5 ILCS 140/1, et seq.): As a unit of local government, the Village is subject to the Illinois Freedom of Information Act (FOIA), as amended. Therefore, after award of the Contract, responses, documents, and materials submitted to the Village by the Consultant will be made available for public inspection in accordance with the FOIA, unless otherwise determined by a Village FOIA officer after award of a contract. The Village and the Consultant and any subconsultant(s) shall maintain their respective records relating to the performance of the Contract Documents in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by the Village and the Consultant and any subconsultant(s) shall be available for review by the other. The Consultant and its subconsultant(s) and the Village shall cooperate with each other (a) with all requests for records made pursuant to the Freedom of Information Act (5 ILCS 140/1, et seq.), (b) with any request for records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records of Consultant within a time period which allows the Village to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1, et seq.). Consultant must inform the Village, in writing, of the exact materials in the Consultant's Letter of Agreement which it claims are exempt from disclosure pursuant to the FOIA as proprietary or as may otherwise be protected. The obligations imposed by this section shall survive final payment and the termination of the other obligations imposed by the Contract.

20. Consultant is an Independent Contractor: It is mutually understood and agreed that the Consultant shall have full control of the ways and means of performing the Professional Services referred to above and/or which is the subject of this Addendum and the related Contract and that the Consultant or his/its employees, representatives or subconsultants are in no sense employees of the Village, it being specifically agreed that in respect to the Village, the Consultant and any party employed by the Consultant bears the relationship to the Village of an independent contractor.

21. Arbitration Deleted from Contract Documents; No Attorneys' Fees: Any provision in the Contract and any other contract documents referring to the submission of claims or disputes to arbitration shall herein be deleted. Notwithstanding anything contained in the Contract and any other contract documents to the contrary, it is the intent of the parties that arbitration is a remedy which shall not exist under the Contract and any other contract documents, and no party shall be entitled to recover attorneys' fees or court costs in any action to enforce or interpret this Addendum and the related Contract and contract documents.

22. Duration: This Addendum and the related Contract Documents shall be in effect from the date of the Contract until the completion of the Services, but the obligations of the Consultant under Paragraphs 12 and 13 shall continue after such termination.

23. Advertisement: The Consultant is specifically denied the right to use in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

24. Amendments: No agreement or understanding to modify this Addendum or the related Contract Documents shall be binding upon the Village unless in writing and signed by the Village's authorized agent. All

specifications, drawings, and data submitted to the Consultant with this Addendum or the related Contract Documents are hereby incorporated and made part thereof.

25. Termination; Remedies: Notwithstanding any other provision hereof, the Village may terminate the Contract with the Consultant and this Addendum in the event of a default by the Consultant or without cause at any time upon 15 days prior written notice to the Consultant. In the event that the Contract with the Consultant and this Addendum are so terminated and the Consultant is not in default or breach of the Contractor and/or this Addendum, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed which shall be determined on the basis of the rates set forth in the Consultant's Letter of Agreement (Exhibit B).

26. Supersede: The terms, conditions and specifications set forth in this Addendum shall supersede, govern, and prevail over any inconsistent terms, conditions, and/or specifications on any other Contract Documents.

27. Severability: In the event any section, subsection, paragraph, sentence, clause, phrase or provision of this instrument or part thereof shall be deemed unlawful, invalid, unenforceable or ineffective by any court of competent jurisdiction, such decision shall not affect the validity, enforceability or effectiveness of the remaining portions of this instrument.

28. Facsimile or Digital Signatures: Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and this Contract shall be deemed delivered as if containing original signatures if such delivery is made by emailing a PDF of a scanned copy of the original, hand-signed document, and/or by use of a qualified, established electronic security procedure mutually agreed upon by the Parties.

29. Counterparts: This Addendum may be executed in one or more counterparts, which counterparts when affixed together, shall constitute one and the same original document.

30. No Third-Party Beneficiaries: The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

31. Entire Agreement: The Contract Documents, which include the Consultant's Letter of Agreement dated May 15, 2024 and this Addendum (including all Exhibits attached thereto which by reference are made a part of this Addendum) and all other written agreements and/or other instruments signed by all of the parties hereto which by their express terms are a part of the Contract Documents, are the final expression of, and contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized officer in quadruplicate counterparts, each of which shall be considered as an original.

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES, INC.

By: DocuSigned by: [signature] B4E8ADE866D7D410...
Eric Tracy Associate
Its Authorized Agent

ATTEST: DocuSigned by: Peter Stoehr B8ZAF330C40B489...
Its Assistant Secretary

VILLAGE OF BARRINGTON

By: Karen Y. Darch
Karen Darch, its Village President

ATTEST: Tony Ciganek
Tony Ciganek, Village Clerk

Village of Barrington CORPORATE SEAL Cook & Lake Counties, IL

(05/14/24)

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EXHIBIT A

Consultant's Letter of Agreement dated May 15, 2024

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Kimley»Horn

May 15, 2024

Marie Hansen, P.E., CFM
Assistant Village Manager & Director of Development Services
Village of Barrington
200 S. Hough Street
Barrington, IL 60010

Re: Letter Agreement for Additional Professional Services for
Pedestrian Crossings at Union Pacific Railroad at Main Street/Cook Street and Hough Street
Village of Barrington, Illinois

Dear Marie:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this Letter Agreement (the "Agreement") to Village of Barrington ("Client") for perform traffic engineering services and update concept drawings for pedestrian crossing improvements at Union Pacific Railroad (UPRR) in downtown Barrington at locations identified below.

Scope of Services

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

Task 1 – Exhibit Modifications

Kimley-Horn previously prepared two UPRR Pedestrian Crossings exhibits dated 4/24/2024 ("UPRR Exhibits"). Kimley-Horn will prepare up to two (2) rounds of revisions to the UPRR Exhibits based upon review comments received from Client staff, Illinois Commerce Commission (ICC), Illinois Department of Transportation, and Union Pacific Railroad (if available). Additional revisions will be completed as an Additional Service.

Task 2 – Presentation Exhibits

Kimley-Horn will prepare two (2) color presentation exhibits based upon the revised UPRR Exhibits approved by the Client. The exhibits will show the proposed roadway alignment, travel lanes, parking stalls, sidewalks, and pedestrian gates. The graphics shall be prepared at a scale and quality to be either presented on a large format mounted board or displayed digitally for PowerPoint presentation. One (1) round of revisions based on Client comments is provided under this task. Additional revisions will be completed as an Additional Service.

Task 3 – Capacity Analysis

Synchro capacity analysis software will be used to evaluate existing and future operational conditions at the study intersections. The analysis of future traffic conditions will consider three alternatives at Main Street/Cook Street: 1) existing geometry; 2) revised geometry depicted on the revised UPRR Exhibits and 3) revised geometry depicted on the revised UPRR Exhibits, and including the Park Avenue closure depicted on the Park Avenue Plaza exhibit prepared by Teska dated January 3, 2022.

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With the revised geometry, existing traffic traveling north-south on Cook Street at Main Street will be redistributed to the area roadway network. Additionally, existing eastbound and westbound left-turn traffic will be redistributed.

Based on the results of the capacity analysis, Kimley-Horn will summarize delay and queues at the study intersections. For the analysis of future conditions, Kimley-Horn will identify the vehicle, bicycle, and pedestrian benefits, challenges, or tradeoffs associated with the two alternatives at Main Street/Cook Street. Where appropriate, improvements to the study intersections will be identified to mitigate existing and future operational and safety issues. All intersection traffic counts will include vehicle classification (i.e., cars, single-unit trucks, multi-unit trucks) as well as pedestrians/cyclists in crosswalks, and bicycles on the road to represent the current characteristics of the surrounding street system and comply with agency standards. The traffic count data will be summarized, evaluated, and used as a basis for future traffic analysis.

Task 4 – Crash History Review

Kimley-Horn will obtain crash history for the study intersections. The crash history will be obtained from the Illinois Department of Transportation (IDOT) for the most recent available 5-year period. Kimley-Horn will summarize crash frequency, severity, type, potential contributing factors (e.g., lighting condition, pavement condition, signage, bicycle/pedestrian/vehicle conflict zones), and where appropriate potential countermeasures will be identified.

Task 5 – Documentation

Based upon the above work tasks, Kimley-Horn will prepare a technical memorandum documenting the study methodology, analyses, and findings. The technical memorandum will include appropriate tables and graphics to summarize existing and future traffic and safety conditions at the study intersections. A draft copy of the study will be provided to the Client for review prior to finalizing the study for submittal. This task includes up to one (1) round of revisions to address consolidated comments from the Client.

Task 6 – Meeting and Coordination

Kimley-Horn will be available to attend any meetings with stakeholders, authorities having jurisdiction, elected officials, and the Client staff. Due to the unknown quantity, duration, and format of these meetings, Kimley-Horn's attendance would be at the Client's request, documented, and billed as additional services on a time-and-materials basis at our then-current hourly rates.

Excluded Items

The following items are not included in our services:

- Field confirmation of dimensions.
- Topographic survey. The exhibits will be based on aerial background.
- Engineer's opinion of probable construction cost.
- ICC to identify location of pedestrian gates.

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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 and work with the Client to develop a mutually agreeable schedule.

Fee and Expenses

Kimley-Horn will perform the services in Task 1-5 for the total lump sum labor fee below. Individual task amounts are informational only. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Kimley-Horn will perform the services in Task 6 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates.

In addition to the labor fees, 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	Base Services	Fee	Fee Type
1	Exhibit Modifications	$3,500	Lump Sum
2	Presentation Exhibits	$2,500	Lump Sum
3	Capacity Analysis	$10,000	Lump Sum
4	Crash History Review	$1,500	Lump Sum
5	Documentation	$6,500	Lump Sum
6	Meeting and Coordination	$5,000	Hourly
	Direct Reimbursable Expenses Budget	$500	
	Base Services Fee	**$29,500**	

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.

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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 Village of Barrington.

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.

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.

DocuSigned by:
Peter Stoehr
B62AF530C49B4B9...

Peter Stoehr, P.E.
Project Manager

DocuSigned by:
B4E8ADE868D7D410...

Eric Tracy, P.E.
Associate

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 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
   d. If Kimley-Horn initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
   e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.

5) **Use of Documents.** All documents and data prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the

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

6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at https://www.kimley-horn.com/khts-software-license-agreement ("the License Agreement") which terms are incorporated herein by reference.

7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.

10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or $50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate

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

14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.

16) **Construction Phase Services.**

a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.

b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, 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 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.